

ORIGINAL

No. 37313-1-II

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

SAMUEL Y. SUNG, et al.,

Appellants,

v.

TAE Y. CHOI, et al.,

Respondents.

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DIVISION II
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STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

BRIEF OF RESPONDENTS

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I. INTRODUCTION

Appellant Samuel Sung is a former minister of the Christian Reformed Church of North America (CRCNA), who served for many years as senior pastor of the “New Hope Christian Reformed Church,” a CRCNA-affiliated church in Tacoma. After his retirement, and while drawing a pension from CRCNA, Mr. Sung became engaged in a dispute with the New Hope church leadership regarding the selection of a new pastor. Basically, Sung wanted to be re-installed as acting pastor; the congregation wanted to call a new pastor in accordance with church rules.

In the midst of the dispute, Sung unilaterally declared himself to be the “Senior Pastor” and “Property Owner” of the church. Sung changed the locks on the church building, and barred the congregation from using it. He then filed papers with the Secretary of State to establish two new legal entities — one named “New Hope Christian Reformed Church” (the same name as the corporation that had originally purchased the church property, but had since been administratively dissolved), and one named “Morning Star World Mission.” Sung identified himself and his family members as the sole board members of each entity. Sung then executed a “quitclaim deed,” purporting to transfer the church property from the newly-created “New Hope” entity to the newly-created “Morning Star” entity. The “Morning Star” entity (*i.e.*, Sung) has since rented the church property to another, unrelated congregation. Sung uses the rental proceeds to pay his legal fees, and also fund his travels to South America and the

Caribbean, while the New Hope congregation meets in a rented room in another church's basement.

Meantime, the church council presented the dispute for resolution by the denomination's regional association, the Classis Pacific Northwest (the "Classis") of the CRCNA, in accordance with CRCNA rules. There is no dispute that the New Hope church was governed by CRCNA rules. Sung had specifically committed to abide by them, in return for the numerous benefits he had received since becoming a CRCNA minister in 1985, including medical and dental insurance, a pension, and a \$50,000 loan that had been used to purchase the original church property.

After thorough investigation, the Classis recognized the church council as the governing body of the church. The Classis directed Sung to reconcile himself with the church council and restore possession of the church property to the congregation. Sung initially promised to do so, but then reneged. Sung stated he intended to appeal the Classis' decision to the Synod, in accordance with church rules, but he never did so. After numerous attempts to mediate and otherwise resolve the matter failed, the Classis and the New Hope church leadership (the Respondents herein) ultimately brought this lawsuit to compel Sung to relinquish the property.

The matter was tried to the bench over 10 court days in November, 2007. At the conclusion of the trial, the court recognized respondents Tae Choi, InMin Strickland,¹ and Myung Soon Hinton, as the duly-elected

¹ InMin Strickland was identified in the original case caption as "InMin Kim." She was alternately referred to in testimony as InMin Kim (her Korean name), and InMin

representatives of the church council. The trial court further concluded that any questions concerning the membership of the church and the authority of the church council, vis-à-vis Sung, were properly subject to resolution by the Classis, in accordance with church rules, and therefore it was appropriate to defer to the Classis' resolution of these issues. The court also recognized that Sung was bound by an earlier contract with the congregation, pursuant to which he had received cash and other compensation in return for his retirement and transfer of control over the church. The court directed Sung to relinquish control of the property forthwith. Sung still refused to relinquish control of the property, and instituted this appeal.

None of Sung's arguments on appeal provides any support for the proposition that Sung, a retired minister with no active position of leadership in the New Hope church, had any authority whatsoever to seize and redirect the church property. The trial court's decision should be affirmed.

II. ASSIGNMENTS OF ERROR AND RELATED ISSUES

A. Issues Relating to Appellants' Assignments of Error

Breach of Contract Claim:

1. Does substantial evidence support the trial court's conclusion that Sung breached the parties' October 2002 agreement (relating to

Strickland (her married name). As there were two other witnesses in this matter with the surname "Kim," she will be referred to herein as "Strickland."

succession of the church pastorship) by ejecting the church council and congregation from the church property?

2. Does substantial evidence support the trial court's determination that an incoming minister's failure to become ordained in the denomination was not a "material breach" that justified rescission of the parties' October 2002 agreement, where Sung had already accepted the substantial benefits of the contract, and where the congregation promptly sought to call an ordained minister in accordance with church rules?

