

NOT TO BE PUBLISHED WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

PRESBYTERIAN CHURCH OF THE
PALISADES, INC., a New Jersey Religious
Corporation; EASTERN KOREAN
PRESBYTERY, a New Jersey Religious
corporation and the ADMINISTRATIVE
COMMISSION OF THE PRESBYTERIAN
CHURCH OF THE PALISADES, INC.,

Plaintiffs/Counterclaim
Defendants,

v.

ROBERT H. HWANG, JONG KIL JEUNG,
JOHN DOES 1 to 100 and JANE DOE 1 to
100,

Defendants/Counterclaimant,

HWANG, et al.,

Third-Party Plaintiff,

PRESBYTERIAN CHURCH (USA), et al.,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: BERGEN COUNTY
DOCKET No. C-68-19

OPINION

Argued: August 15, 2019

Decided: August 22, 2019

Appearances: Ellen O'Connell, (Inglesino,
Webster, Wyciskala, Taylor LLC, attorneys) for
Plaintiffs

Evan Goldman, (Goldman, Davis, Krumholz &
Dillon, P.C., attorneys) for Defendants

HON. EDWARD A. JEREJIAN, P.J.Ch.

This matter has been opened to the Court by way of motion for summary judgment, filed on June 7, 2019 by Inglesino, Webster, Wyciskala & Taylor, LLC, attorneys for Plaintiffs Presbyterian Church of the Palisades, Inc., Eastern Korean Presbytery, and the Administrative Commission of the Presbyterian Church of the Palisades, Inc. On July 1, 2019, Goldman Davis Krumholz & Dillon, P.C., attorneys for Defendants/Counterclaimants and Third-Party Plaintiffs Robert Hwang and Jong

Kil Jeung, filed a cross-motion for summary judgment and opposition to Plaintiffs’ motion. Plaintiffs filed their reply brief on July 16, 2019, to which Defendants responded on July 22, 2019 with a brief sur-reply. The Court heard oral argument on August 15, 2019.

BACKGROUND

Plaintiff Eastern Korean Presbytery (hereinafter, the “Presbytery”) is a New Jersey religious corporation affiliated with the Presbyterian Church (USA) (hereinafter, “PC USA”) located in Ridgefield, New Jersey, and is the governing body of Korean-speaking PC USA churches in the Metropolitan area. It is responsible for the government of the member-churches in its district pursuant to G-3. 0301 of the Constitution of PC USA (hereinafter, “The Book of Order”). Kim Cert. at ¶ 4.

Plaintiff Presbyterian Church of the Palisades, Inc. (hereinafter the “Church Corporation”) is a New Jersey corporation formed under the Religious Associations Act, N.J.S.A. 16:11-1, *et seq.* Id. at ¶ 9.

Article F-3. 0203, also known as the Foundations of Presbyterian Policy, states that elders of the church govern in a tiered system divided amongst four (4) groups: *Sessions* are the governing bodies of each individual church; each individual church is a member in one of a possible 170 geographically defined subordinate units known as *Presbyteries*; the Presbyteries are then governed by sixteen (16) regional units known as *Synods*; and all Synods are overseen by the national body known as the *General Assembly*. See id. at ¶ 5.

Pursuant to the Book of Order, Presbyterian Churches are to form corporations to manage the civil affairs, and explicitly possess the power and authority to:

“ . . . receive, hold, encumber, manage and transfer property, real or personal, for the congregation . . . Provided that in buying, selling, and mortgaging real property, the trustees shall act only after the approval of the congregation, granted in a duly constituted meeting . . . [and] subject to the authority of the session and under the

provisions of the Constitution of [PC USA].” *The Book of Order*, G-4. 0101; see also Kim Cert. at ¶ 8.

Plaintiff Administrative Commission of the Palisades Presbyterian Church (hereinafter, “Administrative Commission”) is an unincorporated commission established by the Presbytery under G-30109b of the Book of Order, and contain five (5) members led by Chairwoman, Dr. Hu-Nam Nam. See ¶ 8 of Verified Complaint.

On August 26, 2007, the congregation of Palisades Presbyterian Church adopted bylaws which explicitly acknowledge membership in PC USA and adopts the Book of Order, providing:

“This church belongs to the Eastern Korean American Presbytery (EKAP), Presbyterian Church, USA (PC USA)

...

