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SUPERIOR COURT OF NEW JERSEY  
MIDDLESEX COUNTY  
CHANCERY DIVISION, CIVIL PART  
DOCKET NO. MID-C-37-17

ST. CYRILLUS AND METHODIUS  
CZECHO SLOVAK NATIONAL  
CATHOLIC CHURCH OF PERTH AMBOY,  
N.J., INC.

Plaintiff(s),

v.

POLISH NATIONAL CATHOLIC CHURCH,  
INC., BERNARD J NOWICKI, IN HIS  
OFFICIAL AND PERSONAL CAPACITY,  
AND SANTANDER  
BANK, N.A.

Defendant(s).

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Decided: December 5, 2017

Mario Apuzzo, Esq., Law Offices of Mario Apuzzo, attorney for  
Plaintiff St. Cyrillus and Methodius Czecho Slovak National  
Catholic Church of Perth Amboy, New Jersey

Edwin R. Matthews, Esq., Bourne, Noll & Kenyon, attorney for  
Defendants Polish National Catholic Church, Inc. and Bernard J.  
Nowicki

ARNOLD L. NATALI JR., P.J. Ch.

## I. Introduction

This is a dispute regarding the ownership and control of church property. Certain parishioners of St. Cyrillus and Methodius Czecho Slovak National Catholic Church of Perth Amboy, New Jersey ("St. Cyrillus" or "Plaintiff") filed a Verified Complaint against the Polish National Catholic Church and Bishop Bernard J. Nowicki ("PNCC Defendants") and Santander Bank ("Defendant Santander"). Plaintiff's claims arise from its association with the Polish National Catholic Church ("PNCC") and an October 2013 fire that destroyed the local parish's church. Specifically, the parties dispute whether the PNCC Defendants properly assumed control over the real and personal property allegedly belonging to Plaintiff. Accordingly, the PNCC Defendants filed this summary judgment motion pursuant to R. 4:46 to resolve the issue. For the reasons detailed in this Opinion, and consistent with the principles detailed in Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995), the Court grants the PNCC Defendants' motion. In granting summary judgment the Court concludes that:

- The issue raised by the motion arises out of a property dispute and does not address ecclesiastical matters beyond the jurisdiction of the Court.
- Assuming for purposes of the motion that the signatories to the Verified Complaint are members of the St. Cyrillus Parish, and therefore have standing to prosecute this action, there remains neither a genuine nor material factual question regarding Plaintiff's membership in the PNCC and that Plaintiff is subject to the authority of the PNCC Constitution.
- As a member of the PNCC, the "hierarchical approach" as detailed in Protestant Episcopal Church in the Diocese

of New Jersey v. Graves, 83 N.J. 572 (1980), applies and requires the Court to defer to the actions of the PNCC as the higher authority that has the right to maintain control over Plaintiff's property and decide to close the St. Cyrillus Parish. Moreover, even if the Court applied the "neutral principles" approach to the undisputed facts in the motion record, the actions of the PNCC Defendants were similarly authorized based upon the PNCC Constitution and Plaintiff's failure to meet its financial obligations to the PNCC.

- Finally, the record before the Court fails to create a genuine or material factual question regarding whether the PNCC Defendants acted fraudulently, collusively or in an arbitrary manner when deciding to close the Parish.

## II. Factual and Procedural History

The Polish National Catholic Church ("PNCC") was formed in Pennsylvania on December 16, 1900. Verified Compl. ¶ 14. After voting to leave the Catholic Church of Rome, Italy, a group of Slovak-Americans formed the Parish of St. Cerela and Methodia Cecho Slovak National Catholic Church ("the Parish") on November 1, 1922. Ibid. at ¶¶ 16-17. The Parish was incorporated in New Jersey as a non-profit corporation. Ibid. at ¶ 17. The Parish purchased property located in Perth Amboy, New Jersey and Woodbridge, New Jersey in 1923 and 1931. Enrique Chuquisana Cert. Vol. I, Exs. 25-27. The respective deeds evidence that the properties were purchased in the name of the Parish. Ibid.

The Parish maintained a journal of activities from 1922 to the late 1970's whereby the initial entries were written in Slovak and later translated into English. A July 6, 1937 journal entry evidences discussion of joining the PNCC and a later entry dated July 20, 1937 provides that the Parish voted to join the PNCC. Edwin Matthews, Esq. Cert. Ex. D. The Parish's Anniversary Journal

confirms that in 1937 they, in fact, joined the PNCC. Cert. of Helen Thomas Cert. Ex. C. Moreover, a July 9, 1938 publication belonging to the PNCC stated that "the Czechoslovakian parish in Perth Amboy, NJ" joined the PNCC. Edwin Matthews, Esq. Cert. Ex. E. Plaintiff concedes that, in 1937, the Parish joined the PNCC under the leadership of Father Sychta. Verified Compl. ¶ 22.

The parties also concede that, in October 1946, a first meeting of the PNCC, or, Synod, was held. Both the Parish's journals and the Synod minutes detail that representatives of the Parish attended the 1946 Synod and many other Synods through 2010. Edwin Matthews, Esq. Cert. ¶ 11. To attend Synods, representatives must be members of a member church of the PNCC and representatives must themselves be members of the PNCC. Ibid. at ¶ 12.

The trustees of the Parish passed a resolution on February 1, 1967 to change the name of the corporation to St. Cyrillus and Methodius Czecho Slovak National Catholic Church of Perth Amboy, New Jersey. Verified Compl. ¶ 25. The principal office of the corporation was also amended to 600 Jacques Street, Perth Amboy, New Jersey. Ibid. The Certificate of Amendment concerning the name change was filed with the New Jersey Secretary of State on February 21, 1967. Ibid. at ¶ 26.

Walter F. Thomas was appointed as Pastor of St. Cyrillus on October 1, 1970. During his position as Pastor from 1970 to 1998, St. Cyrillus was a member of the Central Diocese of the PNCC. Father Thomas served on committees and attended meetings of both the Central Diocese and the PNCC, in accordance with Article XIV, Section 5 of the Constitution. Ronald Deluca Cert. Ex. A; Verified Compl. Ex. VV. Father Raymond R. Drada was appointed as Pastor of St. Cyrillus on March 22, 1999 by Bishop Rysc of the Central Diocese of the PNCC. Father Raymond Drada Cert. ¶¶ 2-3. During his time as Pastor, Father Drada recognized that St. Cyrillus was a member of the PNCC and subject to the Constitution of the PNCC.

Ibid. at ¶ 5. Father Drada filed the necessary annual reports, paid the requisite dues, and attended functions of the PNCC. Ibid. Also, Father Drada followed Article XIV, Section 12 of the PNCC Constitution with respect to admitting members to St. Cyrillus as he conducted interviews, sought approval by the St. Cyrillus Parish Committee, and issued an announcement to the general members of the St. Cyrillus Church. Ibid. at ¶ 6; Verified Compl. Ex. VV. St. Cyrillus conducted its annual meeting to elect trustees and the names of the St. Cyrillus Parish Committee members were submitted to the Bishop Ordinary of the Central Diocese of the PNCC for approval, as required by Article IX, Section 12 and Article XVII, Section 1 of the Constitution, while Father Drada was Pastor. Father Raymond Drada Cert. ¶ 7; Verified Compl. Ex. VV. Father Drada served as the Pastor until August 2005 when Reverend Mariusz Zochowski was appointed as Pastor by the Bishop Ordinary of the Central Diocese of the PNCC.

