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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
Civil No. 17-2312-L2

REV. FR. NICHOLAS KASTANAS
Plaintiff and
Defendant-in-Counterclaim

vs.

GREEK ORTHODOX METROPOLIS OF BOSTON, INC.
Defendant and
Plaintiff-in-Counterclaim¹

**MEMORANDUM AND ORDER ON
MOTION TO DISMISS FIRST AMENDED COUNTERCLAIM**

After defendant Greek Orthodox Metropolis of Boston, Inc.’s (“Metropolis”) removed plaintiff Rev. Fr. Nicholas Kastanas (“Father Kastanas”) from his parish in 2017, Father Kastanas filed this case to recover his personal property that he alleged the Metropolis was holding. The Metropolis counterclaimed, alleging that Father Kastanas had failed to return property belonging to it and/or the parish. As it relates to the motion before me, the operative document is the First Amended Counterclaim (Docket #17). Father Kastanas has moved to dismiss the counterclaim. After hearing, and consideration of the parties’ briefs, including those submitted after the hearing, the motion is **ALLOWED**.

BACKGROUND

A. Factual Allegations

The relevant facts in the First Amended Counterclaim may be summarized briefly. I reserve some facts for the discussion below.

¹ In the Counterclaim, St. Athanasius Greek Orthodox Church, which is not named as a defendant, appears and attempts to assert as a third party plaintiff the same claims asserted as counterclaims by defendant Greek Orthodox Metropolis of Boston, Inc.

1. Father Kastanas' Removal from his Parish

Before July 27, 2017, Father Kastanas was the parish priest at St. Athanasius Greek Orthodox Church in Arlington ("the Parish"). In 2014, the Metropolis Finance Committee ("MFC") began reviewing the Parish's finances. During its review, MFC discovered an account named "St. Athanasius Greek Orthodox Church Homeless & Needy Fund" ("the Fund"), which had not appeared in the Parish's annual audits. The Fund was a passbook account controlled by Father Kastanas, who refused to provide MFC with records relating to the Fund. In March 2017, an audit committee of the Parish, which was formed at MFC's direction, issued a report finding that the Fund "was improperly handled, did not contain sufficient records and there is no accounting for the use of the funds." The Metropolis removed Father Kastanas from his position as the Parish's priest on July 27, 2017.

2. Events After Father Kastanas' Removal

When he was informed of his removal from the Parish, Father Kastanas was asked if he had any Parish records. He indicated he had Parish records at his home, which he would give to the Metropolis. Through counsel, Father Kastanas provided documents to the Metropolis on August 16, 2017, but none related to information about the Parish's sacramental ledgers.²

The Metropolis later learned that in February 2017 Father Kastanas purchased a computer with his own funds and transferred to it data, documents, and files, and communications with parishioners, staff, and others, from the Parish computer. Father Kastanas also told the Metropolis that he had disposed of the Parish's computer, which a local computer repair store told him was too costly to repair. After Father Kastanas filed this action, however, the Metropolis learned that Father Kastanas' counsel had the Parish computer's hard drive. Incident

² Sacramental ledgers include records of marriages, christenings, and burials.

to Father Kastanas' removal from the Parish, the Metropolis barred him from accessing his former office at the Parish and advised him that it had taken temporary custody of all materials in the office, including the computer he purchased with his own funds.

The Metropolis has repeatedly requested the return of the sacramental ledgers and other Parish records. Father Kastanas asserts he does not have them.

B. Procedural History

On August 1, 2017, Father Kastanas filed this action, asserting that the Metropolis was wrongfully retaining his personal property. On November 13, 2017, the Metropolis filed an answer and counterclaim. The Metropolis asserted claims against Father Kastanas for replevin, conversion, and an equitable accounting of the Fund. After Father Kastanas moved to dismiss the counterclaims and before the court heard the motion, the Metropolis filed its First Amended Counterclaim (Jan. 24, 2018). The First Amended Counterclaim asserts the same three counts averred in the initial counterclaim, but also purports to add the Parish as a third-party plaintiff or alternative party to assert those claims.