The "Deference Rule"

3. Did the trial court err in applying the "deference rule" to resolve a dispute concerning the membership of the church and the authority of church officers, where substantial evidence shows that (a) the parties had agreed to be bound by church rules; (b) under church rules, the decision of the Classis regarding the authority of church officers was binding on the parties?

4. Insofar as the "deference rule" does not apply, do "ordinary principles which govern voluntary associations" authorize a retired church minister to dissolve an elected church council, oust the congregation, and alienate church property, all in violation of mutually-accepted church rules?

"Corporations Law"

5. Does the Washington Non-Profit Corporations Act authorize a former church minister to dissolve the elected council of an operating church and seize control of church property, based on the former

minister's assertion that none of the existing council held office when a related church corporation was administratively dissolved?

B. Respondent's Contingent Assignment of Error²

Assignment of Error: Insofar as the trial court's statement that the CRCNA is "clearly more congregational" than hierarchical (CP 138, l. 4) constituted a finding that the church is a purely independent church structure that is not governed by superior ecclesiastical tribunals, notwithstanding the court's subsequent finding that the parties were bound by the ruling of the Classis under church rules, the trial court erred.

Issue: Does substantial evidence support a finding that a church is "congregational," where the trial court specifically found that members of a local church were bound by church rules to accept a higher tribunal's resolution of the matter in controversy?

III. STATEMENT OF THE CASE

Sung's statement of the case includes many factual assertions that are not supported by, or are actually contrary to, the record below. The discussion in this Section reviews relevant evidence presented at trial. As discussed in the Argument section that follows, all of the findings necessary to support the trial court's decision are supported by substantial evidence, and should be upheld on appeal.

² Respondents do not seek any affirmative relief in this matter, but do seek contingent review of what is arguably an erroneous factual finding, insofar as revision of the finding is necessary to support the trial court's decision. See *State v. Kindsvogel*, 149 Wn.2d 477, 480-81, 69 P.3d 870 (2003).

A. Overview of the Christian Reformed Church of North America

1. History of CRCNA

CRCNA belongs to the family of “Reformed” churches that arose during the Protestant Reformation in the 16th and 17th centuries, based largely on the teachings of John Calvin. RP 82:21-83:5. The family of Reformed Churches includes the “Presbyterian” denominations originating in Scotland and England during this period, and the various “Reformed” denominations originating in continental Europe. RP 84:14-23.

The CRCNA was founded in the United States in 1857, by immigrants formerly associated with the Dutch Reformed Church. RP 82:21-83:5; 87:1-12. The CRCNA today includes over 1000 congregations in the United States and Canada. *Id.* These include a number of Korean-speaking congregations, as is the congregation at issue here.

2. CRCNA Governance

Reformed churches, including CRCNA, generally adhere to a “presbyterian” form of church government. RP 88-89.³ Presbyterian-style

³ A “presbyterian polity” is one of three major forms of Christian church governance; with the others being “congregational” and “episcopal.” RP 88-89; *see Southside Tabernacle v. Pentecostal Church of God, Pacific Northwest Dist., Inc.*, 32 Wn. App. 814, 823 n.3, 650 P.2d 231, 236 (1982). As the court explained in *Southside Tabernacle*: “In the congregational [polity], each local congregation is self-governing. The presbyterial polities are representative, authority being exercised by laymen and ministers organized in an ascending succession of judicatories-presbytery over the session of the local church, synod over presbytery, and general assembly over all. In the episcopal form power reposes in clerical superiors, such as bishops. Roughly, presbyterial and episcopal polities may be considered hierarchical, as opposed to congregational polities, in which the autonomy of the local congregation is the central principle.” *Id.*, (quoting *Judicial Intervention in Disputes Over the Use of Church Property*, 75 Harv.L.Rev. at 1142, 1143-44).

churches are governed by overlapping and ascending “councils” of elected church representatives. *Id.*, RP 90-93.

Specific rules for organization and governance of CRCNA churches are set forth in the CRCNA “Church Order,” which is the essential constitution of the church. *See* RP 93:16-94:6; Ex. 45, 69. As described in the Church Order, members of each church elect officers to serve on the church “council,” which oversees local church affairs. RP 98-100; Ex. 45, Art. 2-5, 35-38. One minister and one church elder from each church council are then designated to represent the church in the “Classis,”⁴ a regional council which oversees local churches. RP 90:18-91:6; 103-4; Ex. 45, Art. 39-44. Thus the Classis Pacific Northwest, the Respondent in this case, oversees approximately 30 CRC congregations in Western Washington and Alaska. RP 91:10-16. Representatives of the Classis, in turn, are designated to attend the “Synod,” which is the ultimate authority with respect to church doctrine and governance. RP 92-93.

