

MEMORANDUM

SUPREME COURT

: KINGS

COUNTY

(IAS PART 12)

By SHAW,

Dated December 6, 19 93

CONGREGATION YETEV LEV D'SATMAR, INC.,
LUDOVICK WEISZ and JACOB SCHONFELD,

Plaintiffs,

- against -

26 ADAR N.B. CORP., CONGREGATION BETH
JOEL, BETH FEIGE INC., NACHMAN BRACH
and BAY RIDGE FEDERAL SAVINGS AND LOAN
ASSOCIATION,

Defendants.

Index No. 13224/90

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26 ADAR N.B. CORP. and NACHMAN BRACH,

Third-Party Plaintiffs,

- against -

LEOPOLD LEFKOWITZ and SOLOMON SENDER,

Third-Party Defendants.
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This is a delicate and very grave matter. It involves the activity and memory of Grand Rabbi Joel Teitelbaum (The Satmar Grand Rabbi), a renown leader and originator of the Hasidic Satmar sect. During his lifetime he was considered by his followers as a "Zadick" (a person of outstanding virtue and piety) and who, after death, is revered as a saintly soul. His home and synagogue is viewed by his followers as a holy shrine. The placing of gates in front of the synagogue barring entrance and prayer therein, created a riot amongst the rival factions of the Satmar Grand Rabbi wherein three men were dragged from their automobile, their car was set on fire and but for of the timely intervention of the

police serious injuries would have been inflicted upon them. In view of the gravity of the issues, this court reviewed all of the papers submitted on the respective motions of the parties, the order of the Appellate Division, Second Department, dated March 2, 1993, the record on appeal and the briefs thereon.

Defendants 26 Adar N.B. Corp. and Nachman Brach (collectively "Adar") move for summary judgment dismissing plaintiffs' complaint and alternatively for other relief. Defendant Bay Ridge Federal Savings Bank (Bay Ridge) similarly and supportive of defendants Adar's motion, moves for summary judgment dismissing plaintiffs' complaint. Plaintiffs cross-move for partial summary judgment dismissing the defendants' answers with respect to premises known as 541 Bedford Avenue, Brooklyn.

For facility of disposition this court will filter the plethora of papers and files before it and delimit the issues presented by the parties.

During his lifetime the Satmar Grand Rabbi caused the organization in 1948 of plaintiff Congregation Yetev Lev D'Satmar, Inc. (Yetev Lev). Thereafter, in 1970 and 1971, he arranged for the acquisition of five contiguous parcels of property known by street numbers 533 to 541 Bedford Avenue, Brooklyn (the Property). The deed to 533 Bedford Avenue shows a consideration of \$20,000. The other deeds merely state the usual consideration of \$10 and other good and valuable considerations. The total value of the

acquired Property in 1971 was in excess of \$100,000. Supportive of this valuation is the petition of Yetev Lev dated December 15, 1971 to mortgage the Property for the sum of \$125,000 with the Dime Savings Bank of Williamsburg. Significantly, the petition states the value of the Property as \$150,000 and the cost of completing the construction of the "House of Worship presently being erected . . . approximately \$400,000" (Defendants Adar's Exh. "H"). It is to be noted that premises 541 Bedford Avenue is specifically included as the property being mortgaged. The value of the Property in April and May 1978 (time of the transfer of the Property to Cong. Beth Joel), is best determined by the fact that Beth Joel executed a mortgage on the Property to Manufacturers Hanover trust Company in the sum of \$1,000,000 (the amount of the mortgage, of necessity, is less than the real value of the Property - the real value represents the bank's equity in the Property).

Members and Trustees of Yetev Lev

It appears that Yetev Lev has approximately 100 members. In the alleged minutes of the membership meeting that is annexed to the petition and order submitted to Mr. Justice Pino of this court for leave to sell, as designated, premises 535-539 Bedford Avenue, there appears a statement that 30 members were present at the meeting. None of the alleged members who attended the meeting are named nor identified by the parties.

