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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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COURT OF APPEALS
DIVISION II
STATE OF WASHINGTON

SAMUEL Y. SUNG AND YOUNG HEE SUNG, AS HUSBAND AND
WIFE; MORNING STAR WORLD MISSION,

Appellants,

vs.

TAE Y. CHOI, INMIN KIM, AND MYUNG SOON HINTON, AS
REPRESENTATIVES OF THE NEW HOPE CHRISTIAN
REFORMED CHURCH OF TACOMA, AND REVEREND
TIMOTHY TOESET, AS REPRESENTATIVE OF THE CLASSIS
PACIFIC NORTHWEST OF THE CHRISTIAN REFORMED
CHURCH OF NORTH AMERICA,

Respondents.

APELLANT'S REPLY BRIEF

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I. STATEMENT OF FACTS

The only bylaws in existence for New Hope Christian Reformed Church were those adopted in 1987, soon after the church was originally incorporated. The bylaws were amended in 1991, to reflect that the church had been fully affiliated with the Christian Reformed Church of North America (CRCNA) in 1991. **Tr. Ex. 1.** Upon review, it is clear that the bylaws incorporate both the Church Order of the CRCNA, and "Presbyterian Council Governance" of the Korean Presbyterian denomination, with which Reverend Sung was originally affiliated. *See, e.g. Tr. Ex. 1* Article 10(3)(1) (translation p.3); *See also, Tr. Ex. 102 at 11:24 – 12:16.*

The New Hope Christian Reformed Church was administratively dissolved in 1994, and reincorporated in 1997, using a different UBI number. The trial court found that the entity Reverend Sung created in 1997 was a continuation of the prior entity. **CP 134 ¶ 4.** In any event, it would not have been possible for a new and distinct entity to sell the Sea-Tac property in 1997. New Hope (f/k/a "Hope") Christian Reformed Church held title to the Sea-Tac property it sold in 1997. **CP 134 ¶ 2.**

According to the bylaws of the New Hope CRC, church property is managed by a property "management committee," operating "under the jurisdiction of the Senior Pastor." **Tr. Ex. 1** Article 24(1) and (2)

(translation p. 5). The only person who testified to being a member of the church property management committee, was Deacon Kwi Chan Lee, who also authorized the transfer of title for the church property to Morning Star World Mission. **RP 1054:3 – 1056:16; 1064:7-20; Tr. Ex. 25.**¹ Reverend Sung was always the Senior Pastor of the church he founded. He had intended to remain as Senior Pastor, until Reverend Byung Kim became ordained as a CRCNA minister. **RP 1014:24 – 1015:2.**

Reverend Sung always acted as Chairman of the Board of Directors and President of the New Hope CRC corporation. **RP 936:13-21; 944:18 – 946:8.** In contrast, Rev. B. Kim never had any regard for the corporate structure, or the New Hope CRC bylaws. **RP 416:11-15; 417:7-19.** Reverend Sung signed for the purchase of the Sea-Tac property in 1986, the sale of the Sea-Tac property in 1997, the purchase of the Tacoma property (subject property) in 1997, and the transfer of the Tacoma property to Morning Star World Mission in April of 2005. **RP 944:18 – 946:8.**² No part of the 2002 agreement between Rev. Sung and Rev. Kim calls for Rev. Sung to step down as Senior Pastor, or to resign from the Board of Directors for New Hope CRC. Conversely, the 2002

¹See also, **RP 971:5-15; 972:21 – 973:11; 974:5-12; 974:24-25; 976:9 – 978:23.**

²See also, **RP 1063:20 – 1065:17; 1066:19 – 1069:4.**

agreement clearly refers to Reverend Sung as "Senior Pastor." **Tr. Ex. 14.**³

Respondents persistently attempt to characterize the Joo Shin congregation as "the church," referring to the New Hope Christian Reformed Church. Respondents also persistently attempt to characterize the controversy between the leadership of Joo Shin and New Hope, as a "schism." Neither of these characterizations are accurate.