As it pertains here, there is no dispute between the parties on the following points concerning CRCNA governance.⁵ The church council is the primary governing body of an individual church; members of the council, including the minister, must necessarily be elected by the congregation. Ex. 45, Art. 10; *see* RP 532:9-533:15. The responsibilities

⁴ The “Classis” in continental-European churches is the equivalent of a “Presbytery” in the Scottish and English tradition. *See Sutter v. Trustees of First Reformed Dutch Church*, 42 Pa. 503, 1862 WL 940 at *3, 6 Wr.Pa. 503, Pa. (Penn. 1862).

⁵ At trial, plaintiffs presented evidence concerning CRCNA governance primarily through Rev. Timothy Toeset, who serves as Stated Clerk of the Classis. Sung presented evidence primarily through his son, Rev. David Sung, who is also a CRCNA-ordained minister.

of the Classis include, among other things: ordaining and installing church ministers (Ex. 45, Art. 10); and resolving any intra-church disputes that cannot be resolved at the council level. Ex. 45, Art. 27-30; *see* RP 539:23-540:6, 1020:24-1021:8. The Synod is ultimately responsible for adopting and revising the Church Order, (Ex. 45, Art. 86), and may resolve appeals of church matters decided by the Classis. *Id.*, Art. 27-30.

B. Background Concerning Sung and the “New Hope” Christian Reformed Church.

1. The “Hope” Christian Reformed Church Was Organized as a CRCNA Church.

Appellant Sung was ordained as a Presbyterian minister in his native Korea, before immigrating to the Seattle area in 1979. In 1985, Sung joined and became a minister of CRCNA. Sung undertook an examination of CRCNA doctrine (a “*colloquium doctum*”) and was formally ordained at a meeting of the Classis in November, 1985. *See* RP 121, 124-5; Ex. 4, at Art. 6.

In 1986, Sung formed “Hope Christian Reformed Church of Seattle” (“Hope CRC”) as a Washington non-profit corporation. Ex. 5. The original Articles of Incorporation for Hope CRC stated that it was formed “to advance the religious teachings of the Christian Reformed Church.” Ex. 5, Art. 3.2. For several years, pending formal organization and recognition by CRCNA, the Hope CRC functioned under the authority of a neighboring CRCNA church council. RP 128; *see* Ex. 62, at 238-43.

In 1991, Hope CRC was officially “organized”⁶ and recognized as a fully-fledged member of CRCNA and Classis Pacific Northwest. RP 105-108, 127:9-128:14; Ex. 7. There is no dispute that this association continued up to the present dispute. Ex. 102, 11:24-12:3; RP 428:20-22, 443:14-20; 1053:1-6.

2. As a Minister, Sung Committed to Adhere to the Doctrine of CRCNA.

As a minister of CRCNA, Sung necessarily agreed to adhere to rules of the Church. Ex. 102, 33:14-16. Within the CRCNA, the formal statement of an official’s adherence to Church doctrine is the “Form of Subscription.” Sung executed a Form of Subscription at a meeting of the Classis Pacific Northwest in 1991, when Hope CRC was officially “organized” and Sung first served as a delegate representing his church the Classis. *See* Ex. 8.

The Form of Subscription confirmed Sung’s commitment to the “articles and points of doctrine contained in the Confession and Catechism of the Reformed Churches.” *Id.* The Form of Subscription also confirmed that in the event of any disputes concerning church doctrine, Sung would “submit to the judgment” of the Classis. *Id.* In the event of a disagreement with the judgment of the Classis, Sung’s remedy would be to appeal to the Synod. *Id.*

⁶ Within CRCNA, a mission or “church plant” is initially considered to be an “unorganized” church. When the new church matures to the point that it can govern and sustain itself, it may request to become recognized as an official, “organized” member of CRCNA. *See* RP 105:22-106:13.

With the formal organization of the Hope CRC, Sung was officially “installed” as minister of the church in accordance with CRCNA procedures. As part of the installation ceremony, Sung was required to affirm that he would “be a faithful minister . . . and to submit to the government and discipline of the church.” RP 129-30; Ex. 47.

