

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2014 – 07158

K. G. NARAYANA, et al

vs.

NEW ENGLAND HINDU TEMPLE, INC.

MEMORANDUM AND ORDER ON
DEFENDANT'S MOTION TO DISMISS

INTRODUCTION

The plaintiffs, K. G. Narayana, J. V. Krishna, Sanjay Kaul and R. Sreedar, members of the New England Hindu Temple, Inc. (“NEHTI”), and unsuccessful candidates in an election for the Board of Trustees of the Temple, brought this action by unverified Complaint alleging fraud during an April 27, 2014 Temple election, and asking the court to declare that election null and void and order a new election. Plaintiffs also filed a Motion for Injunctive Relief. Prior to a hearing on that motion, the parties agreed to mediate the dispute. The court (Curran, J.) issued a Mediation Order. The parties were unable to resolve the dispute.

The defendants now move to dismiss for lack of subject matter jurisdiction pursuant to Mass.R.Civ.P.12 (b)(1). The defendants argue that the First Amendment of the United States Constitution and the Massachusetts Declaration of Rights prohibit civil courts from intervening in disputes concerning the internal organization of a religious congregation. In the alternative, the defendants argue that the complaint should be dismissed, pursuant to Rule 12(b)(6) of the Massachusetts Rules of Civil Procedure, because the plaintiffs lack standing to file suit against the Temple (as they do not allege that they are members of the Temple in the body of the

complaint) and, if they are members of the Temple, they are bound by the Temple By-Laws which require binding arbitration to resolve disputes of this nature.

BACKGROUND

The New England Hindu Temple, Inc. is a place of worship in Ashland, Massachusetts for those who subscribe to the Hindu religion. The Temple by-laws provide that membership is open to any person of Hindu faith who satisfies all of the following requirements: (1) a legal permanent resident of North America; (2) 18 years or older at the time of application; (3) subscribes to and abides by the provisions of these by-laws; and (4) complies with the payment of membership dues and other stipulations of the New England Hindu Temple, Inc. (Defendant's Exhibit C, Article IV).

The governing structure of the Temple consists of the General Body (constituted by the members of the Temple), the Board of Trustees (consisting of 12 members elected by the General Body), and the Stewardship Council (consisting of at least five, but not more than eight, Temple founders and other respected members of the Temple community) that provides advisory services to the Board of Trustees and the General Body of members as and when needed. (Defendant's Exhibit C, Article IV, 5.2).

The purpose of the Board of Trustees is to ensure the upholding and execution of the provisions in the by-laws and to facilitate the administration of the affairs of the Temple. (Defendant's Exhibit C, Article V, 5.4.1). The by-laws provide, in part, that the Board of Trustees shall be the "(1) sole governing body of NEHTI; (2) exercise all powers of NEHTI to organize its affairs to achieve the purposes outlined in the By-laws; (3) ensure the diligent compliance of the local, state, federal laws, and the NEHTI By-laws by all NEHTI entities." (Defendant's Exhibit C, Article V, 5. 4. 4). The by-laws also provide that the Board of Trustees

may “Empanel an Independent Committee when needed to resolve issues, which the Board is unable to resolve.” (Defendant’s Exhibit C, Article V, 5.4.4, 19). “Independent Committee” is defined in the by-laws as “An Ombudsman type Committee of five persons (current Trustees excluded), set up by the Board of Trustees and constituted from time to time to resolve issues, and *provide binding arbitration* within the constraints of these by- laws. (Emphasis added). This Committee shall consist primarily of members of the Stewardship Council but may include other respected citizens of the Temple community.” (Defendant’s Exhibit C, Article III, 3.1).

Each member of the Board of Trustees is elected for a term of three years by the General Body at the Annual General Body Meeting. (Defendant’s Exhibit C, Article V, 5.4.2). The election process is governed by Article VII of the by-laws. (Defendant’s Exhibit C, Article VII). Article VII covers the eligibility to vote, the nomination process and the election process. In particular, Article VII provides:

“The Secretary shall prepare a paper ballot on which shall be indicated the names of approved candidates. These ballots shall be mailed to or picked up in person by the NEHTI members eligible to vote. The ballot shall provide clear instructions for voting (including the date and time by which the ballots have to be returned, allowed modes of delivery, prohibitions on writing on the ballot, etc.). The Secretary shall mail the ballots to NEHTI members eligible to vote, at least two weeks before the date of the Annual General Body meeting.”

The Temple by-laws provide a mechanism for removal of a member of the Board of Trustees by the membership. (Plaintiffs’ Exhibit TB1, Article VI, 6.1.4).