The Purpose of the church is to manage the church orderly in accordance with the religious principles based on the teachings of the Old Testament and the New Testament as well as in accordance with the PC USA’s Book of Order”

Bylaws of Presbyterian Church of Palisades; see also Kim Cert., at ¶¶ 14-15.

The Book of Order also contains a “Trust Clause,” which provides:

“All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church USA . . . is held in trust nevertheless for the use and benefit of the Presbyterian Church USA.

...

Whenever property of, or held for, a particular church of the Presbyterian Church USA ceases to be used by that church as a particular church of the Presbyterian Church USA in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery.”

See G-8.0200-0300.

In June 2016, Palisades Church defaulted on a mortgage loan it had entered into with Valley National Bank, and the bank was awarded a Judgment of Foreclosure and Writ of Execution in the Superior Court of New Jersey, Bergen County Vicinage, Chancery Division, under Docket No.

SWC-F-032105-16. The outstanding mortgage debt, plus penalties and interest accrued is approximately \$2.7 million.

Defendants Hwang and Jeung were purportedly disciplined and removed from membership in PC USA and Palisades Church. Prior to this, Defendants were both members of the Palisades Presbyterian Church and Trustees of the Church Corporation, serving as elders on Session. See ¶¶ 10-12 of Verified Complaint.

One of the issues in dispute is interpretation of the authority granted to the Administrative Commission to manage affairs of Palisades Church, including the assets of the Church Corporation. A legal interpretation of the Bylaws of Palisades Church Corporation is necessary because, if the Administrative Commission automatically became trustees on the Board of Trustees as Plaintiff suggests, then the Administrative Commission would have had to vote on - and in favor of - any action as of January 22, 2018.

The other primary issue in dispute is the contextual circumstances surrounding a purported meeting of the board of directors on December 1, 2018, whereby the only persons in attendance were the above-referenced Defendants, who had allegedly accepted the resignation of the former directors and appointed themselves as the sole directors in control of the Church's assets. Defendants now argue that, with this supposed authority bestowed upon them, the court should take possession and control of the assets of the Church away from the denomination and end the affiliation with PC USA via court order.

LEGAL STANDARD

Summary judgment is designed to “avoid trials which would serve no useful purpose and to afford deserving litigants immediate relief.” Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 74 (1954). Thus, the court shall grant a summary judgment motion “if the pleadings, depositions,

answers to interrogatories and admissions on file, together with the affidavits . . . 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).

In order to satisfy its burden of proof on a summary judgment motion, the moving party must show that no genuine issue of material facts exists. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528–29 (1995). Once the moving party satisfies its burden, the burden then shifts to the non-moving party to present evidence there is a genuine issue for trial. Ibid. The non-moving party may not solely rely on denials or allegations made in an answer to defeat a motion for summary judgment. See Cortez v. Gindhart, 435 N.J. Super. 589, 606 (App. Div. 2014). Instead, the non-moving party must respond with affidavits meeting the requirements of R. 1:6-6 as otherwise provided in this rule and by R. 4:46-2(b), setting forth specific facts showing that there is a genuine issue for trial.

In determining whether the existence of a genuine issue of material fact precludes summary judgment, the court must “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill, supra, 142 N.J. at 540. Even if there is a denial of essential fact, the court should grant a motion for summary judgment if the rest of the record, viewed most favorably to the party opposing the motion, demonstrates the absence of a material and genuine factual dispute. See Rankin v. Sowinski, 119 N.J. Super. 393, 399–400 (App. Div. 1972).

ARGUMENT

From the outset, the Court must note the existence of a companion foreclosure case in this matter, captioned *Valley National Bank v. Presbyterian Church of the Palisades*, Docket Number

BER-F-32105-16.¹ The property was originally scheduled to be auctioned at a Sheriff's Sale scheduled as far back as April 5, 2019. Although the Court has discretionary authority to continue to stay the matter absent consent of the parties,² it is apparent that this conflict must be brought to a conclusion, one way or another.