3. Classis Supported Sung and Assisted Hope CRC to Acquire the “SeaTac Property.”

Near the time of its formation in 1986, Hope CRC had purchased a church building and parsonage in SeaTac from another CRCNA church. Classis facilitated the purchase by providing a no-interest revolving loan of \$50,000 to Hope CRC. The remainder of the \$220,000 purchase price was funded by a \$150,000 mortgage from the seller, and a loan of approximately \$20,000 from a member of Sung’s family. *See* Ex. 9.⁷

In the years that followed, while Sung served as Pastor of the Hope CRC, Classis supported Sung by, among other things, paying for his medical and dental insurance. *See* Ex. 66; RP 284:18-285:9; 797:4-19.

4. Hope CRC Used Proceeds From Sale of the SeaTac Property to Acquire the “Tacoma Property,” and Became “New Hope” CRC.

After its formal organization in 1991, Hope CRC experienced a schism and other hardships. *See* Ex. 102, at 21:22-22:8. There are no

⁷ Sung characterizes the \$20,000 loan as a “contribution to the purchase of the property,” (App. Br., at 7), but this is misleading. Sung ultimately counted the \$20,000 loan, as well as the \$50,000 loan from Classis, as his personal payment for the purchase of the adjacent church parsonage on the property. *See* Ex. 9 (1991 “Minutes” explaining structure of transaction). When the SeaTac church was sold in 1999, Sung retained personal ownership of the parsonage, free and clear. Ex. 102, at 22:12-23:6; *cf.* Ex. 9. There was also evidence that the \$20,000 loan was, in any event, repaid to Sung out of proceeds of the sale of the church in 1999. *See* RP 1060-61, 1035. At the end of the day, Sung received more than adequate reimbursement for the initial loan.

records of any corporate activities after 1991. The corporation was dissolved by the State in 1994, evidently for failure to file annual reports. *Id.*; Ex. 10. By 1996, the congregation included less than 10 people, and the church was unable to make payments on the \$150,000 first mortgage on the church building. Ex. 102, at 21:9-22:11.

In 1997, Sung and Mark Jeong, a remaining church elder, began negotiations to sell the SeaTac property, and purchase a lower-priced church property in Tacoma. *See* Ex. 44. As noted above, the Hope CRC corporate entity had been dissolved by this point. In August 1997, Sung and Jeong formed a new corporation — also named “Hope Christian Reformed Church,” but with a different UBI number. Ex. 11. The Articles of Incorporation identified Jeong as the sole director of the corporation. *Id.*

In January 1999, the newly-formed Hope CRC entity proceeded to sell⁸ the SeaTac property for \$500,000. Ex. 44. Proceeds from the sale were used to pay off the remaining debt on the SeaTac property, and fund a \$300,000 down payment on a new property at 905 South 54th Street in Tacoma (“the Tacoma property”). Ex. 12. The seller of the Tacoma property (a Lutheran church) carried a \$25,000 mortgage note to round out the \$325,000 purchase price. Ex. 102, 23:15-20; Ex. 12, at SUNG 00617.

⁸ From a formal “corporate” perspective, the entity formed to sell the church was not the same entity that had purchased the church, and there are no records to indicate that the directors of the first “Hope CRC” transferred ownership rights to the second “Hope CRC.” As the trial court recognized, the leadership of the church was not particularly attentive to corporate matters (CP 134, at Finding No. 4) — but no one would doubt that it was the same church entity throughout.

5. After Moving to Tacoma, the “New Hope” Corporate Entity Was Administratively Dissolved.

Shortly after the purchase of the Tacoma property, Sung and Jeong filed Articles of Amendment to change the name of the Hope CRC corporation to “New Hope Christian Reformed Church.” Ex. 38. This was necessary because there was already a “Hope” church operating in Tacoma at the time. Ex. 102, at 25:5-10.

When it began operation in the Tacoma property, New Hope CRC still had only about 10 members. Ex. 102, at 38:20-22; RP 559:24-560:5. As before, there is no documentation to indicate that the church entity followed any corporate formalities. Mr. Jeong, who had been variously identified as director, treasurer, and secretary of the church, died in February 1999, and was not replaced. Ex. 37; Ex. 102, at 57:7-58:3. The New Hope corporation was administratively dissolved by the State in 2000. Ex. 38.