The six individuals who signed the Verified Complaint ("the signatories") – Enrique Chuquisana, Fausto Egoavil, Maria Rivas, Delia Egoavil, Theresa Tueros, and Segundo Escobedo – were not members of St. Cyrillus while Father Drada served as Pastor from 1999 to 2005. Father Raymond Drada Cert. ¶ 10. Plaintiff's membership lists evidence that Enrique Chuquisana was a member since 2011, Fausto Egoavil and Delia Egoavil were members since 2013, Maria Rivas was a member since 2014, Segundo Escobedo was a member since 2014, and Theresa Tueros was a member since 2015. See Enrique Chuquisana Cert. Vol. II, Exs. 11 – 15. The minutes of the October 25, 2015 meeting of the Parish Committee evidence that the signatories to the Verified Complaint were elected to the Committee. Ibid. at Vol. II, Ex. 7. However, there is no documentation evidencing that they were approved to the St. Cyrillus Parish Committee by the Bishop, in accordance with Article IX Section 12 and Article XVII Section 1 of the PNCC Constitution

and Article VII Section A of the By-laws of St. Cyrillus. The relevant portions of the Constitution with respect to the Parish Committee are as follows:

- Article IX, Section 12: [A Diocesan Bishop] confirms or rejects the election of Parish Committees.
- Article XVII, Section 1: The Parish Committee is elected by the Parish members at its annual Parish meeting (or at a meeting conducted prior to the annual meeting), and when approved by the Diocesan Bishop, enters upon its duties.

Verified Compl. Ex. VV. Plaintiff's By-Laws dictate that the Parish Committee "is the managing body of the parish, duly elected at the annual meeting, responsible to the local parish and approved by the Diocesan Bishop. . . ." Enrique Chuquisana Cert. Vol. 1 Ex. 24.

There is no evidence to reflect the fact that members of the St. Cyrillus Parish Committee elected after 2004, following Father Drada's term as Pastor of the St. Cyrillus Parish, have been approved by the Diocesan Bishop of the PNCC. Though Bishop approval is required by the aforementioned provisions of the Constitution of the PNCC and By-laws of St. Cyrillus, individuals claiming to have been elected to the Church committee after June 14, 2015 have never been approved by the Diocesan Bishop.

Critical to the issues before the Court is the undisputed fact that the St. Cyrillus church building was destroyed by a fire on or about October 28, 2013. Verified Compl. ¶ 29. Later that day, Bishop Nowicki visited the site of the fire and assured the parishioners that "as Christ had risen, so too would St. Cyrillus." Pl. Opp. Br. at p. 14; Bishop Bernard J. Nowicki Cert. ¶¶ 3-4. However, despite his initial statement, Bishop Nowicki maintains that he began to review the records of St. Cyrillus following his visit to the site and after the fire. Bishop Bernard J. Nowicki Cert. ¶ 5. This review caused Bishop Nowicki to have "serious

questions with respect to the potential viability" of the St. Cyrillus Parish. Ibid. Bishop Nowicki also indicates that he realized as a result of his review that Father Zochowski had not filed the necessary annual reports for a number of years and had failed to pay dues. Ibid. However, Plaintiff disputes whether Bishop Nowicki, in good faith, considered that the church had not submitted the required report and dues and whether the St. Cyrillus Parish was viable.

The Verified Complaint alleges that Plaintiff received insurance proceeds as a result of the fire in the amount of \$1,007,264.09. Verified Compl. ¶ 29. According to the Verified Complaint, Plaintiff's insurance carrier paid \$100,000.00 to Plaintiff as an advance payment for the destroyed property, \$8,586.00 to Leonardo's Construction Services, LLC for emergency services, \$839,049.05 to Plaintiff for the cash value of the church building, and \$1,500.00 to Leonardo's Construction Services, LLC to demolish the burnt building. Ibid. at ¶¶ 31-34. Plaintiff also maintains that their insurance carrier paid \$58,129.04 on June 9, 2015 for the cash value of the church building content. Ibid. at ¶¶ 31-34. Plaintiff deposited a check for \$839,049.05 from these insurance payments into Account No. 2221069315 at Santander Bank. Ibid. at ¶ 33.

In an attempt to meet its obligation to pay dues to the PNCC after failing to do so for many years, St. Cyrillus presented a check in the amount of \$2,171.05 to the PNCC and Central Diocese on behalf of certain parishioners to demonstrate the viability of the Church. Pl. Opp. Br. at p. 26; Bishop Bernard J. Nowicki Cert. ¶¶ 5, 7. The PNCC Defendants argue that this payment was made out of the insurance proceeds after the fire and that it was not from parishioners. Def. Reply at p. 34.

Moreover, Bishop Nowicki maintains that, on February 8, 2014, the Central Diocese conducted a teleconference with Father

Zochowski. Bishop Bernard J. Nowicki Cert. ¶ 7. During the teleconference, Father Zochowski referred to the parishioners as a "Peruvian congregation," however, the Court notes that the record is absent of any notes memorializing the teleconference or Father Zochowski's statements. Ibid. At an August 13, 2014 teleconference of the Central Diocesan Council, the PNCC Defendants discussed the viability of the St. Cyrillus Parish. Ronald Deluca Cert. Ex. B. Specifically, the teleconference notes evidence that the following discussion took place: "Peruvian congregation would have to become members of the church . . . In a similar situation in a Latino community in Chicago they began collecting dues from 50 people. The membership increased from there. Maybe we can try that." Ibid. Both the Central Diocesan Bishop Bernard J. Nowicki and the Central Diocesan counsel subsequently discussed the viability of St. Cyrillus with Father Zochowski. Bishop Bernard J. Nowicki Cert. ¶ 9. In this regard, Father Zochowski was asked to provide the names of at least fifty (50) dues-paying members of the Church. Ibid. Father Zochowski did not provide PNCC with the requisite names. Ibid. In fact, Father Zochowski revealed that there were less than fifty (50) dues-paying members of the Church. Specifically, the Central Diocesan Council noted that Plaintiff had provided dues for twenty-seven and one-half parishioners. (Ronald Deluca Cert. Ex. B.).

Though contested by Plaintiff, Bishop Nowicki maintains that based upon the fact that Plaintiff failed to meet its financial obligations to the PNCC for a number of years, he assumed managerial control over Plaintiff. Ibid. at ¶ 14. On June 23, 2014, Bishop Nowicki, Father Zochowski, and Treasurer Karen Jamakowicz went to Santander Bank and added Bishop Nowicki's name to the two bank accounts belonging to Plaintiff at the bank: 1) Account No. 2221069315; and 2) Account No. 7681237917. Ibid. at ¶ 15; Verified Compl. ¶ 38. As a result, all future withdrawals from the bank



account required two signatures, including that of Bishop Nowicki. Bishop Bernard J. Nowicki Cert. ¶ 15. Moreover, from June 2014 to September 2014, deposits were made from the aforementioned accounts and funds from the aforementioned accounts were periodically transferred by the PNCC Defendants to differing accounts at Santander Bank. Verified Compl. ¶¶ 42, 45-47.

As noted, this dispute fundamentally relates to the parties' disagreement regarding the PNCC Defendants' right to control the funds and property of St. Cyrillus and whether Bishop Nowicki purposely assumed control of the funds pursuant to the PNCC Constitution. In this regard, the relevant portions of the Constitution concerning the control of Plaintiff's property are as follows:

- Article V, Section 8: All of the funds, moneys and property, whether real or personal, belong to those members of the Parish who conform to the Rites, Constitution, Principles, Laws, Rules, Regulations, Customs and Usages of this Church, and subject to the provisions of this Constitution and Laws.
- Article V, Section 10: When a Parish is liquidated, expelled, ceases to exist, its Warrant lawfully revoked, or title to its Parish property is unlawfully transferred, then all of its legally acquired or accumulated funds, moneys and property, whether real or personal, shall revert to the Diocese in which any of the aforesaid events take place, and shall be held in trust by such Diocese for a period of not more than five (5) years for the purpose of reestablishing said Parish or establishing a new Parish within said Diocese; failure to reestablish such Parish or to establish a new Parish within said period of time, the property, whether real or personal, held in trust shall become the property of this Church.
- Article V, Section 11: Any Parish which does not fulfill its financial obligations to the Diocese and to the General Church will become under the direct management of the Diocesan Bishop. [Amendment of] 10/4/78.

Verified Compl. Ex. VV.

Plaintiff's Articles of Incorporation, dated October 25, 1922, are silent with respect to the PNCC Defendants control and ownership of Plaintiff's property. Notably, the Articles of Incorporation were signed prior to Plaintiff's membership in the PNCC in 1937.