ANALYSIS UNDER THE DEFERENCE RULE

First, it should be noted that the Defendants seemingly do not dispute in their papers that, under a strict deference analysis, Plaintiff would be entitled to summary judgment as a matter of law. As will be discussed below, the bulk of Defendant's opposition centers around a purported right to relief under a Neutral Principles approach. Nevertheless, the Court will address the merits of Plaintiff's Deference analysis.

Under the deference rule, in the case of a hierarchical church, "the local church is an integral and subordinate part of the general church and subject to its authority. Therefore, the U.S. Supreme Court held in Watson v. Jones, 13 Wall. 679, 443 U.S. 595 (1979), in a hierarchical situation where there was a property dispute between a subordinate local parish and the general church, civil courts

¹ The companion foreclosure proceeding is in the very late stages. The Sale has now been adjourned on two separate occasions, at the consent of both counsel in this case, as well as counsel for the lender/developer Plaintiff DeCotiis, Fitzpatrick, Cole & Giblin, LLP, John Profita, Esq. appearing. It should be noted that counsel for the lender has participated in several conferences with the attorneys in this matter, and attended the summary judgment oral argument, whereby on behalf of his client, counsel agreed to one final adjournment of the Sale to September 13, 2019.

² Specifically, N.J.S.A. 2A:17-36 provides:

Notwithstanding any other law or court rule to the contrary, a sheriff or other officer selling real estate by virtue of an execution may make five adjournments of the sale, two at the request of the lender, two at the request of the debtor, and one if both the lender and debtor agree to an adjournment, and no more, to any time, not exceeding 30 calendar days for each adjournment. However, a court of competent jurisdiction may, for cause, order further adjournments.

It should also be noted a simple calculation would reveal that the legislature strongly urges this court to not adjourn Sheriff's Sales more than one-hundred and fifty (150) days from the date of the original sale. The new sale date – scheduled for September 13, 2019 – is already one-hundred and fifty-four (154) days after the original sale date, while the Plaintiff in that matter continues to absorb all carrying costs associated with the property.

must accept the authoritative ruling of the higher authority with the hierarch.” Protestant Episcopal Church in Dioceses of New Jersey v. Graves, 83 N.J. 572 (1980).

State and federal courts have uniformly concluded that PC USA is a hierarchical religious denomination. See generally, Presbyterian Church in US. v. Mary Elizabeth Blue Hull Mem. Presbyterian Church, 393 U.S. 440, 447, fn. 5 (1969) (internal citations omitted).

In establishing the Administrative Commission and granting it original jurisdiction of the Session, the Presbytery acted under the denomination’s rules of polity and review of the decision on Presbytery are outside the jurisdiction of this court. The Court must also defer to the decision of the Presbytery establishing the Administrative Commission and giving the Commissioners the authority to control the assets of Palisades Church. Thus, the precedents require deference to the Presbytery’s decisions concerning polity and the Trust Clause.

ANALYSIS UNDER THE NEUTRAL PRINCIPLES APPROACH

The Court now shifts its attention to the Neutral Principles analysis. As an initial matter, the Court notes that Defendant vehemently opposes Plaintiffs’ analysis under the “deference rule” approach as “outdated” and thus inapplicable to the instant matter. See e.g. Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969); McElroy v. Guilfoyle, 247 N.J. Super. 582 (App. Div. 1990); Elmora Hebrew Center, Inc. v. Fishman, 125 N.J. 404 (1991); and Welter v. Seton Hall University, 128 N.J. 279 (1992); see also Odatalla v. Odatalla, 355 N.J. Super. 305 (Ch. Div. 2002) (acknowledging the holding of Jones v. Wolfe, in which the Court reasoned that the dispute over ownership of the church property could be determined by recourse to deeds, trust law and state statutes; thus, making the court capable of deciding church related property disputes based upon “neutral principles of law” and not upon religious beliefs or policies).

Nevertheless, for the reasons that will be set forth below, Defendants' argument on cross-motion also fails to demonstrate any genuine dispute of material fact that contradicts Plaintiffs' entitlement to summary judgment under a neutral principles analysis.

First, it is undisputed that the congregation of Palisades Church requested, and was granted, affiliation with PC USA in 2006. This affiliation is unequivocally demonstrated by the adoption of bylaws encompassing the Book of Order, including but not limited to, the Trust Clause in G-4.0203 by which the congregation agreed that the Church's property and assets are owned by the Church Corporation and held in trust for the Presbytery.