C. Sung Contracted to “Merge” with Another Congregation, and then Retired as Pastor.

By 2002, Sung had decided to retire. At this point, the church had very few members, and no functioning church council. Ex. 102, at 42:13-43:20; RP 376:24-377:3, 644:14-645:9. Without consulting the Classis or any church council, Sung contracted to “merge” the church with another Korean-speaking congregation, setting in motion a series of events leading to the current dispute.

1. Rev. B. Kim and the Joo Shin Congregation.

The “Joo Shin” church was a Korean Presbyterian Church affiliated with the Presbyterian Church of the United States (PCUSA), and led by Reverend Byung Kim. Reverend Kim’s congregation included approximately 40 members, but it relied on rented space and did not have a church building of its own. RP 305:5-17. The leadership of the Joo Shin church was interested in acquiring a church building. RP 305, 371.

Sometime in 2001, Rev. Kim heard that the New Hope church might be available for purchase. RP 371-72. Reverend Kim visited the church and met with Sung, but found the asking price — approximately \$400,000 — was more than his congregation could afford. *Id.* But approximately a year later, Sung contacted Rev. Kim with a different proposal. Sung proposed Rev. Kim could be his “successor” as pastor of the New Hope CRC, in return for a cash payment (a “token of appreciation”). RP 372-3.

Rev. Kim pointed out that he was a minister in the PCUSA, and that it would be necessary for him to change his affiliation to CRCNA in order to succeed Sung. *Id.* But after further consultations with his church council, Rev. Kim agreed to proceed with Sung’s proposal. RP 373. Members of the Joo Shin congregation then proceeded to raise funds for the “appreciation” gesture requested by Sung. RP 374.

2. Sung Contracted to Transfer Leadership of the Church to Rev. Kim.

On October 11, 2002, Rev. Kim and two members of his church council (Respondent Strickland, and the church treasurer) went to Sung's home to formalize their agreement. RP 308-9. Mr. Sung had requested payment of \$60,000 "in cash," and the funds were delivered to him at the meeting. RP 311-12. The parties then entered into a written agreement containing the following terms.

- Rev. Kim and his congregation would pay \$60,000 as a "gesture of appreciation" to Rev. Sung;
- Rev. Sung would appoint Rev. Kim as his successor pastor of the New Hope CRC, effective Nov. 1, 2002;
- Rev. Kim and his congregation would assume responsibility for \$25,000 mortgage on the property, as well as \$15,000 still owed to Classis on the 1986 loan;
- Rev. Kim would become a pastor of the CRCNA;
- Rev. Sung would be designated as "Pastor Emeritus"⁹ of New Hope CRC, and honored with a retirement ceremony and plaque;

⁹ A translation of the agreement, as prepared by Sung and his son after the dispute arose, indicated that Sung would be "a Senior Pastor" following the transfer of the pastorship. Ex. 14, ¶ 4; RP 547:3-17. "Senior Pastor" is ordinarily the title given to the acting pastor of the church. Witnesses at trial, including Sung's son, agreed that the original Korean document did not indicate that Sung was to be the acting pastor; rather, the document indicated that Sung would be a pastor "advanced in age," or a "Pastor Emeritus." RP 523-24; 713-14; *see also* Ex. 102, at 47:4-10 (Sung acknowledged that upon his retirement he became a "pastor emeritus").

- All parties would “fully dedicate [themselves] and support the church for [its] growth and development.” [See Ex. 14].

As noted above, by this point the pre-existing New Hope CRC congregation had dwindled to the point that there was no operating Council to approve the “contract.” RP 644:23-645:9; Ex. 102, at 42:13-43:20. Thus there was no meeting to approve the agreement, and no members of the pre-existing congregation (other than Sung) signed the contract. *Id.* Ms. Strickland signed the agreement as “New Hope CRC Congregation Representative.” Ex. 14; RP 308-9.

3. Sung Retired and Rev. Kim Assumed Ministry of the Church.

Following entry of the October 2002 agreement, Reverend Byung Kim assumed the role of Senior Pastor of the New Hope Church, and Sung then proceeded to retire. Classis was unaware of the details of the transaction (in particular, the payment received by Sung) until the present dispute arose. RP 134:24-136:5; 144:25-146:4. But Classis was informed that Rev. B. Kim and his congregation were joining the church through the “Korean Council” – which was a group of Korean-speaking CRCNA ministers and elders in the Puget Sound area. *See* RP 640:16-25; 702:7-20.