On March 2, 2018, Father Kastanas moved to dismiss the First Amended Counterclaim. Because of the parties' attempts at mediation, among other things, that motion is only now before the Court. In his motion, Father Kastanas argues that the Metropolis does not have standing to bring the First Amended Counterclaim on its own behalf, that it fails to state claims upon which relief can be granted, and that the Parish is not properly before the court. I consider the standing and procedural arguments below after addressing a threshold jurisdictional matter raised by the Metropolis after the hearing. Because I conclude the Metropolis lacks standing, I do not consider the argument that the counterclaim fails to state a claim upon which relief can be granted.

DISCUSSION

I. The Applicable Standard

Father Kastanas argues that the Metropolis does not have standing to assert the claims in the First Amended Counterclaim. Standing is an issue of subject matter jurisdiction. It may be considered under either Mass. R. Civ. P. 12(b)(1) or 12(b)(6). See Abate v. Fremont Inv. & Loan, 470 Mass. 821, 823 n.4 (2015). I address the former rule first because it concerns my power to hear and decide the matter. See Ginther v. Commissioner of Ins., 427 Mass. 319, 322 n.6 (1998). Where, as here, the motion to dismiss challenging a plaintiff's standing is supported by exhibits, it presents a factual challenge to subject matter jurisdiction. As such, I give no presumptive weight to the plaintiff's allegations and instead address the merits of the standing challenge by resolving the factual disputes between the parties based on the materials submitted outside the pleadings. See Audoire v. Clients' Sec. Bd., 450 Mass. 388, 390 n.4 (2008); Callahan v. First Congregational Church of Haverhill, 441 Mass. 699, 709-711 (2004).

II. The Metropolis' Threshold Subject Matter Jurisdiction Argument

In its Supplemental Memorandum in Response to Question Raised During Hearing on November 19, 2019, the Metropolis argues that Father Kastanas, by asserting that the Metropolis lacks standing, is inappropriately asking me to intrude into matters of exclusive ecclesiastical authority; essentially, the Metropolis argues that I do not have subject matter jurisdiction to hear the present dispute. See, e.g., Fortin v. Roman Catholic Bishop of Worcester, 416 Mass. 781, 785 ("the First Amendment prohibits civil courts from intervening in disputes concerning religious doctrine, discipline, faith, or internal organization" [citation and internal quotations omitted]), cert. denied, 511 U.S. 1142 (1994). See also Parish of the Advent v. Protestant Episcopal Diocese of Mass., 426 Mass. 268, 280-286 (1997) (discussing threshold question

whether court had subject matter jurisdiction over church dispute). However, “where a dispute directly concerns a purely secular matter (such as rights to church property) and does not implicate matters of church doctrine, discipline, or authority, a court may exert jurisdiction over, and resolve, the dispute by the application of neutral principles of law.” Episcopal Diocese of Mass. v. Devine, 59 Mass. App. Ct. 722, 727 (2003). See also Jones v. Wolf, 443 U.S. 595, 602-603 (1979) (First Amendment permits states to decide church property disputes using “neutral principles of law,” i.e., “objective, well-established concepts of trust and property law familiar to lawyers and judges”).