After taking managerial control of Plaintiff, Bishop Nowicki determined that the church would close and not be rebuilt. Bishop Bernard J. Nowicki Cert. ¶ 19. As noted, the Plaintiff disputes whether Bishop Nowicki, in good faith, determined that the Church was no longer viable and that it should close. The Diocesan Council was informed of Bishop Nowicki's actions with respect to managing Plaintiff's funds on August 13, 2014. Ronald Deluca Cert. Ex. B. During an October 25, 2014 meeting, the Diocesan Counsel approved Bishop Nowicki's actions of taking control over the insurance funds and church property and, also, the Bishop's removal of Father Zochowski as Pastor on grounds of insubordination. Ibid.; Bishop Bernard J. Nowicki Cert. Ex. B.

Subsequent to the October 2013 fire, correspondence was sent by the "Parish Committee Members and All Parishioners" to the Chancery Office of the Central Diocese of the PNCC requesting permission to rebuild the church. See Verified Compl. Exs. K, U, V, AA, and DD. Specifically, the letters were purportedly signed by Father Zochowski and various members of the St. Cyrillus Parish. Ibid. Significantly, the requests recognized the fact that the St. Cyrillus Parish was part of the PNCC and that, under Article XVII, Section 7 of the PNCC Constitution, permission of the Bishop was required to rebuild the church. Ibid. at Ex. VV. While acknowledging that Plaintiff joined the PNCC in 1937, Plaintiff concedes that there is no claim that the St. Cyrillus Parish ever withdrew or sought to withdraw from the PNCC.

Plaintiff filed a Verified Complaint and Order to Show Cause

on February 5, 2016, before the Honorable Michael V. Cresitello, Jr., J.S.C., in the New Jersey Superior Court, Law Division against PNCC and Bernard J. Nowicki, in his official and individual capacity, and Santander Bank claiming that the PNCC Defendants improperly exercised dominion and control over the monetary assets and property of Plaintiff. Enrique Chuqisana, Fausto Egoavil, Maria Rivas, Delia Egoavil, Theresa Tueros, and Segundo Escobedo submitted Affidavits in support of the Verified Complaint indicating that they are the individuals representing Plaintiff St. Cyrillus and Methodius Dzecho Slovak National Catholic Church of Perth Amboy, N.J.

On April 4, 2016, the PNCC Defendants filed a Notice of Removal and the matter was removed to United States District Court for the District of New Jersey. The matter was remanded to the New Jersey Superior Court by the Honorable Kevin McNulty, of the United States District Court for the District of New Jersey on July 5, 2016. Answers were filed on July 29, 2016 by Defendant Santander and on August 8, 2016 by the PNCC Defendants.

The PNCC Defendants filed a motion to dismiss Plaintiffs' Verified Complaint on November 2, 2016. Judge Cresitello denied the PNCC Defendants' motion and transferred the matter to the New Jersey Superior Court, Chancery Division, General Equity division after discussion with counsel. After the transfer, the Defendants filed motions for summary judgment on May 12, 2017. The PNCC Defendants sought summary judgment with respect to all counts of Plaintiff's Verified Complaint arguing that the PNCC Defendants properly maintained control over Plaintiff's assets. Defendant Santander sought summary judgment with respect to the following Counts of Plaintiff's Verified Complaint: I (Declaratory Judgment Action), VI (UCC Article 4), VII (Breach of Contract), VIII (Negligence), IX (Conversion), and X (Breach of Fiduciary Duty). After oral argument on July 21, 2017, this Court issued an Order

granting summary judgment, on consent of the parties, with respect to Count I, Count VI, Count IX, and Count X as to Defendant Santander. The Court indicated that argument would continue on a mutually agreeable date, and after additional discovery, with respect to Defendant Santander's claims concerning Counts VII and VIII and the PNCC Defendants' motion for summary judgment.

After appearing for a telephonic case management conference on August 17, 2017, the Court directed all parties to file supplemental briefing with respect to the summary judgment motions filed by Defendants. After further argument, the Court granted Defendant Santander's motion for summary judgment with respect to Count VII and Count VIII on September 21, 2017. The Court reserved on the PNCC Defendants' motion for summary judgment.

### III. Contentions of the Parties

#### A. PNCC Defendants

The PNCC Defendants assert that the issue before the Court is a narrow one; namely, whether Plaintiff is a member of the PNCC. The PNCC Defendants further argue that there is "overwhelming" and uncontroverted evidence that Plaintiff joined the PNCC in 1937. PNCC Defs.' Br. at p. 20. With respect to the membership of the signatories to the Verified Complaint, the PNCC Defendants argue that they have failed to provide evidence establishing membership in St. Cyrillus, their election to the St. Cyrillus Parish Committee, or their approval to the Committee by the Diocesan Bishop in accordance with the PNCC Constitution and Plaintiff's by-laws. According to the PNCC Defendants, as there is no evidence of their membership in the St. Cyrillus Parish, the signatories are not members of the PNCC and lack the ability to contest the actions of the PNCC Defendants. Moreover, even if the Court determines that the signatories are members of the St. Cyrillus Parish and that St. Cyrillus is a member of the PNCC, the PNCC Defendants argue that the Court must abstain from addressing any

of the issues in the instant suit based upon the First Amendment of the United States Constitution. As applied to the facts here, the PNCC Defendants contend that the First Amendment bars government involvement in purely ecclesiastic affairs about faith or internal organization.

Alternatively, if the Court concludes that the matter presents a property dispute rather than a doctrinal issue, the PNCC Defendants maintain that under the "hierarchical approach" the Court must defer to the PNCC and the Diocesan Bishop of the Central Diocese concerning the control of Plaintiff and its assets. Finally, the PNCC Defendants also argue that, even if the Court were to apply the "neutral principles" approach, an evaluation of PNCC's Constitution and Plaintiff's Articles of Incorporation and By-laws leads to the conclusion that the PNCC Defendants, under the present circumstances, control the church property and the proceeds of any insurance payment. In this regard, the PNCC defendants maintain that because Plaintiff has failed to meet its financial obligations to the PNCC Defendants, the Bishop appropriately took managerial and administrative control over Plaintiff in accordance with Article V, Sections 8 and 11 of the 2010 PNCC Constitution. Specifically, and as noted, supra, the 2010 PNCC Constitution, at Article V, Section 10, provides that property held by a local parish will revert to the PNCC when the parish dissolves, liquidates, or has its corporate status revoked. Thus, the PNCC Defendants contend that the property at issue reverted to PNCC when the Bishop decided to close Plaintiff's Parish after taking managerial control and Plaintiff's corporate charter was revoked for failing to file annual reports. Thus, under either the "hierarchical" or "neutral principles" approach, the PNCC Defendants maintain that the action must be resolved in their favor.

## B. Contentions of Plaintiff

Plaintiff asserts that the instant matter concerns a property dispute and does not involve church governance or religious doctrine. Simply, Plaintiff argues that it is not asking the Court to examine any ecclesiastical issues and, as such, the Court does not need to defer to the authority of the PNCC. Though the Court will need to examine applicable provisions of the PNCC Constitution, Plaintiff's By-Laws, and other relevant documents, the Court does not have to confront or resolve prohibited doctrinal disputes according to Plaintiff.

Plaintiff further argues that although the PNCC Defendants may be a hierarchical organization, Plaintiff "is not a member and integral part of it and under its authority" with respect to the ownership and control of its real and personal property. Pl. Opp. Br. at p. 80. Plaintiff contends that all of Plaintiff's assets have "always" been held in its own name. Ibid. Specifically, the deeds of the church property conveyed the real estate to the Plaintiff as an independent non-profit corporation and, as such, Plaintiff argues that it is the sole legal owner. The Plaintiff's own funds were also used to purchase the properties. Even if the Court were to accept the argument that the Plaintiff chose to affiliate with the PNCC Defendants, the Plaintiff maintains that "there is no evidence that by doing so it gave up the power to control its property." Ibid. at 81. Further, Plaintiff argues that the PNCC has never controlled Plaintiff's real or personal property.

