

COURT OF APPEAL FOR ONTARIO

CITATION: Bethel Restoration Ministries v. Noble, 2024 ONCA 295

DATE: 20240422

DOCKET: COA-23-CV-0852

van Rensburg, Zarnett and George JJ.A.

BETWEEN

The Members of Bethel Restoration Ministries, Pastor Greaves and  
Eulalee Watson-Jackson

Applicants (Respondents)

and

Robert Noble, Eric Sayers and Hubert Phillips

Respondents (Appellants)

AND BETWEEN

Bethel Restoration Ministries

Applicants (Appellants)

and

Elton Greaves and Eulalee Watson-Jackson

Respondents (Respondents)

Osborne G. Barnwell, for the appellants

David P. Lees, for the respondents

Heard: April 11, 2024

On appeal from the judgment of Justice Edward M. Morgan of the Superior Court  
of Justice, dated July 4, 2023.

## REASONS FOR DECISION

### INTRODUCTION

[1] The motion judge made an order enforcing the terms of Minutes of Settlement dated May 30, 2018 (the “Minutes”). The Minutes resolved litigation between two groups with different views about the affairs of a church operated by the corporate appellant Bethel Restoration Ministries (“Bethel”). The parties participated in a mediation before a retired Superior Court judge to settle the litigation and arrive at the arrangements recorded in the Minutes. They were represented throughout by legal counsel.

[2] The motion judge’s order required performance of obligations undertaken in the Minutes by Bethel in favour of the respondents’ newly formed church, New Life Worship Centre (“New Life”). These included making two payments of \$100,000 (which were then overdue), and a further payment of \$1,000,000 if certain property owned by Bethel were sold within ten years from the date of the Minutes. The motion judge’s order also gave effect to a provision of the Minutes that permitted a registration against the title to Bethel’s property.

[3] Before the motion judge, and again in this court, the appellants’ resistance to enforcement of the Minutes was premised on three grounds:

- i. The motion judge should have declined jurisdiction because the dispute that gave rise to the 2017 litigation – settled by the Minutes – involved the internal workings of a church;
- ii. The Minutes were void because they were prohibited by the constating documents of Bethel; and
- iii. The respondents had unclean hands.

[4] We see no error in the motion judge's decision to enforce the Minutes and accordingly dismiss the appeal for the reasons that follow.

## **ANALYSIS**

### **(1) The Motion Judge Was Not Required to Decline Jurisdiction**

[5] As the Supreme Court of Canada made clear in *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga*, 2021 SCC 22, [2021] 1 S.C.R. 868, at paras. 27-31, the court's jurisdiction to intervene in the affairs of a voluntary religious organization depends on the existence of a legally cognizable civil right which is affected and which the court is asked to enforce.

[6] A legally cognizable civil right will not be engaged in every dispute involving a religious organization. The norms of behaviour of voluntary religious organizations concerning matters of dogma or canon are inherently non-justiciable: *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26, [2018] 1 S.C.R. 750, at para. 36. Nor will a church's own

rules, constitution or by-laws amount to an enforceable contract among its members if, viewed objectively, an intention to create legal relations is missing: *Ethiopian Orthodox*, at para. 3.

[7] But a religious organization may “bring [itself] within the civil law’s authority”: *Birhane v. Medhanie Alem Eritrean Orthodox Tewahdo Church*, 2023 ONCA 815, at para 30. One way to do so is by expressly making an agreement with an intention to create legal relations, including one concerning property. Contractual rights and property rights ground jurisdiction in the court: *Ethiopian Orthodox*, at paras. 27-29.

[8] The appellants’ argument that the dispute that first gave rise to the litigation was one that raised issues that fell outside the Superior Court’s jurisdiction, such as who should serve as the church’s Senior Pastor, is unavailing. The parties decided to resolve the underlying dispute by making a contract with financial terms and provisions relating to property.

[9] The Minutes do not deal with or require consideration of matters of dogma, canon or church doctrine and thus do not create the risk that a court will misunderstand their content. They do not invite a court to stray into non-justiciable matters. Rather, by agreeing to the Minutes’ financial and property-related terms, the appellants, including Bethel, “have brought themselves within the civil law’s authority”: *Birhane*, at paras. 29-30. The Minutes are a contract entered into with

the objective hallmarks of an intention to create legal relations. The Minutes were signed to resolve litigation, after a mediation with a retired judge, and with the advice of legal counsel. The Minutes thus gave rise to legally cognizable civil rights – rights in property and contract – which ground jurisdiction in the court: *Ethiopian Orthodox*, at paras. 27-29.