The present dispute relates solely to whether the Metropolis owns or has the right to possess the personal property at issue (the Fund and the Parish’s records). Neutral principles of law can and may be applied to this dispute. Compare General Convention of the New Jerusalem in the United States of America, Inc. v. MacKenzie, 66 Mass. App. Ct. 836, 840-841 (2006) (court could consider claim that church’s by-laws require reversion of assets upon disaffiliation), aff’d in part and rev’d in part on other grounds, 449 Mass. 832 (2007), and Central Boston Church v. Southern New England Conference Ass’n of Seventh Day Adventists, 2012 WL 2874366 at **3-5 (Mass. Super. 2012) (Fahey, J.) (court had jurisdiction because it would only be required to apply neutral principles of law to interpret church manual, according to manual’s own terms and definitions), with Wooten v. Crayton, 66 Mass. App. Ct. 187, 194-198 (2006) (court could only defer to and enforce decision by church’s ultimate governing authority – not apply neutral principles of law – where matter involved differences of opinion over doctrine and polity; while lawsuit had implications for control of church’s real and personal property, parties did not disagree about who had actual ownership of church property), and Episcopal Diocese of Mass., 59 Mass. App. Ct. at 727-728 (neutral principles of law did not apply where question of

right to use and possess church property was inextricably intertwined with question of which individuals hold authority to act for church).

The Metropolis' counterclaims – replevin, conversion, and equitable accounting – relate only to property rights. The Metropolis relies on the written regulations by the Greek Orthodox Archdiocese of America (“the Archdiocese”) to argue that it can maintain these claims. See Parish of the Advent, 426 Mass. at 285 (court did not have subject matter jurisdiction where neither party made any legal claim based on trust or property law); General Convention, 66 Mass. App. Ct. at 840-841 (court had subject matter jurisdiction where it interpreted church by-laws). These regulations may be interpreted by applying neutral principles of law and do not depend on interpretation of church doctrine. As such, I reject the Metropolis' argument that the court cannot render a decision on Father Kastanas' motion to dismiss.

III. The Metropolis' Standing

The crux of Father Kastanas' argument is that the Metropolis does not have standing to assert replevin, conversion, and equitable accounting claims because it does not have a sufficient interest in the particular property, i.e. the Parish's sacramental ledgers and other Parish records (“Disputed Records”), and the monies in the Fund. I agree and address each claim below.

A. Replevin

The Metropolis seeks replevin of the Disputed Records. To prove a claim for replevin, the party bringing the action must prove: “(1) the goods in question have a value greater than twenty dollars; (2) the goods are unlawfully taken or detained; and (3) the owner or person entitled to possession is deprived of the goods.” Evergreen Marine Corp. v. Six Consignments of Frozen Scallops, 806 F. Supp. 291, 295 (D. Mass 1992), vacated on other grounds, 4 F.3d 90 (1st Cir. 1993). See G.L. c. 247, § 7. The plaintiff must also show it has title and the right to

immediate possession of the property. See Marsh v. S. M. S. Co., 289 Mass. 302, 305 (1935); Johnson v. Neale, 88 Mass. 227, 228 (1863). “A plaintiff in replevin . . . must maintain his case on the strength of his own title or claim. It is immaterial whether the defendant has or has not any title, if the plaintiff fails to show any in himself.” Davis v. Smith-Springfield Body Corp., 250 Mass. 278, 284 (1924), quoting Johnson, 88 Mass. at 229.

As noted above, the Metropolis’ argument in support of its standing to maintain the replevin claim regarding the Disputed Records relies entirely on the Archdiocese’s written regulations, which include the Uniform Parish Regulations (“UPR”) and the Uniform Metropolis Regulations (“UMR”). No specific provision of the regulations is directly on point. Instead, the Metropolis argues that the UPR and the UMR as a whole provide for a hierarchical relationship between it and the Parish, which conveys on the Metropolis “ultimate authority over the entirety of any and all property owned, controlled, or in the possession of the Parish.” The Metropolis cites various provisions of the UPR and the UMR indicating: (a) a parish must provide the Metropolitan and/or the Hierarch³ annual financial statements and budgets for the prior and ensuing years; (b) the Hierarch has authority to impose measures to enforce a parish’s obligations to submit the required financial records; (c) a board of auditors composed of at least three parishioners shall audit a parish’s financial records of the prior year and its final report is provided to the Hierarch and the Archdiocese; (d) the Metropolitan must approve a parish’s acquisition of personal property and a parish’s acquisition, disposition, or encumbrance of real property; (e) each parish shall conform to the worship, sacramental life, doctrines, canons, and