Additionally, Plaintiff maintains that rather than the "hierarchical approach" detailed in Graves, supra, the "neutral principles of law" approach applies and governs actions concerning this church property dispute. Citing to the 1958 PNCC Constitution, Plaintiff argues that there is no provision indicating that church property will revert to PNCC. The 1958 PNCC Constitution provides

that the physical property of a PNCC Parish belongs to members of the parish "who conform to the provisions of the constitution, laws, rules, regulations, customs and usages of the [PNCC]." Pl. Opp. Br. at p. 44. Plaintiff argues that its members conformed to the relevant provisions of the Constitution and that the PNCC Defendants have no authority to take ownership and control over Plaintiff's property. The Constitution further provides that control over the Plaintiff's property is vested in the Parish Committee, which was elected by the Parish and confirmed by the Diocesan Bishop. Plaintiff contends that the 1958 Constitution demonstrates that Plaintiff and its members exhibited full ownership and control over their real and personal property. Plaintiff's By-Laws further indicate that the physical property belongs to members of the church who conform to the constitution, laws, rules, and regulations of the PNCC.

With respect to the October 28, 2013 fire, the Plaintiff asserts that the original non-profit corporation of St. Cyrillus and Methodius Czecho Slovak National Catholic Church of Perth Amboy, N.J., Inc. continues to exist despite PNCC closing the local Parish. The destruction of the church, according to Plaintiff, did not cause St. Cyrillus to lose any right with respect to real and personal property. The fire did not cause the non-profit corporation to liquidate or cease to exist. Additionally, while the fire destroyed the physical church property, Plaintiff contends that the members of the St. Cyrillus Parish are still operating and practicing its religious ideals.

In making a distinction between ecclesiastical and secular functions, Plaintiff contends that the PNCC Defendants cannot prohibit Plaintiff from existing as a secular corporate entity in New Jersey. The corporation is an independent entity free from the PNCC Defendants' control. Further, when the PNCC Defendants closed the St. Cyrillus Parish, Plaintiff was no longer bound by the

authority of the PNCC. Though the State of New Jersey revoked Plaintiff's Corporate charter for failing to file annual reports, Plaintiff notes that this has "since been remedied." Pl. Opp. Br. at p. 106.

Plaintiff also contends that the signatories to the Verified Complaint are members of Plaintiff's Church and of its Parish Committee as they were voted on to the Committee by members of the Church. Plaintiff notes that the signatories were never removed from their membership positions by the PNCC Defendants or Bishop Nowicki. According to Plaintiff, they were not required to seek approval from the Bishop regarding the Committee members because, given the decision of the PNCC Defendants to close the St. Cyrillus Parish, the Parish no longer existed. Plaintiff also argues that the PNCC Defendants failed to object to the Parish Committee members. The PNCC Defendants, according to Plaintiff, were knowledgeable with respect to the Parish Committee's members and the Parish's other members and never expressed the existence of a problem.

As to Plaintiff's financial obligations, Plaintiff contends that the PNCC Defendants accepted membership dues for the year 2013, but refused to accept dues for the year 2014. Despite allegations from the PNCC Defendants, Plaintiff argues that the members of the Church did not secede or seek to withdraw from the PNCC. Moreover, Plaintiff maintains that the decision of the PNCC Defendants to close the St. Cyrillus Parish was made in bad-faith and for the purpose of taking Plaintiff's real and personal property. In support, Plaintiff argues that court review is permissible in ecclesiastical matters when the disputed decision of the church is the product of "fraud, collusion, or arbitrariness." Pl. Opp. Br. at p. 126 (citing Gonzalez v. Archbishop, 280 U.S. 1, 16 (1929)). Plaintiff notes that the Church was closed under the "pretext" that Father Mariusz Zochowski had



failed to send in annual reports since 2006, Plaintiff failed to pay dues since 2006, and Plaintiff failed to submit the Parish Committee membership list to the PNCC Defendants for approval.

With respect to the non-payment of dues, Plaintiff maintains that they were in good standing and that the PNCC Defendants never provided notice that it was not in good standing and never gave them an opportunity to pay the accumulated dues. Plaintiff notes further that the PNCC Defendants accepted their dues for 2013. According to Plaintiff, there were also other parishes belonging to the PNCC that did not pay their dues to the PNCC Defendants for many years and, yet, none of those parishes were dissolved or closed. Plaintiff also argues that Bishop Nowicki closed the Church because it was "invaded by Peruvians." Pl. Opp. Br. at p. 137. While Bishop Nowicki indicated that St. Cyrillus was to provide the names of fifty dues-paying members after the fire, Plaintiff maintains that this requirement was not demanded of "other non-Hispanic PNCC parishes." Ibid. at 139.

#### IV. Conclusions of Law

##### A. Summary Judgment

Pursuant to the New Jersey Court Rules, "[s]ummary judgment must be granted if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). A factual issue is "genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." Ibid. A court, in evaluating whether a factual issue is genuine, must "consider whether competent evidential materials presented, when viewed in the light most favorable to

the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). Moreover, a "non-moving party cannot defeat a motion for summary judgment merely by pointing to any fact in dispute." Ibid. at 529.

The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter;" rather, the trial court should limit its determinations to whether a genuine issue for trial exists. Ibid. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986)). When the issues presented do not evidence a "sufficient disagreement to require submission to a jury or [when] it is so one-sided that one party must prevail as a matter of law[," summary judgment must be granted. Ibid. at 533 (quoting Anderson, supra, 477 U.S. at 251-52).

#### B. Standing

Standing refers to the "plaintiff's ability or entitlement to maintain an action before the court." New Jersey Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 409 (App. Div.), certif. granted, 152 N.J. 13 (1997), appeal dismissed as moot by, 151 N.J. 361 (1998). Standing is deemed a threshold issue that "neither depends on nor determines the merits of a plaintiff's claim." Watkins v. Resorts Int'l Hotel & Casino, 124 N.J. 398, 417 (1991). Absent standing, a court is divested of jurisdiction. Ibid. at 418. An entitlement to sue requires "a sufficient stake and real adverseness with respect to the subject matter of the litigation." New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Com., 82 N.J. 57, 67 (1980). For purposes of standing, a "substantial likelihood of some harm visited upon the plaintiff in the event of an unfavorable decision is needed[.]" Ibid.

#### C. Ecclesiastical Matters

Generally, "first amendment jurisprudence forbids civil

courts from deciding issues of religious doctrine or ecclesiastical polity." Elmora Hebrew Ctr. V. Fishman, 125 N.J. 404, 413 (1991) (citing Watson v. Jones, 80 U.S. 679, 728-30 (1871)). See also Solid Rock Baptist Church v. Carlton, 347 N.J. Super. 180, 191 (App. Div. 2002) ("Well-settled principles prohibit civil courts from resolving ecclesiastical disputes that depend upon inquiry into questions of faith or doctrine."). States are explicitly prohibited by the Establishment Clause of the First Amendment of the United States Constitution from "promoting religion or becoming too entangled in religious affairs, such as by enforcing religious law or resolving religious disputes." McKelvey v. Pierce, 173 N.J. 26, 40 (2002) (internal citations and quotations omitted). Entanglement between church and state must be "excessive before it runs afoul of the Establishment Clause." Ibid. at 43 (citation omitted). See also Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971) (holding that government action passes muster when it has a "secular purpose," "neither advances nor inhibits religion," and does not "foster excessive government entanglement with religion").

However, a civil court "may inquire into fraud, collusion or arbitrariness in the ecclesiastical disposition." Protestant Episcopal Church in the Diocese of New Jersey v. Graves, 83 N.J. 572, 577 (1980). Specifically, "[e]very fraud in its most general and fundamental conception consists of the obtaining of an undue advantage by means of some act or omission that is unconscientious or a violation of good faith." Jewish Ctr. of Sussex Cty v. Whale, 86 N.J. 619, 624 (1981). Legal fraud consists of a "material representation of a presently existing or past fact, made with knowledge of its falsity, with the intention that the other party rely thereon, and he does so rely to his damage." Foont-Freedenfeld Corp. v. Electro Prot. Corp., 126 N.J. Super. 254, 257 (App. Div. 1973). The elements of scienter (knowledge of the falsity and an

intention to obtain an undue advantage) are not "essential" if a party seeks to demonstrate that a misrepresentation only amounted to equitable fraud. Jewish Ctr. of Sussex Cty, 86 N.J. at 625. With respect to collusion, the term is defined as "[a]n agreement to defraud another or to do or obtain something forbidden by law." Collusion, Black's Law Dictionary, (10th ed. 2014).