Second, the Palisades Church is clearly governed by the Religious Societies and Associations Act, N.J.S.A. 16:1-1, et seq. Which states, in pertinent part:

“No . . . Trustees . . . Or session of any incorporated church . . . Shall divert the estate, property or revenue belonging thereto to any purpose other than the support and maintenance of the church or religious or benevolent institution or object connected with the church or denomination to which the corporation belongs” N.J.S.A. 16:1-25

N.J.S.A. 16:11-4 requires Palisades Church's property to be used only for the purposes “committed by the constitution of [PC USA],” and states that [the corporation] shall have no power to make bylaws or exercise any power with respect to matters so committed.”

In short, both by the congregation's own bylaws and as a matter of law, the assets referenced above are to be held in Trust for the Presbytery and may only be used for purposes approved by PC USA.

The New Jersey Supreme Court dealt with a strikingly similar issue in the matter of Kelly v. McIntire, 125 N.J. Eq. 351 (Ch. 1938). There, the New Jersey Supreme Court enforced the Religious Associations Act by refusing to award a church's assets to a defecting congregation when members of a PC USA church declared disaffiliation from PC USA. In its decision, the court held that “a

congregation belonging to a religious denomination and subject to the constitution, faith and doctrines there, cannot use its property for a purpose other than that sanctioned by the denomination.” Id. at 361.

The Kelly court relied on the U.S. Supreme Court opinion in Watson v. Jones, 80 U.S. 679, 734 13 Wall. 679 (1871), where in a dispute over ownership of property of a Presbyterian Church, the Court stated:

“The appellants in the case presented to us have separated themselves wholly from the church organization to which they belonged when this controversy commenced. They now deny its authority, denounce its action, and refuse to abide by its judgments. They have first erected themselves into a new organization, and have since joined themselves to another totally different, if not hostile, to the one to which they belonged when the difficulty first began. Under any of the decisions which we have examined, the appellants, in their present position, have no right to the property, or to the use of it, which is the subject of this suit.” 80 U.S. 679, 734 13 Wall. 679 (1871).

Lastly, although the Court takes Defendants’ argument that the Administrative Commission’s actions are in direct opposition to the will of the Church congregation very seriously, Defendants fail to demonstrate to the Court how such determination would even fall within this Court’s jurisdiction.

The act of deciding the “will” of a congregation was declared a violation of the First Amendment by the United States Supreme Court in Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969). There, the U.S. Supreme Court found that it was impermissible for a court to determine which of two factions – the seceding or remaining faction – should be awarded church assets. Thus, the purported disaffiliation from PC USA because it is the “will of the Church congregation” is simply not a finding that can be made by this Court under a neutral principles analysis.

Moreover, the undisputed facts before the court warrant the granting of summary judgment in Plaintiffs' favor. Palisades Church asked for and became chartered as a member of PCUSA in 2006. The congregation adopted Bylaws, affirming that, "following the joining of the Presbyterian Church (USA) denomination, the bylaws of the church shall be enacted on August 26, 2007." See Goldman Cert., at Ex. B (Bylaws, Article 19). The Bylaws declare that the Church belongs to Eastern Korean American Presbytery, Presbyterian Church USA; that the purpose is to operate in accordance with the constitution of US Presbyterian Church. Id. The Palisades Presbyterian Church benefitted under the PC USA "Church Loan Program and Presbyterian & Loan Program" in 2017. The Presbytery provided candidates for ministry and the Committee on Ministry oversaw the selection and fitness of ordained ministers, and the Presbytery also reviewed and approved the salary, benefits, vacations, study leaves and other terms of the service of the ordained ministers. Under neutral principles, the Court finds that no written agreement concerning the property specifically is necessary to enforce the terms of the Book of Order.

Although significant debate surrounding the legal authority governing this dispute took place during oral argument, such that the Court allowed supplemental submissions after to clarify each party's respective positions on the matter, the Court does not find that any of the authority supports Defendants contentions in this matter. For purposes of clarity, the Court shall address the key cases in turn.