³ The Archdiocese’s regulations define “Metropolitan” as the “head Hierarch of a Metropolis,” and “Hierarch” as the “Archbishop for the Direct Archdiocesan District, Metropolitan for a local Metropolis or Auxilliary [sic] Bishop who serves under the authority of either.” Given that the Parish is within a local metropolis, it seems the Metropolis or its Metropolitan would be the Parish’s Hierarch.

discipline of the Greek Orthodox church; and (f) the Metropolis in general “oversee[s]” each of its parishes, and each priest and parish council “is responsible to the respective Hierarch for the whole life and activities of his [p]arish.”

The Metropolis also cites various provisions of the UPR regarding disposition of property under certain circumstances. Specifically, if the Archbishop declares a parish in canonical disorder, he assumes control of the parish’s “properties” until he declares the parish to be in canonical order, except that if the parish cannot be restored to canonical order, “the title to properties shall vest in the Archdiocese”; when a priest is transferred, reassigned, or removed, he must deliver to his respective Hierarch “all sacred vessels and other liturgical items belonging to the [p]arish . . . and all registry books and other pertinent records of the [p]arish”; and under certain circumstances, the Archbishop may declare a parish dissolved or disbanded, “and its properties shall devolve to the Archdiocese.”

Applying neutral principles of law, the plain language of the UPR and the UMR do not establish that the Metropolis has title in or immediate right to possession of the Disputed Records. See Fortin, 416 Mass. at 788 (“Under the neutral principles of law approach, we may examine any relevant statute, the deeds to the property in question, and any pertinent constitutions or by-laws of the organizations involved.”). See also Central Boston Church, 2012 WL 2874366 at **3-5 (court interpreted terms of church manual). Cf. General Convention of the New Jerusalem in the United States of America, Inc. v. MacKenzie, 449 Mass. 832, 835 (2007) (“The bylaws of a church corporation form a contract between the church and its members, and are interpreted according to principles of contract law. . . . When the words of a contract are clear, they must be construed in their usual and ordinary sense.”). Though the UPR and the UMR do not clearly establish whether the Parish or Father Kastanas holds title to the

Disputed Records, this is immaterial for determining whether the Metropolis can maintain a replevin claim.⁴ See Davis, 250 Mass. at 284. The only provisions in the UPR to which the Metropolis cites that explicitly mention title to parish property indicate that such title reverts to the Archdiocese – not the Metropolis – upon the happening of certain events.

Nor do the UPR or the UMR provide the Metropolis with a right to immediate possession of the Disputed Records. None of the provisions the Metropolis cites provide it with any right to possess property that belongs to or is associated with a parish. The only provision that relates to a higher authority taking possession of such property indicates that the Archbishop may assume control of a parish's property if he declares the parish in canonical disorder. Even that provision would not support a replevin claim by the Archbishop, however, because there is a condition precedent to the Archbishop's right to possession (declaring the parish in canonical disorder). See da Silva v. Coffee Connection, Inc., 1994 WL 879508 at *1 (Mass. Super. 1994) (Hinkle, J.) (to bring a replevin claim, "the plaintiff . . . must have the right to immediate, exclusive and unqualified possession of the property as against each defendant. If any preliminary act or condition precedent must be performed before the unqualified right of possession attaches, replevin cannot be maintained."), citing Wylie v. Marinofsky, 201 Mass. 583 (1909).

The Metropolis' mere authority over the Parish in the hierarchical order, or its alleged financial dependence on "parish-level funds," does not mean that it has ownership or possessory rights in the Disputed Records. If that were the case, any number of organizations and/or persons within that hierarchy above the parish such as the local archdiocese, the Archbishop, or

⁴ If he is not the owner of the Disputed Records, Father Kastanas may be answerable to the property's true owner, presumably the Parish. See Johnson, 88 Mass. at 229. As discussed below, the Parish has not properly been joined in this action.

the Archdiocese, could assert replevin claims against a parish's property. That is simply not the nature of a replevin claim.