In 2002, Joo Shin was invited to become part of New Hope CRC according to the agreement between Rev. Sung and Rev. B. Kim. The agreement provided for an affiliation process. When Rev. Kim abandoned his position, never having become ordained in the CRC, as required pursuant to the 2002 agreement, the process of affiliation was terminated. **Tr. Ex. 14.**

This case does not present a situation where you have two warring factions within a voluntary association. There is a voluntary association (Joo Shin) and a dissolved nonprofit corporation (New Hope CRC) vying for control of the subject property. Joo Shin is an entirely different church, from a different denomination, invited to join the New Hope CRC.

³Respondents argue that in the proceedings below, Appellants did not address the issue concerning whether the October 2002 agreement between Reverend Sung and Reverend Kim was a contract for the transfer of real estate, requesting that the argument be precluded as not having been brought up below. This is not true. The argument was made below. *See* **RP 1225:12-15; CP 80:11-13.**

However, the process was not completed. Furthermore, the Joo Shin church never made payments pursuant to the agreement with New Hope CRC.⁴

Rev. Sung never considered Joo Shin to be members of his church. **Tr. Ex. 102 at 49:14 – 50:8; 50:25 – 52:5; 52:13 – 55:16.** It is not possible for a PCUSA minister to lead a CRC congregation. Not coincidentally, Joo Shin operated under the name "New Hope Presbyterian Church" while Kim, a PCUSA minister, held services at the subject property. It is not possible for anyone to have authority to govern in a CRC church without signing the form of subscription. **RP 219:22 – 220:19.** Not one single Joo Shin church representative has ever signed a form of subscription with the CRCNA. **RP 227:21 – 231:25.**

II. ARGUMENT AND LEGAL ANALYSIS

A. The deference rule applies to hierarchical churches only.

In Church of Christ at Centerville v. Carder, et al., 105 Wn.2d 204, 207-08, 713 P.2d 101 (1986), the Washington Supreme Court confirmed that a different analysis applies to hierarchical churches, as opposed to

⁴ Respondents took issue with the fact that Reverend Sung did not provide receipts for his claim of using the entire \$60,000 to pay church debts. However, Respondents never produced a single check or receipt indicating that any payments were made pursuant to the October, 2002 agreement, including payments on the outstanding \$25,000 mortgage balance.

congregational churches. The deference rule does not apply to congregational churches. However, courts are permitted to ascertain and apply principles of church governance in the congregational setting, so long as the inquiry does not require the courts to resolve matters of purely religious concern. This is consistent with the "neutral principles of law" approach, because it looks to ordinary laws governing non-profit corporations and voluntary associations.

In Carder, *supra*, an unincorporated congregational church board of elders hired a minister. The board then fired the minister two years later, pursuant to the church constitution. The minister rallied support among a majority of church members to overturn the board's decision.⁵ Thereafter, the elders created a nonprofit corporation and deeded title to the church property to the nonprofit corporation. The deposed minister and his followers then also created a nonprofit corporation, and the controversy over control of the church property went to court.

The Supreme Court upheld the trial court's ruling favoring the action of the original board of elders, based on the original church constitution. The Supreme Court referred to the original church constitution, and decided the case based on ordinary laws that govern

⁵Contrast the Supreme Court's rejection of a "majority rules" approach to resolution of a church property dispute in Carder, with the trial court's finding that the number of

voluntary associations, because there was no corporation at the time of the church board's action at issue, and therefore no bylaws for reference. Thus, consistent with the neutral principles of law standard, the ruling in Carder requires *reference* to the governing corporate documents of congregational churches, rather than *deference* to some higher ecclesiastical authority.