The purpose of the Temple’s Stewardship Council is to provide non-binding “guidance, mentoring, advisory services and institutional memory to the Board of Trustees. (Defendant’s Exhibit C, Article V, 5.5). There are five to eight members of the Stewardship Council. Members of the Stewardship Council are selected from the founders of the Temple and other respected NEHTI members. They are appointed by the Board of Trustees. The Stewardship Council’s responsibilities include, “(1) Providing vision and guidance on religious matters of a

policy nature, especially regarding the conformity of religious practices of NEHTI and the Temple with Hindu scriptures and traditions, especially the Agama Shastras; (2) Developing recommendations and action items to ensure the long-term viability and success of NEHTI and the Temple; (3) Advising on other matters referred to it by the Board.” (Defendant’s Exhibit C, Article V 5.5.3).

The plaintiffs were unsuccessful candidates in an election for the Board of Trustees. They allege irregularities in the election process, including failure to provide accurate lists of Temple members, failure to provide email addresses, residential addresses and telephone numbers of members, sending ballots via certified mail to some members, but delivering other ballots in hand to others, failure to process member applications appropriately and sending a disparaging letter regarding one of the candidates. They claim to have been deprived of a fair and impartial election due to these irregularities.

DISCUSSION

I. Motion to Dismiss for Lack of Subject Matter Jurisdiction

Defendant’s Motion is filed pursuant to Mass.R.Civ.P.12 (b)(1). Accordingly, the court will consider documents, affidavits, and other materials outside the pleadings. Disputed facts presented on a Rule 12(b)(1) motion are not viewed in the light most favorable to the nonmoving party. If the defendant makes a supported factual challenge to subject matter jurisdiction, the court is required to address the merits of the jurisdictional claim by resolving any factual disputes between the plaintiff and the defendant. Callahan v. First Congregational Church of Haverhill, 441 Mass. 699, 710-711 (2004). The plaintiffs bear the burden of proving jurisdictional facts to support the plaintiffs’ claim.

The litigants' positions on subject matter jurisdiction can be summarized as follows. The plaintiffs claim that this is a secular dispute over an election process and should be decided by neutral principles of law. According to the plaintiffs, the court can determine whether the Temple adhered to its by-laws in the election process and, if they did not, may set aside the vote in the same way the court may set aside a defective decision made by a nonreligious organization. The defendant argues that despite the fact that the plaintiffs frame the dispute as one over procedural irregularities in an election process, the core dispute relates to the Temple's "religious internal organization" and any court involvement will lead to entanglement in religious practices.

"[T]he First Amendment prohibits civil courts from intervening in disputes concerning religious doctrine, discipline, faith, or internal organization." Hiles v. Episcopal Diocese of Mass., 437 Mass. 505, 510 (2002), quoting Alberts v. Devine, 359 Mass. 59, 72, *cert. denied sub nom. Carroll v. Alberts*, 474 U.S. 1013 (1985). The issue is whether this is such a dispute.

The plaintiffs seem to argue that because the Temple is Congregational in nature, it is governed by secular laws. However, "[C]ongregational as well as hierarchical churches are entitled to the same autonomy over Church disputes touching on matters of doctrine, canon law, polity, discipline and ministerial relationships." Callahan v. First Congregational Church of Haverhill, 441 Mass. 699, 708 (2004), quoting Williams v. Episcopal Diocese of Mass., 436 Mass. 574, 579 (2002).

Religious institutions may establish their own rules and regulations for internal discipline and government, and create tribunals to resolve disputes over these matters. Antioch Temple, Inc. v. Parekh, 383 Mass. 854, 861 (1981), quoting Wheeler v. Roman Catholic Diocese of Massachusetts, 378 Mass. 58, 61 *cert. denied* 444 U.S. 899 (1979). In Callahan, the court "reiterated one of the justifications it had given in Antioch for affirming a declaratory judgment

upholding the authorized actions of the church's Board of Directors – that doing so did ‘no more than honor the decisions of the governing body of a congregational church.’” Wooten v. Crayton, 66 Mass. App. Ct.187, 197 (2006), quoting Callahan, supra at 707. “[C]ourts have jurisdiction to consider factual disputes over control of congregational churches in the same circumscribed way that they may consider similar disputes in hierarchical churches – by inquiring into the allocation of authority in the church and according deference to the decisions of its highest authority.” Id. at 197. The Temple by-laws set out the responsibilities of the Board of Trustees and the Stewardship Council to define election procedures and establish a procedure for resolving internal disputes. Members are bound to “subscribe to” and “abide by the provisions” of the Temple by-laws. The Temple by-laws provide a mechanism for the resolution of disputes through an “Independent Committee” made up of primarily members of the Stewardship Council. The court concludes that it lacks subject matter jurisdiction in this matter.

