

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A No.: 2022-CP-29-01637

Ikram Khan, *et al.*,

Plaintiffs,

v.

Mustapha Saoui, *et al.*,

Defendants.

**PLAINTIFFS' BRIEF IN OPPOSITION
TO MOTION TO DISMISS**

NOW COME Plaintiffs, Ikram Khan, et al, ("Plaintiffs"), by and through the undersigned counsel, and for their Brief in Opposition to Defendants' Motion to Dismiss state as follows:

I. Overview and Statement of Facts

This is a corporate governance case, not a "church case," or a religious dispute. The outcome does not depend on interpreting the doctrine, polity, or practice of a religious denomination or faith.

The Islamic Community Center of South Charlotte ("ICCSC") is not a church or a mosque.

It is a Community Center serving the Islamic community of South Charlotte. It operates a school, a gymnasium, a library, a playground, and a soccer field, and has a Masjid, which is a prayer area.¹

The underlying question before the Court is whether a non-profit corporation followed its internal Constitution and Bylaws regarding membership leading up to an election. The motion brought by defendants challenging the court's subject matter jurisdiction to hear this dispute is misplaced, based on a claim that the ICCSC is itself a mosque, and that the issues before the court

¹ See, e.g. <https://iccsc.org>. For clarity: a dedicated Masjid is a Mosque, although a Mosque is not a community center.

would be primarily religious in nature. Neither are correct. The ICCSC is a non-profit corporation with a religiously oriented purposes, but the fact that it has a religious orientation and purpose does not divest its members of the possibility of judicial relief.

Technically, there is a distinction between a “religious non-profit corporation” that functions as a church, mosque, temple, or other house of worship, (which therefore enjoys the greatest degree of legal protection to preserve freedom of religion), and a “religious non-profit corporation” that is really just a standard 501(C)(3) corporation which has a religious purpose. Here, the ICCSC is the latter. However, for our purposes here, i.e. establishing subject matter jurisdiction, the law provides for judicial review in both instances, so other than affirming the fact that the ICCSC is a standard 501(C)(3) religious oriented corporation, the case law need not be separated out.

As addressed below, even specific statutes provide for religious non-profit corporations that function as houses of worship to obtain judicial relief where proper. It follows that members of religiously oriented non-profit organizations can obtain relief, where proper, as well.

The ICCSC is a South Carolina Non-Profit Religious Corporation duly incorporated and registered with the Secretary of State of South Carolina.² As reported in its tax filings on the Form 990s, which it filed between 2016-2019, well before this dispute erupted, the stated purpose of the ICCSC is “to provide educational and religious opportunities for members of the Muslim faith in Charlotte and surrounding areas.”³ The corporation operates pursuant to its Corporate Constitution and Bylaws, and members of the Community Center have legal rights relative to that membership.

The ICCSC Constitution and Bylaws describes the “Aims and Purposes” of the organization to include helping Muslims understand and practice Islam, (which is educational in

² Ex. A, Articles of Incorporation.

³ Ex. B, Form 990 Tax Filings, 2016-2019.

nature), to conduct religious, educational, social and other activities, (which are educational, social, and “other”), to promote unity, make Islam known to non-Muslims, (which is outreach and public relations), and to conduct the affairs of the Islamic Center, (which is corporate management).⁴

The fact that this non-profit corporation serves the Islamic community does not divest the members of legal rights, and does not divest the court of subject matter jurisdiction over corporate issues. The case before this Court is one of corporate governance, not religious faith.

II. Law and Argument

The United States Supreme Court has acknowledged and held numerous times that courts have subject matter jurisdiction over civil disputes involving church property and church governance matters. In fact, the United States Supreme Court expressly noted in *Presbyterian Church v Mary Elizabeth Blue Hull Memorial Church*, in a church property dispute between a local church and its denominational hierarchy, that “it is of course true that the State has a legitimate interest in resolving property disputes, and that a civil court is a proper forum for that resolution.”⁵ Thus, even when a matter clearly is between two church entities, subject matter jurisdiction is not barred. The only matters the court lacks subject matter jurisdiction over is resolution of an ecclesiastical matter.