In this case, the trial court should have regarded the original bylaws of New Hope Christian Reformed Church, created in 1987, but it did not. The trial court simply made up its own rule, *i.e.*, that a retiring minister cannot take church property with him when he retires. Upon making this determination, the trial court did not regard or reference any bylaws, or the CRCNA Church Order. Consistent with the Supreme Court's holding in Carder, *supra*, the trial court would need to regard the original bylaws of the church, to determine if the bylaws were followed. Rather, however, the trial court simply applied the deference rule, holding that application of the deference rule was appropriate, because in the trial court's opinion, the issues in this case involved matters of ecclesiastical concern.

members in Sung's congregation v. the number of members in the Joo Shin congregation had "a lot of relevance." **RP 376:1-11.**

According to the CRCNA rules, this case does not involve an ecclesiastical matter. **Tr. Ex. 62 at 165-166.**⁶ The CRCNA Church Order does not address any issue regarding disposition, or management of church property. And, the Classis has no authority to be meddling in the business affairs of local congregations. **RP 245:20 – 247:17.** Also, according to the Classis representative who testified at trial, Tim Toeset, a "form of subscription" must be signed prior to any person gaining authority to act on behalf of any CRCNA church. **RP 219:22 – 220:19.** None of the Joo Shin members masquerading as New Hope CRC members in this case have ever signed a form of subscription with the CRCNA. **RP 227:21 – 231:25.** Respondents Choi, Kim, and Hinton were never members of New Hope CRC, or any CRCNA church for that matter. **Tr. Ex. 102 at 49:14 – 50:8; 50:25 – 52:5; 52:13 – 55:16.**

B. Rules regarding reinstatement of a nonprofit corporation.

Respondents argue that, despite the requirement of RCW 24.03.302 wherein a nonprofit corporation must be reinstated within three years of administrative dissolution, Respondent Choi successfully

⁶ This reference, the "Manual of Christian Reformed Church Government," specifically identifies the authority of the Classis as limited to "ecclesiastical matters." The Manual then goes on to identify what ecclesiastical matters are, according to the CRCNA. Specifically, business matters "are not to be regarded as ecclesiastical matters." The detailed definition of ecclesiastical matters referenced here concludes: "The task of the church pertains to things sacred . . . the church must not endeavor to rule in the sphere of the natural life."

reinstated the New Hope nonprofit corporation more than five years after administrative dissolution. Respondents' argument cites RCW 24.03.303, for the position that "exigent or mitigating circumstances" may permit a reinstatement more than three years after administrative dissolution.

First, there is nothing in the record of this case indicating "exigent or mitigating circumstances" necessary to allow reinstatement under RCW 24.03.303. There was no evidence presented to the trial court in this regard. Nonetheless, the other mandatory requirements of RCW 24.03.303 have not been satisfied.

The statute, RCW 24.03.303, *requires* an application for reinstatement to be filed within 15 days after discovery of dissolution, by an authorized corporate officer. (a) There is no evidence in the record of this case to indicate that Mr. Choi was ever an authorized corporate officer for the dissolved nonprofit corporation, New Hope Christian Reformed Church. In fact, Mr. Choi testified he was not acting as a corporate officer, or board member for New Hope CRC, prior to his unilateral designation of corporate authority in May of 2005. **RP 460:10-24.** (b) At the very least, we know Mr. Choi became aware that New Hope CRC had been administratively dissolved, when he first attempted to reinstate the corporation by filing a business license application in Pierce County on

May 19, 2005. **Tr. Ex. 85.**⁷ Mr. Choi did not then file an application for reinstatement with the secretary of state until June 14, 2005. **Tr. Ex. 3.** Best case scenario for respondents is that Mr. Choi filed for reinstatement approximately 25 days after learning that the corporation had been dissolved in 2000. Therefore, Mr. Choi cannot qualify for reinstatement under RCW 24.03.303, because his application was filed in excess of fifteen days after discovery of the administrative dissolution.

C. A gift is not contractual consideration.

Respondents, and the trial court, persistently characterize the \$60,000 transferred to Reverend Sung as contractual consideration. The money was specifically identified as a "gesture of appreciation," pursuant to the terms of the 2002 agreement between Reverend Sung and Reverend B. Kim. **Tr. Ex. 14.** It is clear that the 2002 agreement was not a contract for the transfer of title to real property. Essentially, pursuant to the terms of the 2002 agreement, Reverend Sung agreed to retire, and Reverend Kim agreed to become ordained in the CRCNA.