The term "arbitrariness" is often used to describe "a determination made without consideration of or regard for facts, circumstances, fixed rules, or procedures." Arbitrary, Black's Law Dictionary, (10th ed. 2014). When evaluating a church's decision for evidence of arbitrariness, the inquiry concerns "whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations." Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 713 (1976). The Court, in Serbian, explained that the arbitrariness exception is not consistent with the constitutional mandate that courts "are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law." Ibid. Overall, a court may inquire into allegations of fraud, collusion, and arbitrariness despite the fact that the issue presented concerns ecclesiastical matters typically outside the bounds of the court's jurisdiction.

With respect to property disputes, "[r]eligious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints." Elmora, supra, 125 N.J. at 413 (quoting Watson, supra, 80 U.S. at 714.) Civil courts possess a duty to protect state interests in the resolution of property disputes concerning ownership and control. Ibid. See also McKelvey v. Pierce, 173 N.J. 26, 51-52

(2002) ("[A] court may "interpret provisions of religious documents involving property rights and other nondoctrinal matters as long as the analysis can be done in purely secular terms."); Chavis v. Nickerson, 183 N.J. Super. 458, 462 (App. Div. 1982) ("[A] civil court may . . . undertake and properly resolve a church property dispute by the incidental application of 'an ecclesiastical determination[.]'""). As such, property disputes do not raise ecclesiastical issue beyond the bounds of the civil court's jurisdiction when the dispute may be adjudicated by secularly interpreting religious documents. Moreover, the issue of "church membership is not one that is removed from the jurisdiction of the civil courts, even though the courts may not determine ecclesiastical issues." Hardwick v. First Baptist Church, 217 N.J. Super. 85, 91 (App. Div. 1987) (internal citation omitted). See also Elmora, supra, 125 N.J. at 415 ("[N]eutral principles may sometimes be invoked to resolve disputes concerning a religious entity's membership.").

#### D. Approaches to Property Disputes

Two approaches govern disputes concerning church property. First, the hierarchical approach dictates that, "[i]n disputes involving a church governed by a hierarchical structure, courts should defer to the result reached by the highest church authority to have considered the religious question at issue." Elmora, 125 N.J. at 414. See also Solid Rock, 347 N.J. Super. at 192; Newark v. Burns, 83 N.J. 594, 598 (1980) (holding that the New Jersey Supreme Court has approved the hierarchical church approach with respect to property disputes). A hierarchical structure exists where "the local church is an integral and subordinate part of the general church and subject to its authority." Alicia v. New Brunswick Theological Seminary, 244 N.J. Super. 119, 131 (App. Div. 1990). See also Chavis, supra 93 N.J. at 105 (hierarchical churches "are characterized by a common ruling or convocation or

ecclesiastical head") (internal quotations omitted).

The New Jersey Supreme Court has concluded that "the hierarchical [] approach should be utilized in church property disputes in this State. Only where no hierarchical control is involved, should the neutral principles of law principle be called into play." Graves, supra 83 N.J. at 580. See also Chavis, supra 93 N.J. at 110 ("New Jersey courts are to use neutral principles in adjudicating property disputes within a congregational church."). When a church is a "local autonomous body" and authority and control over church property rests with the local congregation, a hierarchical structure does not exist. Solid Rock, supra, 347 N.J. Super. at 184. Moreover, as previously explained, a court may inquire into allegations of fraud, collusion, or arbitrariness despite the application of the hierarchical approach foreclosing court review. Graves, supra, 83 N.J. at 577.

Secondly, the neutral principles of law approach "calls for the secular examination of church deeds, constitutions, bylaws, canons and the like for settling church disputes, thereby freeing 'civil courts completely from entanglement in questions of religious doctrine, polity, and practice.'" Chavis, supra, 93 N.J. at 108 (quoting Jones v. Wolf, 443 U.S. 595, 603 (1979)). In a strictly congregational situation, "where the congregation answers to no higher ecclesiastical authority in matters of church government, our courts should use 'neutral principles' in resolving civil disputes. . . ." Solid Rock, supra, 347 N.J. Super. at 192. But see Elmora, supra, 125 N.J. at 414 ("This 'neutral principles' approach is particularly suited to adjudications of property disputes.").

In Graves, the Court upheld the hierarchical approach to resolve a dispute as to ownership of church property. 83 N.J. at 580. Defendants were a local parish incorporated as an affiliated member of the plaintiff church and the facts demonstrated that,

since its incorporation, it was an integral part of the hierarchical structure of the plaintiff church. Ibid. at 574. Specifically, defendants adhered to the long-established customs and usages of the plaintiff church, used the plaintiff's standard prayer book, paid missionary quotas regularly, sent delegates to the Diocesan Convention, and submitted to the plaintiff's authority on all matters concerning parish affairs. Ibid. at 574-75. Defendants did, however, purchase parish property in their own name and all deeds ran to the parish corporation. Ibid. After a doctrinal dispute arose and the defendants voted to sever their relationship with plaintiff, the plaintiffs filed suit to bar religious services from commencing on the parish property and to prevent defendants from using parish property for any unauthorized use. Ibid. at 575.

While acknowledging both the hierarchical and neutral principles of law approaches, the Court dictated that the hierarchical approach controls in instances concerning integrated hierarchical entities. Ibid. at 580. The defendants incorporated as an affiliated member of the plaintiff church and "the local church organization and its property are subject to the hierarchical authority of the parent church as indicated in the constitutions and canon law of the national church and its dioceses." Ibid. Thus, the plaintiffs were entitled to control the parish property. Even applying the neutral principles of law approach, the Court noted that the defendants adhered to the latest governing document and recognized the authority of the plaintiff by seeking plaintiff's consent to purchase a new rectory. Ibid. at 581. Therefore, under either the hierarchical approach or the neutral principles approach, the Court reached the same conclusion and upheld plaintiff's authority to control the defendant's property.

## V. Analysis

### A. Ecclesiastical Matters

First, the Court holds that the instant lawsuit does not concern solely ecclesiastical or doctrinal issues. While the Court is prohibited from "resolving ecclesiastical disputes that depend upon inquiry into questions of faith or doctrine," the instant matter concerns a dispute as to property ownership. Solid Rock, supra, 347 N.J. Super. at 191. Simply put, the parties dispute whether the PNCC Defendants possess true ownership over the physical and personal property of Plaintiff. Property disputes like the instant matter come within the purview of the Court's jurisdiction because the property rights of religious organizations "are equally under the protection of the law." Elmora, supra, 125 N.J. at 413. Moreover, the Court is also within its jurisdiction to interpret the PNCC Defendants' Constitution and Plaintiff's By-laws to trace the parties' competing arguments of ownership, so long as the Court secularly interprets the documents. McKelvey, supra, 173 N.J. at 51-52. In other words, the Court is able to interpret the Constitution and By-laws independent of any religious doctrine when analyzing the parties' rights with respect to the relevant property. Thus, the instant dispute is properly before the Court for consideration as it is a property dispute that does not require the Court to interpret and evaluate ecclesiastical principles.