[10] In our view, there is no basis to interfere with the motion judge's decision that he had jurisdiction to enforce the Minutes by making an order for the performance of their financial terms and the term permitting registration against Bethel's property.

## **(2) The Minutes Are Not Prohibited by Bethel's Constating Documents**

[11] The appellants argue that Bethel's constating documents prohibit what the Minutes effect: a distribution of some of its assets to one group of church members so they can go their separate ways with a new church.

[12] The motion judge rejected this argument. He stated:

As [respondents'] counsel points out, the by-laws of Bethel give the board the power to administer its funds, deal with its property, and to bring and respond to legal actions. Although [appellants'] counsel submits that the Minutes were beyond the authority contained in Bethel's constitution/by-laws, it is apparent to me that the Minutes were not contrary to the church's authority. Like any not-for-profit organization, Bethel had to have authority to deal with its property and treasury; otherwise, it would not have been able to function as an entity. It had to be able to pay its bills, administer its real estate, and allocate its

assets among its members if the circumstances called for that.

[13] The appellants take issue with this conclusion, relying primarily on Sections 1, 2 and 3 of Article I of Bethel's By-laws. Those provisions provide as follows:

### **Section 1**

The government of this local church organization ... shall be vested in the Council of Elders under the direction of the Senior Pastor....

### **Section 2**

To Perpetually protect this local church organization in its ownership, and control of its property (ies), and in its sovereignty under Christ, all ecclesiastical power and authority relative to this church, and its property (ies), shall be exercised by the Council of Elders and Deaconate under the direction of the Senior Pastor of this church assembly. The decisions thus made are subject to no reversal or amendment by any other ecclesiastical body, or other body whatsoever, unless demanded by the Government of Canada.

### **Section 3**

Any action on the part of any member, non-member or officers of this local church organization to bring about any change from its original status as outlined in the BY-LAW Article I, Section 2, is hereby strictly forbidden....

[14] We do not agree that the Minutes contravene these provisions.

[15] We begin by noting that, in arguing that the constating documents of Bethel prohibit the Minutes, the appellants implicitly concede that this issue is justiciable, since to evaluate it the court must interpret the constating documents and determine their effect.

[16] The constating documents must be considered as a whole. The Letters Patent of Bethel give it the power to “compromise” claims. Thus, Bethel had the power to settle litigation. Article V of the By-Laws provides that the Council of Elders shall act as the board of directors of Bethel. The Minutes were executed by all of the members of the Council of Elders of Bethel, who were all of its corporate directors. A term of the Minutes is that “this Agreement will bind Bethel”.

[17] Against that backdrop, it is clear that nothing in the Minutes infringes Section 3 of Article I of the By-Laws. The Minutes do not change the authority of the Council of Elders to make decisions about Bethel’s property as provided for in Article I, Section 2, nor do they (contrary to Section 2) purport to reverse any decision of the Council of Elders. Rather, the Minutes reflect and implement a decision of the Council of Elders to deal with some of Bethel’s property to settle litigation, and thus permit Bethel to continue without the overhang of that litigation.

[18] In our view, the Minutes are not prohibited by Bethel’s constating documents. It is unnecessary to consider, therefore, whether the Minutes (which

have been partially performed) would be void, as the appellants contend, if they were so prohibited.

**(3) There Is No Other Reason to Refuse Enforcement of the Minutes**

[19] The appellants submit that the respondents' conduct amounts to unclean hands and that this justifies not enforcing the Minutes. We reject this argument.

[20] Assuming without deciding that a request to enforce the Minutes is sufficiently analogous to an equitable claim so as to make the unclean hands doctrine relevant, the conduct to which the appellants point is the conduct of the respondents that gave rise to the litigation – in other words, conduct that preceded the Minutes. The Minutes recite that they were intended to resolve the parties' differences and settle the litigation.

[21] Any prior conduct was resolved by the Minutes. It cannot form the basis for a refusal to enforce the Minutes. The appellants do not point to any conduct of the respondents in their attempt to secure performance of the Minutes that could justify refusing to enforce them.



## **CONCLUSION**

[22] The appeal is therefore dismissed.

[23] The respondents are entitled to costs of the appeal in the agreed amount of \$5,000, all-inclusive.

“K. van Rensburg J.A.”

“B. Zarnett J.A.”

“J. George J.A.”