The Trustees, their number and identity, as claimed by defendants, are no more than the three named in the petition. However, defendants Adar's Exhibit "L", a petition and order dated November 12, 1981, made in Orange County for leave to sell an unneeded parcel of land, discloses that there were 13 directors, their names and address clearly identified and separately set forth. Defendants submit no proof that as of 1978 there were more or less directors. However, plaintiffs annexed to their moving papers an affirmation by four members of Yetev Lev, one of whom is Sender Deutsch, the Vice-President and Trustee named in the petition, wherein they affirm that there were eight living Trustees and four who were deceased as of the year 1978. Each Trustee is identified by name. Defendants do not submit any proof to the contrary other than their reliance on the three Trustees named in the petition. Defendant Beth Feige submitted an affirmation by a Wilhelm Katz who states that he has been a member of Yetev Lev for 34 years and is the treasurer of Beth Feige. Although he disputes the denials of the existence of the notices of meetings of the Membership and Trustees and the denials of meetings to authorize the sale of the designated properties, he makes no averment of the number of Trustees in 1978, nor does he state that he attended the membership meeting described in the petition, nor does he name one member of the alleged 30 who did attend the membership meeting. His only hearsay statement is that

"afterwards [certain members] told me that a [sic] meeting the Trustees and officers decided to sell the property to Beth Joel."

Before this court proceeds to analyze the petition, the court wishes to make the following observations, particularly since Yetev Lev, Beth Joel and Beth Feige are religious corporations whose members are of the orthodox, very observant, Jewish faith. Biblically, after the flood and the destruction of the then evil civilization, the Lord gave unto Noah seven laws, known as the Noahide Laws. Significantly, one of the seven laws command the establishment of courts of justice. Without courts of justice there is chaos and civilization cannot long exist. Emphasizing the enforcement of this law, the Lord proclaimed to Moses "Justice, Justice shalt thou pursue". With these basic Judaic laws from which many of our own laws originate, this court is duty-bound to uphold the sanctity of our courts and the proceedings therein.

The Petition and Order

1. Annexed to the petition and order are notices of meetings of the Membership and Trustees of Yetev Lev. Solomon Sender (Sender) signed both meeting notices as Secretary, Sender denies that he knew what he signed. Apparently, he was given papers to sign and he dutifully obeyed without reading the papers handed to him. The fact is that he never was the Secretary of Yetev Lev, but was its Treasurer. Had he read the papers, he

would have patently seen the error. Sender affirms that the notices of meetings of the Membership and Trustees were never sent, that no meetings to sell the Property to Beth Joel were ever held or attended by him, that no offer of sale of the Property to Beth Joel was ever made or received, that there were more than three Trustees at the time (1978), that the members of Yetev Lev were not desirous of relocating, or that Yetev Lev ever received from Beth Joel or from anyone on its behalf the cash portion of the alleged purchase price of \$35,0000, or that he knew or was informed at the time that the Property was sold to Beth Joel.

2. Sender Deutsch, Vice-President of Yetev Lev, one of the three Trustees named in the petition and one of the four who made the joint affirmation of September 2, 1993 with other members of Yetev Lev, and who also made the affirmation dated December 2, 1990, averred that:

a) there were more than three Trustees in the year 1978.

b) no notices of meetings of the Membership or Trustees for the sale of 533-539 Bedford Avenue to Beth Joel were ever served upon or received by him or by the other three joint affiants;

c) to his knowledge and to that of the other three joint affiants, there never was a meeting to sell said premises nor did he or the other three joint affiants know of any such meetings or attend any such alleged meetings;

d) neither he nor the other three joint affiants knew of the existence of any minutes of such alleged meetings.

e) Leopold Lefkowitz never presided over any meeting to sell said premises. Leo Lefkowitz has no present memory of the meetings and of the petition and order. He had suffered "a major and serious stroke in 1979" (see aff. of Sandra E. Langs and Dr. Louis Robert Wasserman).

(f) he and the joint affiants averred that "[i]n or about 1978, members of Congregation Yetev Lev did not nor were they desirous of relocating to another section of New York City. In fact, in 1978, the number of members of Congregation Yetev Lev residing in Williamsburgh was increasing";

g) the cost to build and acquire the Property (the home of the Satmar Grand Rabbi and the Synagogue) exceeded 1 million dollars;

h) he and his joint affiants averred that "Congregation Yetev Lev never received any payment for the Property or any portion thereof from Congregation Beth Joel or any other person or entity. In fact, notwithstanding Congregation Beth Joel's purported assumption of Congregation Yetev Lev's mortgage with the Dime Savings Bank, Congregation Yetev Lev continued to pay that mortgage in 1978 and thereafter until satisfaction in 1982."