### B. Membership

While acknowledging that the Court is unable to determine ecclesiastical and doctrinal issues, the Court possesses jurisdiction to evaluate issues concerning church membership. Hardwick, supra, 217 N.J. Super. at 91. Neutral principles of law guide the Court's determination of membership. Elmora, supra, 125 N.J. at 415. Specifically, there are two membership issues before the Court: 1) the membership of the signatories to the Complaint



in the St. Cyrillus Parish; and 2) the membership of Plaintiff in the PNCC. As to the first issue, even were the Court to conclude that the evidence in the record, viewed in the light most favorably to Plaintiff, supports the finding that the signatories to the Verified Complaint are members of the St. Cyrillus Parish, the result of the motion would be the same. First, the Court acknowledges that the membership lists belonging to the Plaintiff establish that Enrique Chuquisana was a member of the Parish since 2011, Fausto Egoavil and Delia Egoavil were members since 2013, Maria Rivas was a member since 2014, Segundo Escobedo was a member since 2014, and Theresa Tueros was a member since 2015. See Enrique Chuquisana Cert. Vol. II, Exs. 11 - 15. Though the documented minutes of the October 25, 2015 meeting of the Parish Committee evidence that the signatories were elected to the Committee there is no documentation supporting the fact that the signatories were approved to the Parish Committee by the Bishop as required. Ibid. at Vol. II, Ex. 7. As members of the St. Cyrillus Parish, the Court concludes for purposes of this motion that the signatories possess a "sufficient stake and real adverseness" in the outcome and subject matter of the instant litigation. Chamber of Commerce, supra, 82 N.J. at 67.

However, and as noted, supra, even assuming standing to bring this action (an issue the PNCC Defendants dispute)<sup>1</sup>, such membership does not impact the central issue in the case – the status of Plaintiff as a member of the hierarchy of the PNCC. With respect to the Plaintiff's membership on that issue, the Court finds that the Plaintiff is unquestionably a member and "integral part of the hierarchical structure" of the PNCC. Graves, supra, 83 N.J. at 574. In evaluating membership, the Court considered "church deeds, constitutions, bylaws, canons[,]” records belonging to the

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<sup>1</sup> The Court acknowledges that the PNCC Defendants heavily dispute whether the signatories to the Complaint are members of the St. Cyrillus Parish.

Plaintiff, and the actions of the Plaintiff with respect to the PNCC Defendants. Elmora, supra, 125 N.J. at 415; Chavis, supra 93 N.J. at 108.

In this regard, the record evidences, and Plaintiff concedes, that Plaintiff joined the PNCC under the leadership of Father Sychta in 1937. Verified Compl. ¶ 22. Journals and publications belonging to Plaintiff specifically dictate that they joined the PNCC in 1937. See Helen Thomas Cert. Ex. C; Edwin Matthews, Esq. Cert. Ex. E. Moreover, the Plaintiff's representatives attended the first Synod of the PNCC and many others from 1946 through 2010. The Plaintiff's representatives were members of St. Cyrillus and members of the PNCC. Cert. of Edwin Matthews, Esq. Cert. ¶¶ 11-12.

The Plaintiff has also recognized that it is "subject to [the PNCC's] authority." Alicia, supra, 244 N.J. Super. at 131. Pastor Walter F. Thomas, during his tenure as Pastor from 1970 to 1998, served on various committees and attended meeting of the Central Diocese and the PNCC in accordance with Article XIV, Section 5 of the PNCC Constitution. Verified Compl. Ex. VV. Father Raymond R. Drada, the Pastor of the St. Cyrillus Parish from 1999 to 2005, also recognized that Plaintiff was subject to the Constitution of the PNCC. In conformity with Article XIV, Section 12 of the Constitution, Father Drada conducted membership interviews, sought approval by the St. Cyrillus Parish Committee for admitting new members, and issued an announcement concerning new members to the current members of the St. Cyrillus Church. Father Raymond Drada Cert. ¶ 6; Verified Compl. Ex. VV. Father Drada also recognized Article IX, Section 12 and Article XVII, Section 1 of the Constitution as he conducted annual meetings to elect trustees and submitted the names of the Parish Committee members to the Bishop Ordinary of the Central Diocese of the PNCC for approval. Father Raymond Drada Cert. ¶ 7; Verified Compl. Ex. VV. Plaintiff's own

By-Laws also indicate that members of the Parish Committee are to be approved by the Diocesan Bishop. Enrique Chuquisana Cert. Vol. 1 Ex. 24. As a whole, the actions of Pastor Thomas and Father Drada evidence that Plaintiff's officials recognized that Plaintiff was obligated to follow the PNCC Constitution and that it was subject to the authority of the PNCC's officials.

Furthermore, correspondence sent by the "Parish Committee Members and All Parishioners" subsequent to the October 2013 fire recognized that, under Article XVII, Section 7 of the PNCC Constitution, permission from the Bishop to rebuild the church was required. See Verified Compl. Exs. K, U, V, AA, DD, and VV. In other words, the Plaintiff's own members recognized that the Plaintiff was "subject to [the PNCC's] authority" and that they could not act in the absence of the Bishop's approval. Alicia, supra, 244 N.J. Super. at 131.

While the Court acknowledges Plaintiff's argument that they incorporated as a non-profit corporation and that all property purchased in the 1920's and 1930's were deeded to the Plaintiff in the name of St. Cyrillus, the facts demonstrate that the Plaintiff is a member and integral part of the PNCC. Similar to Graves, where the local parish was deemed a member of the higher church despite the fact that it purchased property in its own name, the aforementioned factual conclusions and analysis demonstrate that the Plaintiff has adhered to the customs of the PNCC, sent delegates to Synods and meetings, and submitted to the PNCC's authority on all matters concerning parish affairs. Graves, supra, 83 N.J. at 574-75.

#### *C. Approaches to the Property Dispute*

As indicated, the Court concludes that the instant matter presents a property dispute within the jurisdiction of the Court. The Court also holds, for the aforementioned reasons, that the Plaintiff is a member of the PNCC as it is an "integral and

subordinate part of the" PNCC and subject to its authority. Alicia, supra, 244 N.J. Super. at 131. Plaintiff's membership evidences that the PNCC is governed by a hierarchical structure with local parishes submitting to the PNCC's higher authority and governing provisions of the PNCC Constitution. See also Guardian Angel Polish Nat. Catholic Church of L.A., Inc. v. Grotnik, 118 Cal. App. 4th 919, 928 (Cal. Ct. App. 2004) ("The Polish National Catholic Church is and always has been a hierarchical church. The laws of the Polish National Catholic Church are drafted and passed at General Synods, after which they are binding on all parishes within the church.").

In accordance with New Jersey law, the Court must apply the hierarchical approach to resolve the instant dispute over the Plaintiff's real and personal property. Graves, 83 N.J. at 580; Chavis, supra 93 N.J. at 110; Burns, supra, 83 N.J. at 598. As the hierarchical approach provides that the Court must "defer to the result reached by the highest church authority," the Court holds that the actions of the PNCC Defendants in taking control over the real and personal property of the Plaintiff must be upheld. Elmora, supra, 125 N.J. at 414. The Plaintiff and its property are "subject to the hierarchical authority" of the PNCC as the parent church, as indicated in the PNCC Constitution. Graves, 83 N.J. at 580. Thus, under the hierarchical approach, the Court upholds the decision of the PNCC Defendants to manage the Parish, determine its viability and to control the real and personal property of the Plaintiff in accordance with the PNCC Constitution.

However, even if the Court were to conclude that the Plaintiff was not a member of the PNCC and, thus, that the hierarchical approach did not apply, the Court would reach the same result under the neutral principles of law approach. In examining the "church deeds, constitutions, bylaws, canons and the like," the Court concludes that the actions of the PNCC Defendants were explicitly

authorized. Chavis, supra 93 N.J. at 108. The PNCC Constitution particularly guides the Court's evaluation of the competent facts before the Court.

In relevant part, Article V, Section 8 of the PNCC Constitution provides that "[a]ll of the funds, moneys and property, whether real or personal, belong to those members of the Parish who conform to the Rites, Constitution, Principles, Laws, Rules, Regulations, Customs and Usages of this Church." Pl. Verified Compl. Ex. VV. Plaintiff relies heavily upon this provision included within the 1958 Constitution to emphasize the fact that the property belongs to members of the St. Cyrillus Parish. However, Plaintiff fails to recognize, and, in fact, ignores, that Article V, Section 11, included in the Constitution via a 1978 amendment, states unequivocally that "[a]ny Parish which does not fulfill its financial obligations to the Diocese and to the General Church will become under the direct management of the Diocesan Bishop." Ibid. The PNCC Defendants, pursuant to Article V, Section 11, took managerial and administrative control over Plaintiff's property and funds based upon the fact that the Plaintiff failed to pay dues and meet its financial obligations for a number of years. Bishop Bernard J. Nowicki Cert. ¶¶ 5, 14. Notably, Plaintiff does not dispute the fact that they failed to meet its financial obligations to the PNCC for many years. See Def. Statement of Undisputed Mat. Facts ¶ 35; Pl. Response to Statement of Undisputed Mat. Facts ¶ 35.