Where the Metropolis has failed to prove its title and right to immediate possession of the Disputed Records, it lacks standing to maintain a replevin claim. See Callahan, 441 Mass. at 709-710. The claim must be dismissed.⁵

B. Conversion

To prevail on a claim of conversion, a plaintiff must show that, “at the time of the conversion, it had a general or special property in the goods and also that it had either the actual possession or the right to immediate possession of them.” Massachusetts Lubricant Corp. v. Socony-Vacuum Oil Co., 305 Mass. 269, 271 (1940). See Beliveau v. Ware, 87 Mass. App. Ct. 615, 618 (2015), citing Mazeikis v. Sidlauskas, 346 Mass. 539, 544 (1963); MCLE Massachusetts Superior Court Civil Practice Jury Instructions § 24.3 (3d ed. 2014, 2d Supp. 2018), citing J.R. Nolan & L.J. Sartorio, Tort Law § 4.5, at 83 (3d ed. 2005). As discussed above, the Metropolis has not shown that it had title to or the right to immediate possession of any property owned by or associated with the Parish; and certainly not at the time of the alleged conversion. Thus, it does not have standing to maintain its conversion claim regarding the monies in the Fund. The conversion claim must be dismissed.

C. Equitable Accounting

As is relevant here, a claim for equitable accounting is available where there is a fiduciary relationship between the parties. See Ball v. Harrison, 314 Mass. 390, 392 (1943). The Metropolis alleges in the First Amended Counterclaim that Father Kastanas is its fiduciary. As

⁵ The Metropolis has also failed to allege or prove that the Disputed Records have a value “exceeding twenty dollars.” See G.L. c. 247, § 7. While the sacramental ledgers and other Parish records certainly have historical value, their financial value is not self-evident.

noted above, because Father Kastanas has presented a factual challenge to the Metropolis' standing to bring its claims, I must consider the factual dispute as to whether there is a fiduciary relationship between Father Kastanas and the Metropolis based on the materials before me. After consideration of those materials, I conclude that the Metropolis has failed to show that there was a fiduciary relationship between Father Kastanas and the Metropolis.

A fiduciary relationship may arise as a matter of law (e.g., attorney/client) or as a matter of circumstances. See Maffei v. Roman Catholic Archbishop of Boston, 449 Mass. 235, 247-248 (2007). The Metropolis has not cited any case indicating that there is a fiduciary relationship between a priest and the local archdiocese as a matter of law. Thus, to sustain its equitable accounting claim, the Metropolis must show circumstances giving rise to a fiduciary relationship, which occurs when "one person is in fact dependent on another's judgment in business affairs or property matters." Markell v. Sidney B. Pfeifer Found., Inc., 9 Mass. App. Ct. 412, 444 (1978), abrogated on another ground, Cleary v. Cleary, 427 Mass. 286, 292 (1998). See Doe v. Harbor Sch., Inc., 446 Mass. 245, 252 (2006), quoting Van Brode Grp., Inc. v. Bowditch & Dewey, 36 Mass. App. Ct. 509, 516 (1994) ("A fiduciary duty exists 'when one reposes faith, confidence, and trust in another's judgment and advice.'"). As the party asserting the existence of the relationship, the Metropolis has the burden of proof. See Doe, 446 Mass. at 252. The Metropolis has failed to meet its burden.