In January 2003, with the assistance of a fellow Korean CRCNA pastor, Sung submitted a written request for emeritation to the Classis. RP 641:22-643:7; Ex. 90. The request noted that Rev. Byung Kim was “already preaching . . . and tak[ing] care of the church’s ministry,” in

accordance with the “church and council decision.” Ex. 90. In February 2003, a delegation from the Korean Council visited the New Hope Church to review CRC doctrine and procedures with Rev. Kim and members of the church council. RP 645:17-649:7; Ex. 91. The delegation submitted a written report to the Classis, explaining:

A few months ago the pastor Kim and his church members came to the New Hope Church and decided to become united. We saw this unity as promising to the church future and are excited so much. And the members of the church feels satisfied with the new pastor’s leadership. [Ex. 91]

The report also noted that Rev. Kim would be retiring in accordance with CRC procedures, and that members of the Korean Council would be working to screen and prepare Rev. Kim for a *colloquium doctum* and initiation into the CRCNA, anticipated for October 2003. *Id.*

Sung’s retirement was recognized at a meeting of the Classis in March 2003, where he was officially granted “honorable emeritation from the ministry” effective April 27, 2003. Ex. 16, Art. 17. On April 27, 2003, Sung was honored in a “Retirement Celebration Service” at the New Hope church. The retirement ceremony was presided over by Rev. Byung Kim, and was attended by over 200 guests. RP 391:23-392:6; Ex. 17; Ex. 102, at 45:4-47:13. Sung was then identified as a “Pastor Emeritus,” and began receiving his pension from CRCNA. RP 523:7-10.

4. The New Hope CRC Continued Operation under Rev. Kim.

Following Sung's retirement, the membership of the New Hope church consisted of former members of the Joo Shin congregation, and new members who came to the church. RP 313-14. Sung and his wife attended the church on a sporadic basis, but there no other members who remained from Sung's former congregation. *Id.*; RP 391-92.

As Rev. Kim began the process of qualifying for ministry within CRCNA, the church formed a new church council, began publishing bulletins for weekly services, and otherwise conducted itself as a functioning church.¹⁰ RP 314:6-24; 319:6-321:12. In September of 2003, Respondent Tae Choi joined the church. RP 322:21-24. Mr. Choi had attended seminary school and previously served as elder in another church. RP 427:5-428:12. The members of the New Hope council felt the church needed an elder, and they were pleased to invite Choi to serve as an "associate elder." RP 322:21-324:8. After watching and getting to know him, the council nominated Mr. Choi to stand as "full elder" at a congregational meeting in January 2004. *Id.* Mr. Choi was elected by the congregation. *Id.*, RP 389:4-15.

¹⁰ Sung states that after the merger, the church sometimes identified itself in English as the "New Hope Presbyterian Church" — implying that the church members intended the church to be affiliated with PCUSA, not CRCNA. App. Br., at 12. In fact, it is not uncommon for Korean CRCNA churches to identify themselves as "Presbyterian," owing to the essential similarity between "Presbyterian" and "Reformed" doctrine. RP 717:1-718:3; 735:3-736:6. There is no dispute that the name of the church in Korean (which was the language of the church) remained the same following the merger. RP 322:4-20, 334:16-335:5, 716:19-25. There was also no evidence that any of the church members intended the church to be affiliated with PCUSA; all of the relevant witnesses testified to the contrary. See RP 312:16-313:20. (testimony of InMin Strickland); 385:24-386:17; 395:23-25 (Rev. B. Kim); 428:20-22, 443:14-20 (Tae Choi); 648:17-21 (Ho C. Song).

Meantime, Rev. Byung Kim continued to serve as acting pastor of the New Hope CRC, but he never completed the process of becoming a CRCNA minister. In October 2004, Reverend Kim informed members of the church council that he had decided to leave to take a position at another church. RP 394:23-395:22.

D. Following Rev. Kim's Departure, Sung Asserted Himself as "Property Owner" of the Church.

Following Reverend Kim's announcement, Sung reemerged from retirement and asserted that he would assume leadership of the church. Disputes arose between Sung and the existing church council on this point. Sung then abruptly asserted that members of Reverend Kim's congregation had no rights in the church because Rev. Kim had breached his "contract" and failed to become a CRCNA minister. Ex. 26. In an open letter to the congregation, Sung declared:

New Hope stands on the doctrine of the Christian Reformed Church. Any person whom denies the confession of the CRC or the church order of CRC, or is dissenting from the teaching and direction of the senior pastor, will be barred from the church membership and the usage of the church.