II. Motion to Dismiss for Failure to State a Claim¹

Assuming, arguendo, that the court does not lack subject matter jurisdiction in this matter, the defendants argue that the Complaint must be dismissed because the plaintiffs failed, as required by the Temple's by-laws, to engage in binding arbitration to resolve this dispute. The plaintiffs claim that the arbitration clause is unconscionable and violates fundamental concepts of fairness.

To withstand a motion to dismiss pursuant to Mass.R.Civ.P.12(b)(6), a plaintiff's complaint must contain “allegations plausibly suggesting (not merely consistent with) an

¹ The court does not find the defendant's position, that the complaint should be dismissed because the plaintiffs lack standing as they failed to assert that they are members of the Temple, persuasive. In order to be a candidate for the Board of Trustees, one must be a member of the Temple. (Plaintiff's Exhibit TB1, Article VI, 6.1.1).

entitlement to relief, in order to ‘reflect[a] threshold requirement... that the plain statement possess enough heft to sho[w] that the pleader is entitled to relief.’” Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008), quoting Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955, 1966 (2007) (internal quotations omitted). While a complaint need not set forth detailed factual allegations, a plaintiff is required to present more than labels and conclusions, and must raise the right to relief “above the speculative level...[based] on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” Id. To meet this standard, the complaint must identify the legal obligations in issue, and set forth facts to show that the defendant did not meet that obligation; conclusory assertions do not suffice. See Iannacchino, 451 Mass. at 632 – 633.

Whether the parties are bound by a given arbitration clause is a matter for judicial resolution. Dixon v. Perry & Slesnick, 75 Mass. App. Ct. 271, 272 (2009). The court applies general principles of state contract law to determine whether a particular agreement requires arbitration of the claim. Warfield v. Beth Israel Deaconess Med. Center, Inc., 454 Mass. 390, 396 (2009). The Temple by-laws provide that members must “[s]ubscribe(s) to and abide(s) by the provisions of these by-laws. Further, the by-laws provide a mechanism to resolve disputes by an “Independent Committee” set up by the Board of Trustees and “constituted from time to time to resolve issues and provide binding arbitration.” The arbitration clause here is broad; it covers “issues.”

Plaintiffs argue that the arbitration requirement is unconscionable because the “Independent Committee,” or arbitrators, are all appointed by the Board of Trustees and that “the weaker party, namely, members,” have no role in selecting the arbitrators. Notwithstanding the strong public policy favoring arbitration, it remains available to the party opposing arbitration to assert traditional grounds which will permit the voiding of contract such as fraud, duress, and

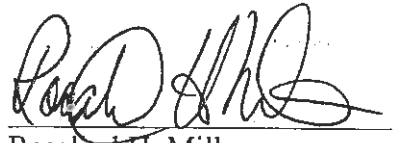
unconscionability to seek to deny an action to compel arbitration. See St. Fleur v. WPI Cable Systems/Mutron, 450 Mass. 345,350 (2008). Unconscionability is decided on a case-by-case basis. Miller v. Cotter, 448 Mass. 671, 679 (2007). Whether a contract is unconscionable is a question of law for the court to be determined in light of its setting, purpose and effect. Id. A contract may be oppressive, and thus unconscionable, where its terms are unreasonably favorable to one party and allocate the risks and benefits of the agreement in a grossly disproportionate way. Zapatha v. Dairy Mart, Inc., 381 Mass. 284, 293-295 n.13 (1980). The doctrine of unconscionability provides protection against terms that produce an unfair and burdensome result, contrary to the spirit of the bargain. Id. at 297. The case law has also noted in evaluating this issue that particular attention must be paid to whether the challenged agreement could result in oppression and unfair surprise to the disadvantaged party, and not to disturbance of the allocation of risks which result from “superior bargaining power.” Waters v. Min. Ltd., 412 Mass. 64, 68, quoting, Zapatha, 381 Mass. at 292 – 293.

The Board of Trustees is elected by the members of the Temple. The Board of Trustees is entrusted with selecting members of the “Independent Committee” or arbitrators. Current Trustees are precluded from being members of the “Independent Committee.” The by-laws require that the “Independent Committee” consist of five to eight members drawn primarily from the Stewardship Council. The Temple by-laws provide a mechanism for removal of Trustees by the membership. The plaintiffs here had a voice in selecting the Board of Trustees. The plaintiffs have recourse, through the by-laws, to remove Trustees if they are dissatisfied with their actions. The fact that the Board of Trustees selects the arbitrators does not make the arbitration agreement unconscionable.

Accordingly, the parties are bound by their agreement to resolve "issues" by binding arbitration.

ORDER

For the foregoing reasons, it is ORDERED that Defendant's Motion to Dismiss is **ALLOWED**.


Rosalind H. Miller
Justice of the Superior Court

Dated: January 28, 2015

Entered: 2/4/15