After taking control of the St. Cyrillus Parish, Bishop Nowicki determined that the church would close and not be rebuilt. Bishop Bernard J. Nowicki Cert. ¶ 19. As noted, supra, Article V, Section 10 dictates that:

When a Parish is liquidated, expelled, ceases to exist, its Warrant lawfully revoked, or title to its Parish property is unlawfully transferred, then all of its legally acquired or accumulated funds, moneys and

property, whether real or personal, shall revert to the Diocese in which any of the aforesaid events take place, and shall be held in trust by such Diocese for a period of not more than five (5) years for the purpose of reestablishing said Parish or establishing a new Parish within said Diocese; failure to reestablish such Parish or to establish a new Parish within said period of time, the property, whether real or personal, held in trust shall become the property of this Church.

Verified Compl. Ex. VV.

Upon Bishop Nowicki's determination that the St. Cyrillus Parish would close and not be rebuilt, the Parish ceased to exist and all of its "funds, moneys and property" reverted to the Diocese of the PNCC. As such, the PNCC Defendants properly controlled and managed the property and funds even under the neutral principles approach. Further, even if the Court were to conclude that the St. Cyrillus Parish continues to exist based upon Plaintiff's argument that members continue to worship, Plaintiff's property came under the direct management and control of the PNCC Defendants after the fire based upon Plaintiff's failure to meet its financial obligations. Thus, the property is appropriately within the control of the PNCC Defendants.

*D. Fraud, Collusion, and Arbitrariness*

Though the Court must defer to the authority of the PNCC Defendants under the hierarchical approach, the Court is not precluded from addressing and evaluating allegations of "fraud, collusion or arbitrariness." Graves, supra, 83 N.J. at 577. The Court concludes that there is no genuine issue of material fact with respect to Plaintiff's contentions that the PNCC Defendants acted fraudulently, or in an arbitrary or collusive manner.

As a preliminary matter, the Court notes that Plaintiff relies upon five primary categories of evidence introduced through the Certifications of Enrique Chuquisana and Plaintiff's counsel: depositions, letters, income statements, dues receipts, and

confirmation forms. Much of the evidence submitted, however, contains evidentiary deficiencies.<sup>2</sup> Notably, even if the Court were

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<sup>2</sup> For example, Plaintiff claims that the decision of the PNCC Defendants to close the Parish was made in bad-faith and for the purpose of taking Plaintiff's real and personal property. More specifically, Plaintiff alleges that Bishop Nowicki's bad faith is "well documented" in a November 21, 2014 letter written by Father Zochowski and a letter written by Gloria Kondrik, a former parishioner of the St. Cyrillus Parish. Pl. Opp. Br. at. 127. The letter by Father Zochowski, attached as Exhibit 30 to Volume II of Enrique Chuquisana's Certification, is inadmissible as it is unauthenticated and contains inadmissible hearsay. See N.J.R.E. 901; N.J.R.E. 801. The record is devoid of evidence demonstrating that Father Zochowski, the purported author of the letter, has authenticated the document. Moreover, the letter is itself hearsay as it is an out-of-court statement being offered to prove the truth of the matters asserted in the letter. In the letter, Father Zochowski purports to quote Bishop Nowicki as using inappropriate phrases towards the parishioners of St. Cyrillus. In his deposition, attached as Exhibit F to Volume III of Enrique Chuquisana's Certification, Bishop Nowicki acknowledged that he recognized this document as a letter he received purportedly by Father Zochowski, but he denied making some of the statements in the letter. However, the letter has yet to be authenticated by its author, Father Zochowski. The same analysis applies to the letter authored by Gloria Kondrik to Bishop Nowicki. The letters have not been authenticated, are hearsay, and the record does not establish that they fall within a recognized exception. (See N.J.R.E. 803(c)(6). Here, the only foundational facts with respect to the letter purportedly authored by Father Zochowski, in addition to their receipt by Bishop Nowicki, is the statement of Enrique Chuquisana in Paragraph 60 which states the substance of the letter but does not establish how he is competent to authenticate the letter on behalf of Father Zochowski nor does the text of Paragraph 60 or other portions of his Certification permit the Court to conclude that the criteria of R. 803(c)(6) has been satisfied.)

Moreover, Plaintiff argues that other PNCC parishes failed to pay their yearly dues to the PNCC Defendants and, yet, these other parishes were not dissolved. In support, Plaintiff cites to the Central Diocese's Quarterly income statement for 2005/2006 and receipts allegedly belonging to the PNCC for 2006 through 2009. See Enrique Chuquisana's Cert. Vol II, Exs. 20-25. Plaintiff's reliance on the aforementioned documents is deficient for a multitude of reasons. First, Plaintiff failed to indicate the source of these documents in the Certification of Enrique Chuquisana. The Court was left to search through the deposition testimony of Bishop Nowicki to find counsel for the PNCC Defendant's statement that "reports" were provided in discovery from the records of the Diocese. It is unclear whether the "reports" cited in the deposition testimony are the same parish receipts attached as Exhibits 20-25 in Volume II of Enrique Chuquisana's Certification. If the Court were to presume that the aforementioned receipts were provided through discovery, the record nonetheless fails to establish how exactly the documents were created in accordance with the New Jersey Rules of Evidence and whether they qualify as a business record under R. 803(c)(6), or if they qualify under a separate hearsay exception.

Even assuming that the Court could rely upon the documents and that they evidence that other PNCC parishes failed to pay their yearly dues, the Court is left to speculate as to the fate of those parishes and the circumstances surrounding their failure to pay. With just Plaintiff's bare allegation that the parishes were not dissolved, the Court is unable to sufficiently conclude or understand whether they were or were not dissolved or the reasons articulated

to consider the aforementioned evidence, those materials do not create a genuine and material factual issue.

What has been indisputably presented to the Court is the PNCC Defendants' determination that fifty dues-paying members would be necessary to demonstrate the viability of a parish who had failed to pay dues for a number of years and whose property had been completely destroyed. The PNCC Defendants wanted to ensure that before the property was going to be rebuilt from the ground up, the St. Cyrillus Parish was a viable entity that could pay its dues and sustain itself on a yearly basis. That other parishes may have faced similar challenges does not negate the undisputed facts related to St. Cyrillus. Nor does any other parishes' difficulties

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in any discussions not to close the parishes.

Also, Plaintiff maintains that other parishes of the PNCC remained open despite having less members or similarly failed to pay dues. For example, Plaintiff submits Parish Committee Confirmation Forms for the Resurrection of Christ Parish and the National Catholic Church of the Nativity Parish for various years. See Mario Appuzzo Supp. Cert. Exs. A and B. The documents, submitted through counsel, allegedly show that the Resurrection of Christ Parish had 23 members in 2008, 23 members in 2009, 11.5 members in 2011, 18 members in 2012, and 11 members in 2015. *Ibid.* at Ex. A. The documents also purport to show that the National Catholic Church of the Nativity had 17 members in 2000, 30 members in 2009, 27 members in 2014, and 25 members in 2015. *Ibid.* at Ex. B. Counsel for Plaintiff certifies that the documents were received from the PNCC Defendants in discovery. Again, however, receiving documents in discovery does not necessarily mean they are authentic, but even if authentication was assumed, the motion record does not permit the Court to find factually that the records satisfy the business records exception, see N. J. R. Evid. 803 (c) (6), or are admissible under another recognized hearsay exception.