The Allegations of the Petition

1. "That the interests of the petitioner will be served and its welfare promoted by the sale and transfer of the property . . . premises 533-539 Bedford Avenue . . . The members of the organization have long since moved from the area where the premises are located and they are desirous of locating in another section of the City." How does one reconcile those allegations with the true value of the premises to be sold and the fact that the home of the Satmar Grand Rabbi continued to be occupied by him until his death and for approximately ten years thereafter by his wife. The synagogue was and still is used for prayer and study for over 12 years. The gate-barring of the synagogue produced a riot. The allegations of the petition are clearly misleading.

2. "[T]he petitioner has received an offer for purchase of the premises . . . from Congregation Joel, a religious corporation . . . for the sum of \$100,000, \$35,000 cash, and \$65,000 subject to an existing mortgage . . . this is the best possible offer that could be obtained for these premises and upon information and belief, is the fair and reasonable value of the property." This allegation is blatantly incorrect. Defendants seek to attenuate the effect of this misleading misstatement by contending that even a nominal consideration would have been sufficient. True, the Religious Corporation Law § 12(8) provides that "any solvent religious corporation . . . may . . . sell . . . convey the whole

. . . of its real property to another religious corporation . . . for a consideration of one dollar or other nominal consideration . . . a proposed conveyance for such consideration shall be treated as a sale" But, rhetorically, does a statute excuse or condone incorrect misleading statements made to unduly influence a presiding justice to grant a requested order. Again, rhetorically, is the sanctity of a court and its judicial proceedings enhanced by such misstatements or protected and preserved by conduct violative of the spirit, intent and commands of the Religious Corporation Law, a body of law designed to protect religious corporations and their congregants against the wrongs of their officers.

Upon examination of the practically exact petition of Congregation Beth Joel to resell the Property to Beth Feige, the court considers the petition to be even more grievous than its predecessor Yetev Lev. The Beth Joel petition recited a consideration and value of the Property of \$100,000 despite its having mortgaged the Property a very short time later for \$1,000,000 and despite the fact that but one year earlier an application was made to the Orange County Court wherein the petition specifically set forth the names and residence addresses of 13 directors, not just three.

This court may not permit a perversion of its judicial proceedings nor an unethical, wrongful misstatement of facts to unduly influence a presiding justice of this court to grant a desired order. It is the duty of this court, in upholding the sanctity of its judicial proceedings and the honor of the justices of the court, to annul the order of Mr. Justice Frank J. Pino dated and entered on June 6, 1978, and the order of Mr. Justice Anthony T. Jordan dated and entered on November 12, 1980. The annulment of the orders of Messrs. Justice Pino and Jordan voids the deeds executed pursuant thereto. The real property of a religious corporation may not be sold "without applying for and obtaining leave of the court therefor" (Religious Corporation Law § 12[1]). No proper leave was sought and no proper order was granted for the conveyance by Yetev Lev to Beth Joel nor Beth Joel's conveyance to Beth Feige.

This court's conclusion of the invalidity of the court orders with the resultant invalidity of the deeds is mandated by the Religious Corporation Law.

In Bank of Manhattan Trust Co. v Twenty-one Sixty-six Broadway (142 Misc 910, 915, affd 236 App Div 781), the court held:

"If consent was essential and not obtained, the Supreme Court ex parte orders authorizing the lease and mortgage cannot cure an inherent invalidity of the transaction . . . The fact that it has been executed on both sides and fully performed will not permit the mortgage to stand, nor create an estoppel."

Expanding on Bank of Manhattan Trust Co. (supra), the court in Diocese of Buffalo v McCarthy (91 AD2d 213, 217, lv denied 77 NY2d 808) stated:

"The purpose of the requirement is 'to protect the members of the religious corporation, the real parties in interest, from loss through unwise bargains and from perversion of the use of the property' . . . Mindful of that purpose and in furtherance thereof, the courts have construed section 12 strictly and held that compliance with it is 'absolutely necessary' and 'indispensable' to the validity of the transaction . . . Adopting that view, we conclude that the lease herein was void ab initio as in violation of the special act."

More recently in Levovitz v Yeshiva Beth Henoeh (120 AD2d 289, 292, 297, 298), Justice Vaccaro, confirmed

"the award by a Beth Din . . . [and] declared that 'pursuant to the award of the Beth Din . . . neither a majority of the trustees nor a majority of the members of Yeshiva Beth Henoeh, Inc. consented to the sale of the real property . . . prior to the signing of the contract for sale . . . or after the signing of the contract,' [and] declared that 'pursuant to the award of the Beth Din . . . the contract of sale for the real property . . . owned by the Yeshiva Beth Hanoeh, Inc. is null and void, non-existent and without any legal standing at all', and . . . 'set aside the prior order of Special Term'" (emphasis added).