The question is *how* the court is to deal with issues of doctrine, polity, and practice without entangling the court in the religious dispute, or establishing a religion by its actions, more than one of subject matter jurisdiction. First Amendment protections for religious belief and practice must be zealously guarded, but, “[i]t is obvious, however, that not every civil court decision as to

⁴ Ex. C, Constitution and Bylaws of Islamic Community Center of South Charlotte, at Art. II.

⁵ *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 445.

property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property.”⁶ Therefore, even if this was a church case, the court house doors are not shut.⁷

South Carolina Statutes contemplate that non-profit corporations, including religious organizations, have access to the courts. For example, SC Code Section 33-31-160 provides for “Judicial relief” where the non-profit corporation cannot call meetings in accordance with their bylaws.⁸ Given the fact that the ICCSC’s governing board’s terms have all expired, Plaintiff’s anticipate seeking relief under this provision, which the court certainly retains jurisdiction to affect. Likewise, Section 33-31-610 expressly provides for recognition of membership rights, which anticipates the ability to judicially protect those rights.⁹ Membership derivative suits are provided for under Section 33-31-630.

Defendants cite to the 1903 cases of *Morris Street Baptist Church v Dart*, 67 S.C. 338 and

⁶ *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 449

⁷ Plaintiffs are using the term “church” to include all manner of religious houses of worship, including churches, Mosques, and temples, of all faiths, in order to reflect the body of case law addressing such disputes.

⁸ **33-31-160(a)**: “If for any reason it is impractical or impossible for a corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, or the Attorney General, the court of common pleas for the county in which the principal office designated ... is located ... may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authored, in such a manner as the court finds fair and equitable under the circumstances.”

⁹ **SECTION 33-31-610**: “Differences in rights and obligations of members: “All members have the same rights and obligations with respect to voting, dissolution, redemption, and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.”

Pearson v Church of God, 325 S.C. 45 (1996) for the proposition that the court has no subject matter jurisdiction over membership expulsion issues. (Defs' Motion at p.4). This is a misreading of *Pearson* and its progeny. The South Carolina Supreme Court recently described the *Pearson* rule as follows: "The ***Pearson*** rule establishes that where a civil court *can* completely resolve a church dispute on neutral principles of law, the First Amendment commands it to do so. Nonetheless, where a civil court is presented an issue which is a question of religious law or doctrine masquerading as a dispute over church property or corporate control, it must defer to the decisions of the proper church judicatories in *so far as it concerns religious or doctrinal issues.*" *Protestant Episcopal Church v. Episcopal Church*, 421 S.C. 211, 220 (2017), *emph. added*. This does not divest the court of jurisdiction for corporate governance disputes – to the contrary – it directs the court to utilize neutral principles of law in making the determination of law, and to defer to the highest judicatory of the religious organization to the extent that a specific religious precept is involved. This approach both respects the rule of law and protects freedom of religion while preserving judicial oversight.

The *Protestant Episcopal* language above uses an interesting phrase, describing some issues as "a question of religious law or doctrine *masquerading as a dispute over church property or corporate control.*" (*Id.*, *emph. added*). Here, Plaintiff's submit that Defendants' motion presents the inverse: *a corporate control issue which defendants are masquerading as a religious dispute.*

Here, as set forth in the pleadings, the governing board of the corporation, the Shura, was up for re-election writ large. Defendants, sensing they would be on the losing side of the election, arbitrarily and without following the procedures in the Bylaws, simply declared that their political opponents were no longer members. This is not a matter of Islamic law or doctrine – its political

skullduggery. No hearing was held, no formal proceedings initiated, just the defendants on the Shura, before their terms expired, making a declaration that their political opponents had acted in an un-Islamic manner by campaigning. The Corporate Bylaws provide that the Shura “may suspend or expel a member *after an appropriate hearing.*” (Bylaws, Art. V. Sec.4, *emph. added*). Here, no hearing was held. Even if this were a church case, the determination of whether a hearing was held does not involve a question of religious doctrine.