Reverend Sung performed according to his obligation under the 2002 agreement. Reverend B. Kim did not. The \$60,000 transferred to Reverend Sung, however, is specifically designated as a "gesture of

⁷ See RP 461:23 – 463:23.

appreciation," indicating donative intent. It cannot, therefore, be arbitrarily deemed contractual consideration. It was a gift.

"A gift is the transfer of property with donative intent and without consideration." City of Bellevue v. State, 92 Wn.2d 717, 720, 600 P.2d 1268 (1979) (*citing*, Andrews v. Andrews, 116 Wn. 513, 521, 199 P. 981 (1921)). The \$60,000 transfer was specifically designated "a gesture of appreciation" by the Joo Shin congregation. **Tr. Ex. 14**. This language clearly indicates donative intent. The money should not now be regarded as contractual consideration. Nevertheless, even assuming it *was* contractual consideration, and Reverend Sung had no right of rescission, as Respondents argue, then the remedy would be to order return of the \$60,000, less the rental value of the property during the time Joo Shin was using the property. It is inconceivable how the trial court could regard the appropriate remedy here as a transfer of title to a parcel of real estate that was not contemplated as consideration pursuant to the agreement, under any reasonable interpretation of the agreement. **RP 911:9-24**.

III. CONCLUSION

The trial court's decision in this case is at odds with the law established by this Court, and the Washington Supreme Court, regarding resolution of church property disputes. Whether the issue should be

resolved in the congregational church setting by reference to "ordinary rules governing voluntary associations," or "neutral principles of law" is just semantics. It means the same thing. However, there is no authority for the concept that a congregational church can be subject to the deference to hierarchy rule. As for Respondent's argument regarding the trial court's finding of fact that New Hope CRC is a "congregational" church, Respondents surely have not demonstrated that the trial court's finding of fact on this issue was an abuse of discretion. This finding of fact was supported by overwhelming evidence that New Hope CRC functioned independent of the denomination, save for issues concerning religious doctrine.

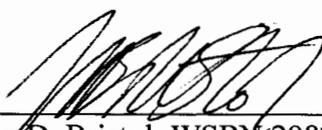
The trial court ruled that the ultimate issue in this case was ecclesiastical, and therefore the trial court applied the deference rule. As a result, the trial court did not regard the founding 1987 bylaws of New Hope (Hope) CRC, or the CRCNA church order in rendering its decision. The trial court simply deferred to the ruling of the Classis, regardless of whether the Classis had complied with the CRCNA Church Order, because there was no evidence presented that the Classis' decision in this case was contrary to the Word of God. The trial court's decision, if upheld, will require litigants to engage in a debate about the proper interpretation and application of the Bible. The First Amendment of the

United States Constitution clearly prohibits such an inquiry in secular courts.

For this reason, and a multitude of other reasons briefed herein, the trial court's decision in this case must be reversed. There is no reason to remand this case, however. Pursuant to the New Hope CRC bylaws, established in 1987, and the CRCNA Church Order, no respondent in this case could act as a corporate, or ecclesiastical authority on behalf of New Hope CRC. Given the facts established in this case, application of neutral principles of law resolves all claims in favor of Reverend Sung and Morning Star World Mission.

Respectfully submitted this 16th day of December, 2008.

McFERRAN, BURNS & STOVALL, P.S.

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DIVISION II

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STATE OF WASHINGTON

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DEPUTY

NO. 37313-1-II

**IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

TAE T. CHOI, ET AL.,
Respondents,

vs.

SAMUEL Y. SUNG, ET AL.,
Appellants.

Appeal from
Pierce County Superior Court
Cause No. 06-2-07278-8

**CERTIFICATE OF
SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on December 16, 2008, at Tacoma, Washington, I caused a true and correct copy of *APPELLANT'S REPLY BRIEF* to be served upon all parties and/or their counsel of record at their last known addresses:

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Seattle, WA 98104-3179

VIA U.S. MAIL
and VIA FAX

DATED this 16th day of December, 2008, at Tacoma, Washington.

McFERRAN BURNS & STOVALL, P.S.

By Laurie J. Shinyama
Laurie J. Shinyama, Paralegal