Despite alleging that Father Kastanas is its fiduciary, the Metropolis has not made any argument in its papers in support of this assertion. It does not cite to any provision of the UPR or the UMR, or any other evidence, indicating that there is a fiduciary relationship between it and a priest. My review of the UPR and the UMR does not reveal circumstances that may give rise to

such a relationship.⁶ Accordingly, the Metropolis has not shown it has standing to assert an equitable accounting claim against Father Kastanas.⁷

IV. Naming the Parish in the Counterclaim

As I have concluded, the Metropolis does not have standing to bring the claims in the First Amended Counterclaim. Where the Metropolis has failed to assert a valid counterclaim, it cannot bring another party into the case to assert claims, regardless of whether that new party purports to be a plaintiff-in-counterclaim or a third-party plaintiff (as the Metropolis has alternatively referred to the Parish in its papers). See Marchese v. Boston Redevelopment Auth., 483 Mass. 149, 156 (2019) (“The question of legal and standing is a jurisdictional matter. . . . Where a plaintiff lacks standing to bring an action, the court lacks jurisdiction of the subject matter and must therefore dismiss the case” [citations omitted].); Rental Prop. Mgmt. Servs. v. Hatcher, 479 Mass. 542, 547 (2018) (“Although dismissals for lack of subject matter jurisdiction are ordinarily without prejudice because they typically do not involve an adjudication on the merits, in cases where a lack of standing is also fatal to the merits of the plaintiff’s claim, as here, dismissal must be with prejudice.”).⁸

⁶ Under the UPR, a priest serves as a non-voting member of the parish council, which submits financial statements and budgets to the Metropolitan and/or the Hierarch each year. The UPR also provide that the priest “together with the [p]arish [c]ouncil is responsible to the respective Hierarch for the whole life and activities of his [p]arish.” There is no indication that such activities of the priest involve the Metropolis putting faith and confidence in him relating to the Metropolis’ affairs, rather than the affairs of the parish.

⁷ If the Metropolis’ equitable accounting claim depends on a fiduciary relationship that is not expressly stated or immediately apparent, assessing whether such a relationship exists would require me to consider internal organizational or other canonical matters that would take me “far afield of neutral principles of law.” Maffei, 449 Mass. at 250 (declining to hold clergy member relationship with congregant to be fiduciary).

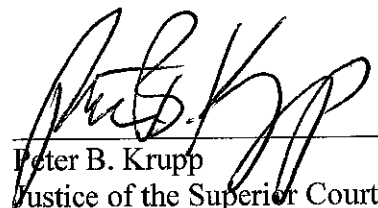
⁸ If it believes it is the true owner of the property in question, the Parish could presumably bring its own claims against Father Kastanas. See Rental Prop. Mgmt. Servs., 479

The Metropolis' reliance on Mass. R. Civ. P. 13(h) and 17 is misplaced. The former provides that "[p]ersons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20." Given that there is no valid counterclaim because the Metropolis lacks standing, there is nothing to which the Parish can be made a party. As to Rule 17, the issue in this matter is not "a possible technical defect in pleading" as to the true party in interest. See Vittands v. Sudduth, 49 Mass. App. Ct. 401, 409-410 (2000) (if trust is not true trust, sole beneficiary of purported trust must join trust's suit or be substituted for trust as real party in interest). See also Mass. R. Civ. P. 17(a) (referring to "[a] personal representative, guardian, conservator, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute" as real parties in interest); J.W. Smith & H.B. Zobel, Rules Practice § 17.2, at 288 (2d ed. 2006) ("The named claiming party must be the person who possesses the right being asserted, not necessarily the person who will derive the ultimate benefit from the relief sought."). The Metropolis has not shown any procedural basis to add the Parish as the real party in interest to defend plaintiff's claims.

ORDER

Plaintiff's Motion to Dismiss the First Amended Counterclaim of the Greek Orthodox Metropolis of Boston, Inc. (Docket #21) is **ALLOWED**.

Dated: December 16, 2019


Peter B. Krupp
Justice of the Superior Court

Mass. at 547. Requiring the Parish to bring a separate action against Father Kastanas (and perhaps seek to have the new action consolidated with this one) may not be the most efficient result, but it is the result the law requires.