Nevertheless, even were the Court to consider the documents as well, there has been no evidence presented with respect to the circumstances surrounding these other parishes and the amount of members necessary to sustain their individualized viability. And, the documents do not create a factual question regarding Plaintiff's failure to have a sanctioned Parish Committee, to pay dues and observe other church required formalities. Further, the parishes referenced in the documents did not have a fire that destroyed an entire church, the insurance proceeds from which Bishop Nowicki did not believe would be sufficient to rebuild. Under such circumstances - a dwindling parish that had not paid dues or made other filings for years and whose leadership by way of Parish Committee had not been sanctioned - the aforementioned evidence does not create a factual issue regarding the PNCC's decision to decide to take over management of the affairs and close Plaintiff's Parish after the review conducted by Bishop Nowicki.



mandate that St. Cyrillus stay open as Plaintiff demands.

Also, the "evidence" submitted does not create a genuine or material factual question that supports the argument made by Plaintiff's counsel that the true reason the PNCC Defendants sought to close the Parish was based upon the fact that the parishioners were of Peruvian descent. While the meeting notes of the August 13, 2014 teleconference make reference to the "Peruvian congregation" and a similar situation concerning the lack of members in a "Latino community in Chicago," the motion record does not support the conclusion, giving Plaintiff all reasonable inferences, that this manner of characterizing the congregation evidenced ill-motives towards the group, nor does it support the claim that this was the reason the PNCC Defendants wanted to close the Parish.<sup>3</sup>

Additionally, Plaintiff cites to a January 2014 email exchange between Bishop Nowicki and Stephen Morgan to demonstrate that Bishop Nowicki developed a plan to "close the parish, take all its assets, and give it to another parish" because the parishioners of St. Cyrillus Parish were mostly Peruvian. However, an accurate reading of the email exchange, attached as Exhibit 42 to Volume I of Enrique Chuquisana's Certification, evidences that, in response to Stephen Morgan's thoughts that the St. Cyrillus Parish did not have any committees, that members were now going to other parishes, and that resources could be consolidated into other parishes, Bishop Nowicki indicated that he would "get to this soon." Nothing in this exchange indicates that Bishop Nowicki

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<sup>3</sup> It is also significant to note, a point not addressed by Plaintiff, that Father Zochowski, during a teleconference on February 8, 2014, purportedly referred to the parishioners as a "Peruvian congregation." Bishop Bernard J. Nowicki Cert. ¶ 7. Moreover, Bishop Nowicki's deposition transcript evidences that he referred to the group of parishioners as "Peruvians" because Father Zochowski told him that they were from Peru. Enrique Chuquisana's Cert. Vol III, Ex. F.

wanted to give the assets to another parish or that he was in any way motivated by the fact that the parishioners of the St. Cyrillus Parish were Peruvian. What cannot be lost in the discussion and analysis is that the Parish indisputably failed to follow the PNCC Constitution, failed to elect a Parish Committee that was approved by the Bishop, failed to pay dues for years before the fire, and could not identify more than approximately two dozen members after the PNCC Defendants requested same to evidence viability. Indeed, the documentary evidence submitted detail an analysis based upon the inability of the Parish to sustain itself due to low membership. The meeting notes specifically dictate that, the "Peruvian congregation would have to become members of the church . . . In a similar situation in a Latino community in Chicago they began collecting dues from 50 people. The membership increased from there. Maybe we can try that." Ronald Deluca Cert. Ex. B. Thus, the notes evidence that the PNCC Defendants were brainstorming ways for the Parish to raise money, gain membership, and improve their chances of viability.

Further, while Plaintiff contends that the Parish was closed under the "pretext" that it was not viable, the record demonstrates that Plaintiff was unable to give the Bishop a list of fifty dues paying members after the fire. Again, the Plaintiff presented to the Bishop a list of only approximately two dozen members. Based upon the lack of members and the long-term failure to pay dues, the Parish was deemed to not be viable by the PNCC Defendants' hierarchy. With respect to the argument that the PNCC Defendants failed to pay dues for a number of years, Bishop Nowicki indicated that, after the fire, he began to review the records and seriously question the viability of the Parish. Bishop Nowicki Cert. ¶ 5. In other words, the fire was the catalyst for the PNCC Defendants to investigate the records of the Parish and evaluate their failure to file reports and pay dues. The record does not support the

conclusion that such a decision was fraudulent, arbitrary or collusive nor does a genuine or material factual question exist on the issue.

During his deposition testimony, Father Nowicki also acknowledged the fact that the "cost of building churches in North Jersey is significant." See Enrique Chuquisana's Cert. Vol III, Ex. F. Father Nowicki testified that the amount of money obtained through insurance proceeds would not permit the St. Cyrillus Parish to rebuild a church of the same size and quality that existed prior to the fire. Thus, the record evidences that, not only was Bishop Nowicki concerned by the fact that the St. Cyrillus Parish had failed to pay dues and submit the requisite reports for a number of years, but also that he was concerned that the insurance proceeds would not permit the PNCC Defendants to rebuild a comparable church.

Though Plaintiff asserts the PNCC Defendants acted in bad faith, there is no evidence that any fraudulent statements were made by the PNCC Defendants to obtain an unfair advantage. Foont-Freedefeld Corp. v. Electro Prot. Corp., 126 N.J. Super. 254, 257 (App. Div. 1973). While Plaintiff notes that Bishop Nowicki originally indicated that the St. Cyrillus Parish would be rebuilt, it is undisputed that Bishop Nowicki made these statements prior to his in-depth review of the Parish's records. There is no indication that Bishop Nowicki's statement that the Parish would be rebuilt was made with knowledge of its falsity. Even if Plaintiff's argument could be interpreted to allege equitable fraud and thereby negate the scienter requirement, there is no evidence in the record of a misrepresentation made by the PNCC Defendants that the Plaintiff detrimentally relied upon. Jewish Ctr. of Sussex Cty, 86 N.J. at 625.

While Plaintiff attempts to assert an arbitrariness argument by indicating that the requirement to obtain fifty dues-paying

members was not demanded of "other non-Hispanic PNCC parishes," the requisite arbitrariness evaluation concerns "whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations." Pl. Opp. Br. 139; Serbian, 426 U.S. at 713. Even considering Plaintiff's unsupported claim, the record supports the conclusion that the request to obtain fifty dues-paying members was based upon a similar circumstance involving a church in a differing community and it was simply an attempt for the Plaintiff to prove its viability. After the failure to pay dues for a number of years, the PNCC Defendants took control of the St. Cyrillus Parish pursuant to Article V, Section 11 and, while maintaining control, subsequently decided to close the St. Cyrillus Parish based upon evidence that they only had roughly two dozen dues-paying members. Verified Compl. Ex. VV. The property at issue reverted to the PNCC Defendants in accordance with Article V, Section 10. Ibid. There is no evidence that the PNCC Defendants' actions failed to comply with the practices and procedures outlined in the PNCC Constitution.

With respect to the fact that the PNCC Defendants asked Plaintiff to provide the names of fifty dues-paying members after the fire to demonstrate viability, the context of the requirement for fifty members reveals that this decision was not arbitrary. First, as noted above, the requirement for fifty members was previously utilized in a similar situation at another congregation in Chicago. Secondly, the PNCC Defendants made this requirement despite the fact that Plaintiff had failed to pay dues for a number of years prior to the fire. In other words, rather than immediately close the St. Cyrillus Parish, the PNCC Defendants gave Plaintiff an opportunity to demonstrate that it was viable and that it could pay dues in the future after having failed to pay in the past.

To the extent that the PNCC Defendants never acted upon the

undisputed fact that Plaintiff failed to pay dues for many years prior to the fire, the record evidences that the fire served as the catalyst for the PNCC Defendants to investigate Plaintiff's records. And, there is no support in the record that the PNCC waived any right under the Constitution as they did not voluntarily give up a known right. Rather, the record reflects that the PNCC Defendants acted in accordance with the PNCC Constitution in taking control of the Parish after the fire upon reviewing its records and evaluating concerns of viability. Their actions cannot be deemed arbitrary, fraudulent, or collusive.

#### VI. Conclusion

For the reasons detailed in this opinion, the PNCC Defendants' motion for summary judgement is granted.