

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Ikram Khan, Shahid Hussain Rahu,)
Arshad Khan, Mohammad Masroor,)
Masoom Shaik, Arafath Mohammad,)
Suleman Waheed, Muhammad Mahmood,)
Muhammad Ajmal, Zafer Mohammed,)
Sarfraz Khan, Abdul Azeez Muhammed,)
Shaik Abdul Mannan, and Aslan Shaik,)
)
Plaintiffs,)

v.)

MOTION TO DISMISS PLAINTIFFS’
COMPLAINT FOR LACK OF SUBJECT
MATTER JURISDICTION

Mustapha Saoui, Jamal Zoubir, Farooq)
Hussain, Marlon Haniff, Izzeldin Shibeika,)
Mehdi Wajih, Ahmed Anakkar, Bouna)
Cisse, Khaalis Ansaar, and AbdulRahman)
Shuli (All in their Official Capacity as)
Members of the Shura Governing Body of)
The Islamic Community Center of South)
Charlotte,)
)
Defendants.)

Defendants move, pursuant to Rule 12(b)(1) S.C. R. Civ. P., to dismiss Plaintiffs’ complaint and each of Plaintiffs’ causes of action for lack of subject matter jurisdiction.¹ This motion is based upon the following:

- 1. This lawsuit:

[I]s a dispute between members who were or are congregants of the Islamic Community Center of South Charlotte (ICCSC), which is a religious non-profit corporation organized under South Carolina law. The plaintiffs and defendants contend that the other side has acted inappropriately and without authority

¹ “The issue of subject matter jurisdiction may be raised at any time including when raised for the first time on appeal. . . .” Tatnall v. Gardner, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct. App. 2002).

concerning election of the governing body of ICCSC, which is known as the Shura.

See Order filed Jan. 18, 2023.

2. Plaintiffs were all members of ICCSC and candidates for election to ICCSC's governing body - the Shura - for the upcoming (2023-2025) term. Some of the plaintiffs were also members of the then-governing (2020-2022) Shura.

3. Defendants were all members of the then-governing (2020-2022) Shura, and some of them were also candidates for the upcoming (2023-2025) Shura.

4. In November 2022, a dispute arose between the parties concerning the upcoming Shura election. As a result of that dispute, the governing Shura voted to revoke the memberships of each of the plaintiffs and to remove them as candidates for the 2023-2025 Shura.

5. Plaintiffs filed this lawsuit, seeking both injunctive and declaratory relief. Plaintiffs' entire lawsuit is based upon the assertion that the Shura "violated the ICCSC bylaws and governing documents" when it removed Plaintiffs from the ballot and revoked their membership "without an appropriate hearing or due process." *See* Complaint ¶¶ 34-36. Plaintiffs' complaint seeks a judicial declaration that their removal was invalid and also seeks to enjoin "the holding of any elections for the 2023-2025 Shura governing body without the inclusion of all Plaintiffs as eligible candidates." *Id.* ¶¶ 42 & 44.c.

6. As a matter of well-settled law, civil courts do not have subject matter jurisdiction to grant the relief that Plaintiffs seek in this lawsuit. Over 150 years ago, the United States Supreme Court first recognized:

The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. **All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.**

But it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular court and have them reversed.

Watson v. Jones, 80 U.S. 679, 729 (1871)(emphasis added).

7. More recently, the United States Supreme Court has reaffirmed this rationale in Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). In Milivojevich, a former bishop of the Serbian Eastern Orthodox Church, challenged his defrocking on grounds that it was “procedurally and substantively defective under the internal regulations of the [church] and therefore arbitrary and invalid.” Id. at 698. The Illinois circuit court initially ruled in favor of the church and against the bishop, but Illinois’ Supreme Court reversed. The Illinois Supreme Court held, because the church had failed to follow its internal regulations, its decision to defrock the bishop was “arbitrary” and therefore invalid. Id.

After granting certiorari, the U.S. Supreme Court concluded that the Illinois courts’ review of the church’s internal proceedings “improperly interfered [with an ecclesiastical matter] . . . in violation of the First and Fourteenth Amendments.” Id. The Supreme Court reversed, reasoning:

[I]t is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria. **Constitutional concepts of due process, involving secular notions of “fundamental fairness” or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance.**

Id. at 714-715 (emphasis added).

8. South Carolina’s courts have followed the United States Supreme Court’s lead in these matters:

[C]ivil courts will not enter into the consideration of church doctrine or church discipline, nor will they inquire into the regularity of proceedings of the church judicatories having cognizance of such matters. To assume such jurisdiction would not only be an attempt by the civil courts to deal with matters of which they have no special knowledge, but it would be inconsistent with complete religious liberty, untrammelled by state authority. **On this principle, the action**

of church authorities in the deposition of pastors and the expulsion of members is final.

Morris Street Baptist Church v. Dart, 67 S.C. 338, 45 S.E.753, 754 (1903)(emphasis added)(cited with approval in Pearson v. Church of God, 325 S.C. 45, 478 S.E.2d 849 (1996)).

9. These cases make clear that secular courts have no authority to review the internal decision-making and governance of a religious organization. The Shura's decision to revoke Plaintiffs' membership and to remove them as candidates for the upcoming election is an ecclesiastical matter, which is not subject to judicial review. If Plaintiffs find themselves aggrieved by Defendants' actions, then they can assert their grievances within the governance of ICCSC or its hierarchical organization. They cannot challenge the Shura's decision-making in this court.

10. The court lacks subject matter jurisdiction to entertain any of the claims asserted in Plaintiffs' complaint.² Defendants are entitled to dismissal of each of Plaintiffs' claims, pursuant to Rule 12(b)(1) S.C. R. Civ. P.

This motion will be based upon the applicable statutory and case law, the verified pleadings and affidavits of record, and the South Carolina Rules of Civil Procedure. Counsel certifies, pursuant to Rule 11 S.C. R. Civ. P. that he had no obligation to consult with opposing counsel prior to filing this motion.

² While the court lacks subject matter jurisdiction to decide Plaintiffs' claims, it has jurisdiction to decide Defendants' derivative counterclaims. Pearson v. Church of God, 325 S.C. 45, 53, 478 S.E.2d 849, 853 (1996)(in litigation involving a religious organization, "courts cannot avoid adjudicating rights growing out of civil law.").

February 8, 2023

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