First, the Court does not agree with Defendant's blanket assertion that the trend of the Courts is to simply disregard the deference approach and strictly apply a neutral principles approach, albeit in a manner that clearly and unequivocally favors Defendants such as the ones before this Court.

Defendants rely heavily on Scotts African Union Methodist Protestant Church v. Conference of African Union First Colored Methodist Protestant Church, 98 F. 3D 78 (3d Cir. 1996).

Nevertheless, this authority fails to support Defendants position because there, the church corporation was formed under the Non-Profit Corporations Act, and not the Religious Societies and Associations Act. Such a critical distinction makes this case contextually irrelevant under the circumstances.

In addition, the circumstances surrounding the Scotts matter differ significantly from the matter before the Court. There, a January 19, 1991 meeting between the Conference resulted in the approval of a resolution that had similarities to the case at bar – in particular, the approval of a “Titles to Properties” portion that provided that a local church “be held in trust for the African Union Methodist Protestant Church” Id. at 5-6. Moreover, the resolution also contained a “Trust Clause” wherein all written instruments of conveyance involving church properties contain specific language. Id.

However, the key distinction in Scotts is that a subsequent meeting took place on April 6, 1991, whereby the Conference approved a “Signature Resolution” which provided that “ministers in charge of [the local] churches shall be empowered to sign official documents pertaining to the individual local church and the Conference. Id. at 7. Thereafter, at the April 6, 1991 meeting, the Conference instructed a church pastor to sign a quitclaim deed transferring Scotts Church’s Baird Boulevard property to the Conference. Id. at 8. The pastor signed the deed and the deed was recorded on April 26, 1991. Id.

It is clear that the circumstances surrounding the affirmative action taken by the Conference in Scotts are distinguishable from the facts here. Here, it is undisputed that the congregation affiliated with PC USA in 2006, and simultaneously adopted bylaws encompassing the Book of Order, and the Trust Clause indicating that the Church’s property and assets are owned by the Church Corporation and held in trust for the Presbytery. Unlike Scotts, there were no superseding

events that took place that would insinuate some ulterior motive to pull the proverbial wool over the congregation's eyes or force them to act against their will. The congregation knowingly and voluntarily entered into this affiliation, and are now bound by the documents governing the relationship.

It is undisputed that the congregation of Palisades Church requested, and was granted, affiliation with PC USA in 2006. This affiliation is unequivocally demonstrated by the adoption of bylaws encompassing the Book of Order, including but not limited to, the Trust Clause in G-4.0203 by which the congregation agreed that the Church's property and assets are owned by the Church Corporation and held in trust for the Presbytery.

Defendants also rely on an unpublished decision from the Superior Court of New Jersey, Chancery Division, Essex County, in Anthony Wisseh, et al. V. Ana Aquino, Docket No. ESX-C-147-18. However, the facts before that Court are also clearly distinguishable from the instant matter for a plethora of reasons.

As an initial matter, as Plaintiff's supplemental submission points out, the court finds that even a cursory reading of the Court's opinion would indicate that the question of whether N.J.S.A. 16:11 governs churches in PC USA is assumed, and is not at issue.

More importantly, however, are the series of steps taken by the Defendants in the Wisseh case to indicate their mere tangential association with PC USA - and keep their property segregated.

First, a written employment agreement entered into in 2012 between the Board of Trustees and Reverend Mizik explicitly acknowledged that the obligations relating to the terms and conditions of the pastor's employment must be fulfilled "to the extent that such do not conflict with the Charter of the First Presbyterian Church of Newark or its historic traditions and precedent." Id. at 15.

Second, the Judge in Essex County relied on a lengthy documented history of independence the Defendants exhibited from the Plaintiffs that are simply not present here. The Court found that “because . . . First Presbyterian Church has never relinquished control of [its] property to Presbyterian Church USA, plaintiffs have no right to a declaratory judgment in this case.” Id. at 18. However, not only did the Court note that Defendants “[did not] dispute the Presbyterian Church U.S.A.’s ecclesiastical connection with First Presbyterian Church,” but also outlined three (3) pages worth of business transactions that “took place solely at the behest of the Board of Trustees . . . None of [which] required the written permission of the Newark Presbytery.” Id. at 12.