A case on point affirms that this court has subject matter jurisdiction. In *McCain v Brightharp*, 399 S.C. 240, (Ct. App., 2012), the question before the court was whether the purported removal of trustees and deacons was a nullity, as the church had not followed its internal bylaws provisions. Upholding the trial court’s determination that the church had not followed its internal procedures, and that therefore the removal of the trustees was a nullity, the court found:

The Mount Canaan Baptist Church's By-Laws state the Board of Trustees is comprised of deacons and trustees. Article VI, Section 7, titled "Removal from the Trustee Board," provides:

Any trustee who fails to discharge his duties or is found to be inefficient shall first be counseled by the Pastor and a committee of Trustees. If he fails to rectify his ways, he shall be removed from the Trustee Board by a simple majority vote of the Church members present in a regular business meeting.

McCain testified that this is the procedure established by the Church to remove and silence trustees and deacons, and he was not counseled prior to his removal. Johnson and Goodwin also testified they were not counseled. *Because Respondents were removed without prior notice or counseling by the pastor and a committee of trustees, as required by the Church's By-Laws, we find the trial court properly found their dismissals were a nullity.*

McCain v. Brightharp, 399 S.C. 240, 251 (*emph. added*).

Specifically in its discussion on subject matter jurisdiction, the court noted that

Obviously then, if a decision is reached by some body *not* having ecclesiastical jurisdiction over the matter, then the civil court would not be bound by that decision. *The appropriate remedy, therefore, would not be to impose an*

ecclesiastical dictate of the civil court but would rather be to restore the status quo prevailing before the unauthorized action.

McCain v. Brightharp, 399 S.C. 240, 249, citing to *Bowen v Green*, 275 S.C. 431 (1980) (*emph. added*). Similar to *McCain*, the ICCSC Bylaws require certain steps be taken before a removal can be effectuated. Similar to *McCain*, they were not followed. As the court in *McCain* exercised civil jurisdiction to remedy the wrong, so it should do here. Defendants' Motion to Dismiss for lack of subject matter jurisdiction should be denied.

It is axiomatic that when assessing a Motion to Dismiss the allegations in the complaint must be taken as true. (*Citations omitted*). Here, the Complaint alleges a failure of the corporate board to follow its Bylaws. (See e.g. Complaint at ¶¶ 29, 32, 33, 34, 35). Taking those as true, the question is whether the court has subject matter jurisdiction to consider a membership termination where the corporate bylaws were not followed. As was done in both *McCain* and *Bowen*, jurisdiction was exercised and upheld on review, and should be held here.

In *Williams v. Wilson*, 349 S.C. 336 (2002), the South Carolina Supreme Court exercised subject matter jurisdiction in a matter examining the removal of a pastor, to see if the body purporting to do so had the proper authority per the church's bylaws, and whether it had followed those bylaws. The church trustees voted to dismiss respondent church preacher. In response, the congregation voted to oust the trustees, elected replacement trustees, and overrode the dismissal of the preacher. In *Williams*, certain church members commenced a declaratory judgment action to determine the preacher's employment status, to determine the legitimacy of the newly elected trustees, and for injunctive relief. Holding the trustees did not have the authority, the court voided the termination. As to subject matter jurisdiction, the court noted "Church disputes may be resolved by the courts only if resolution can be made without extensive inquiry into religious law." *Id.* at 340, citing to *Pearson*, *supra*, and *Knotts v Williams*, 319 S.C. 473 (1995). Here, the question

of whether a hearing was held involves no inquiry into religious law, and therefore the court may retain jurisdiction.

Here, the complaint alleges that the corporation's governing body, the Shura, acted contrary to its bylaws, and hence acted *ultra vires*, without authority, to remove members from their positions with the Shura, and as candidates for office. Plaintiffs are not asking the court to examine the substantive reasons why the Shura purported to act, but simply to examine if it had legal authority to do so, as the corporate board. (See, e.g. Complaint at ¶¶ 29, 32, 33, 34, 35).

Plaintiffs respectfully submit that the Court does have subject matter jurisdiction to see if the corporate body functioned in accordance with its bylaws, and that the inquiry does not involve a question of faith, polity, or religious practice.

III. Conclusion

For the foregoing reasons, the Court has Subject Matter Jurisdiction to consider the plaintiffs' claims, and may do so without infringing upon or offending any right of free exercise of religion.

Respectfully submitted this 24th ay of April, 2023.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April, 2023, a true and correct copy of the foregoing document was served upon all parties who have appeared, by filing the same with the Court's e-filing system before 11:59 p.m.

s/ Brandy G. Price
Brandy G. Price, Esq.