The Appellate Division reversed on the grounds that one of the parties to the contract of sale was not made a party to the Beth Din arbitration and that there appeared to be a question of fact of whether the Trustees validly voted, and thus remitted the matter for trial stating:

"If upon remittal, it is determined that the trustees of the Yeshiva did not validly authorize the sale of the subject realty pursuant to the contract . . . then an appropriate judgment should be entered dismissing the complaints for specific performance and the judgment of Special Term (Vaccaro, J.) . . . which, inter alia, set aside the order of Special Term (Koofer, J.) . . . and the order of Special Term (Pizzuto, J.) . . . may stand."

Where a deed to real property had been recorded and thereafter is declared void, a subsequent purchaser of the realty will not be permitted to contend that he is a purchaser in good faith and for value. One cannot establish bona fides on a void deed. The void deed negates any subsequent transaction thereon (Field v Field, 130 Misc 2d 751, 754).

Defendants, however, contend that plaintiffs are barred from seeking equitable relief by reason of a statutory bar and by reason of laches.

CPLR 212(a) provides for a ten-year time limitation to commence an action to recover real property. However, that time bar affects only those owners who are not in possession of their realty (see, Downes v Peluso, 115 AD2d 454; James v Lewis, 135 AD2d 785, 786). There is a marked distinction in the applicability of the time bar between an owner in possession of realty and one not so in possession.

In Ford v Clendenin (215 NY 10, 16, 17), the court stated:

"It is well settled that an owner in possession has a right to invoke the aid of a court of equity at any time while he is so the owner and in possession, to have an apparent, though in fact not a real incumbrance discharge from the record and such a right is never barred by the Statute of Limitations. It is a continuing right which exists as long as there is an occasion for its exercise . . . The owner of real property who is in possession thereof may wait until his possession is invaded or his title is attacked before taking steps to vindicate his right. A person claiming title to real property but not in possession thereof must act affirmatively and within the time provided by the statute" (see also, Howard v Murray, 38 NY2d 695, 699).

There is no denial that neither Beth Joel or Beth Feige paid the cash part of the purchase price - \$35,000 - or the \$65,000 on the Dime Savings Bank of Williamsburg mortgage. Such payments could have alerted members and Trustees of Yetev Lev of a change in status and ownership. The monthly payments on the mortgage continued to be made by Yetev Lev until satisfaction of the mortgage debt. Neither Beth Joel or Beth Feige claim to have given notice to the Trustees and membership of Yetev Lev of a change of ownership. In fact, Beth Joel never put a sign over the synagogue that it is Congregation Beth Joel. Similarly, Beth Feige never put a sign over the synagogue that it is Beth Feige. The only sign placed over the entrance to the synagogue was a commemorative sign honoring the memory of The Satmar Grand Rabbi. Outwardly, in all other respects, the residence building (533-539-

Bedford Ave.) originally occupied by The Satmar Grand Rabbi and his Rebbetzin (a respectful title for Rabbi's wife), and after his death by his Rebbetzin and the synagogue (541 Bedford Ave.), were occupied and used in the same manner prior and subsequent to 1978. No proof to the contrary was offered by defendants.

It is important to here note that on a motion for summary judgment the "facts appearing in moving papers . . . not controverted may be deemed admitted" (Costello Assocs. v Standard Metals, 99 AD2d 227, 229; Kuehne & Nagel v Baiden, 36 NY2d 539, 544).

The facts deemed to be admitted by defendants:

- a) The monthly check payments by Yetev Lev to the Dime Savings Bank of Williamsburg, the last one being April 11, 1982 (photocopies annexed to Pls' moving papers as Exh. "L");
- b) The monthly check payments by Yetev Lev to Brooklyn Union Gas and to Consolidated Edison, the last one being October 10, 1986 (photocopies annexed as Exh. "AA");
- c) The billings by both the Brooklyn Union Gas and Consolidated Edison to Yetev Lev to 1989 (photocopies annexed as part of Pls' Exh. "AA");
- d) The regular attendance by members of Yetev Lev to the synagogue and the riot that ensued when defendants' Adar gate-barrred the entrance to the synagogue; and
- e) The facts previously recited and found by this court.