In sum, the Wisseh case is not on point with the facts before this Court because the decision was based on the voluminous evidentiary materials demonstrating that the Defendants “followed the Royal Charter *and were in contravention to the Book of Order,*” and included *literally* “centuries of property transfers.” The evidence before the Wisseh Court demonstrated that the Board of Trustees were bound by a different charter, and acted in accordance therewith as an independent congregation.

As noted above, this Court is bound by the documents governing this dispute in order to make a legal determination as to rightful ownership of the property. Although there is no document indicating a transfer of ownership, the Court does not find even a scintilla of evidence exists indicating Defendants’ clear and unambiguous desire to remain an independent congregation when they joined PC USA. Aside from defending themselves in this lawsuit, Defendants merely rely on the deed to the property to state their independence from PC USA. The Defendants in Wisseh effectively demonstrate that the First Presbyterian of Newark remained an independent congregation by virtue of the Royal Charter and was a corporation which controlled its own assets and property. Therefore, the Wisseh case also fails to support Defendants’ position.

Similarly, Defendants cited Pennsylvania cases which are also irrelevant because Pennsylvania does not have a Religious Societies and Associations Act, and therefore such cases obviously did not take it into consideration in their respective opinions.

DECEMBER 1, 2018 MEETING

Furthermore, the court finds that as a matter of law, the alleged minutes of the annual meeting of the corporation on December 1, 2018 are clearly void on its face as they violate several aspects of the Religious Association Act, the Book of Order, and the Church's own bylaws.

The Minutes recite how only Defendants attended, that they accepted the resignation of the former "directors," appointed themselves as the only "directors," and bestowed upon themselves the titles of "Chairman of the Board" and "Director," thereby giving themselves the power to control Palisades Church's assets. Kim Cert. at Ex. L.

The Minutes are void for several reasons. First, an annual meeting of the corporation may only be called by a resolution adopted by a majority of the Trustees. See N.J.S.A. 16:1-10 and N.J.S.A. 16:11-14. The Minutes themselves show that there was never a vote to have an annual meeting, despite the Plaintiff Administrative Commissioners serving as Trustees at that point in time on December 1, 2018. Next, only the President of the Board of Trustees - elected by the other trustees - may preside at the Annual meeting. N.J.S.A. 16:1-14. Yet, here, the alleged Minutes state that the Defendants, neither of whom were President, presided over the meeting.

Lastly, the alleged Minutes state that Defendants "do hereby waive all notice what so ever of such meeting and of any adjournment or adjournments thereof," in contradiction of N.J.S.A. 16:11-14, which provides that the trustees must give at least 10 days' notice of an annual meeting to the congregation. Furthermore, the Palisade Church's own bylaws actually require two weeks'

notice of such meeting. See Bylaws, Chap. 4, Kim Cert., Ex. C. Here, it is clear that no notice of the meeting was given to anyone.

Moreover, Defendants also violated N.J.S.A. 16:1-5 in the manner in which action was taken at the alleged Meeting. Specifically, according to the alleged Minutes, only Defendants attended and accepted the resignations of former trustees and appointed themselves to office. However, under the Act, any action taken at an Annual Meeting must be by a vote by the majority of the members of the congregation. Ere, the congregation was not present, and there was therefore no vote of the congregation, much less a majority vote.

Thus, it is clear and undisputed that as a matter of law, any actions purportedly taken at the December 1, 2018 meeting are deemed void.

CONCLUSION

Although the Court notes the law governing this area is rather opaque, the Court cannot find that analysis under either the deference or neutral principles approaches favors Defendants position in this conflict. Moreover, the court finds that the authority Defendants do rely on are easily distinguishable from the facts before this Court. Plaintiff is entitled to summary judgment as a matter of law.

Furthermore, it cannot be emphasized enough that the underlying property at issue is in the final stage of a foreclosure action that has continued to be stayed pending the outcome of this action, leaving the lender in an unenviable position of paying the taxes and fees associated with the property without good cause. These circumstances not only are inconsistent with the new foreclosure regulations that have recently gone into effect and are discussed in detail above, but are also inconsistent with principles of equity.

Thus, for the foregoing reasons, Plaintiff's motion for summary judgment is hereby granted, and Defendants' cross-motion for summary judgment is hereby denied. An order accompanies this decision.