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FROM STEPHEN H PENN ASSOC

TO

All of the foregoing clearly establish continued occupancy and possession of the Property by Yetev Lev.

The Defense of Laches

There has been no showing by defendants that plaintiffs' delay in instituting and pursuing this action was knowingly or intentionally delayed to defendants' damage. The doctrine of laches to be employed and enforced must contain the

"significant factor . . . whether the plaintiff has inexcusably delayed in asserting his rights, while to his knowledge the opposing party has changed his position to his irreversible detriment . . . Here, the record contains no evidence that plaintiffs had any knowledge, notice or reason to believe that defendant . . . entered into a transaction in 1968 . . . which involved a change of position on his part. Without such knowledge or notice, we conclude that plaintiffs' inactivity does not justify invocation of the doctrine" (Orange and Rockland Util. v Philwold Estates, 70 AD2d 338, 343, mod on other grounds 52 NY2d 253), the court stating at page 261 and 262: "We agree, also, for the reason stated by the Appellate Division, that laches could not bar this action."

Defendants' defense of laches is without merit.

The Motions

Plaintiffs' motion is limited to a prayer for partial summary judgment declaring Yetev Lev's continuing ownership of its synagogue at 541 Bedford Avenue. Defendants, however, moved for full summary judgment dismissing plaintiffs' complaint. Thus, "[i]f it shall appear that any party other than the moving party

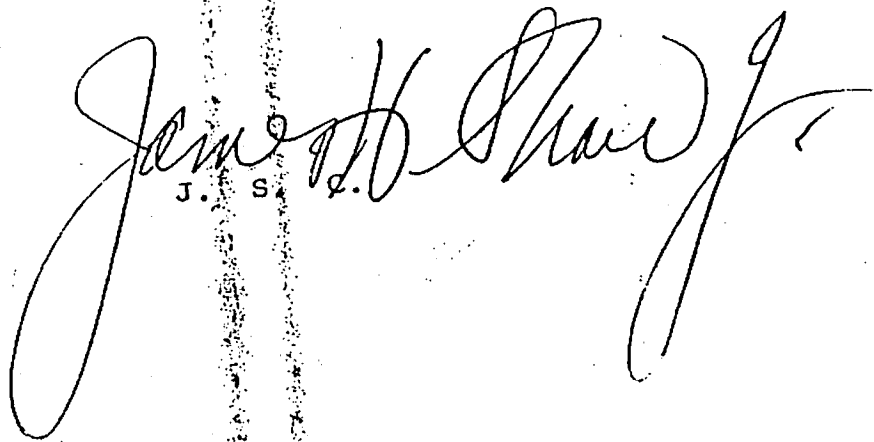
is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross motion" (CPLR 3212[b]).

This court grants to plaintiffs complete summary judgment declaring Yetev Lev's continued ownership of all of the Property.

If this court was compelled to limit itself to plaintiffs' request for partial summary judgment of continued ownership of the synagogue at 541 Bedford Avenue, the court would be compelled to grant such motion on defendants' own exhibits. Defendants' Exhibit "D", the petition of Yetev Lev to sell to Beth Joel, refers only to "premises 533-539 Bedford Avenue" (the residence of the Satmar Grand Rabbi and his Rebbetzin, ¶ 6). The alleged notices of meetings of Trustees and membership are similarly limited "to consider the sale of premises 533-539 Bedford Avenue." The alleged minutes of the membership meeting only authorizes the sale of "its property located at 533-539 Bedford Avenue." There can be no mistake as far as the Trustees and Members as to what was proposed to be sold, particularly since in an earlier petition and order to mortgage the Property, the Property was described as 533-541 Bedford Avenue (see, Defs' Exh. "H"). The ineluctable conclusion that this court must accept is that the ownership of the synagogue - 541 Bedford Avenue - was never to be severed from Yetev Lev. Defendants' contentions to the contrary are wholly without merit and frivolous.

Accordingly, the court grants summary judgment to plaintiffs declaring plaintiff Yetev Lev to be the owner of premises 533-541 Bedford Avenue, Brooklyn, New York. The respective motions of each of the defendants are denied, including defendants Adar's motion for preclusion and to strike the complaint. This latter motion is denied as moot.

Settle order.


J. S. C.