... As a result of the breach of agreement by Rev Kim, all members who have joined the New Hope CRC congregation who used to be Rev. Kim's old church, automatically lose their rights or claims, whatsoever, on the polity of the church nor utilization of the church resources and properties. [Ex. 26 (sic)].

Sung specifically directed his antagonism at Elder Choi, who had emerged to lead the council after Rev. Kim's departure. Sung complained

that Choi “was not present at the time of the endorsement of the contract,” and “he has no members in the congregation in this matter.” Further:

.... He has caused grievance against Rev. Sung by slandering him as well as mislead and distort the rightful opinions of other members of the congregation. Due to his unlawful behavior according to CRC church polity, he will be formally reprimanded and banned from the pulpit as of the end of December 2004 and will not be allowed to lead the congregation. [*Id.*]

Sung thereupon reasserted himself as pastor of the church:

Pastor Samuel Sung will assume the role of the senior pastor and will continue to lead and guide the New Hope congregation until the new successor is formally appointed. [*Id.*]

As an indication of his self-proclaimed status, Sung identified himself on the signature block of the letter as the “Property Owner.” *Id.*

On the following Sunday, one of Sung’s associates appeared at church to harass the congregation, and disrupt the service. *See* RP 326. Shortly thereafter, another of Sung’s associates changed the locks on the church building so as to prevent access by Choi and his group. RP 326; Ex. 102, 85:21-86:4. In the weeks that followed, the church sat vacant. RP 327.

E. Classis Recognized the Church Council as the Governing Body of the Church.

Following the altercation at the church, Choi and other church members sent appeals to the Korean Council to resolve the matter. *See* Ex. 35 (letters to Korean Council). In January 2005, Choi and Sung

appeared together at a meeting of the Korean Council to address the matter. RP 654. Choi requested the assistance of the Council to re-open the church doors for service, and help the congregation locate a new minister, while Sung persisted in criticizing Mr. Choi. RP 654-55. In the course of the meeting, Choi presented a Deed of Trust for the church property and other legal documents that Sung had provided to Rev. B. Kim, in accordance with the October 2002 agreement as described above. Sung became angry; he snatched the documents from Choi's hands and put them in his briefcase. RP 654, 704. A shouting match ensued, and the meeting descended into chaos. RP 704.

The Korean Council decided to refer the matter to the Classis. RP 656, 712. Classis, through its Classical Interim Committee ("Committee"), responded and conducted an investigation in January and February 2005. RP 143-47; 157-83.

Under CRCNA rules, as discussed above, churches are governed by a "council." Ex. 45, Art. 35-37. Upon investigation, the Committee concluded that as of the fall of 2004, Sung was an emeritated pastor who had no position on the church council, whereas Choi was an elder and a member of the council. RP 147:6-14; Ex. 48. The Committee further determined that Choi and his group were sincere in their desire to be members of the CRCNA; and that they should be entitled to use the church property while they set about recruiting a new Pastor. RP 163-65; Ex. 48. The Committee thus determined that Sung had no ongoing

authority, and that he should refrain from further interference in the church. *Id.*

The Classical Interim Committee's recommendations were presented at a meeting of Classis on March 3, 2005, with Sung in attendance. RP 159, Ex. 48, 49. After deliberation, the Classis formally adopted the Committee's recommendations. RP 165:9-12. In the months that followed, the Classis made further, unsuccessful attempts to reconcile the parties (RP 167-75, 182-3, Ex. 50), and issued a series of increasingly pointed directives to Sung to relinquish control of the property to the Church Council. *Id.*, Ex. 51, 52. Sung refused to comply.

F. In Defiance of the Church Governance, Sung Established a New Entity and Purported to Transfer the Church Property.

Meantime, as discussed above, the New Hope CRC entity that owned the church had been dissolved in 2000. Ex. 38. In December 2004, Sung unilaterally filed an application to form a new entity with the same name, New Hope Christian Reformed Church, identifying himself and his daughter as directors. Ex. 27. On February 1, 2005, Sung filed an application to form another entity, Morning Star World Mission, with himself as the only director. Ex. 28. On April 25, 2005, Sung executed a quitclaim deed on behalf of New Hope CRC, purportedly assigning its interests in the church property to Morning Star World Mission. Ex. 29.¹¹

¹¹ Sung claims that his actions were authorized by a "vote of the membership of his original New Hope CRC congregation and leadership." App. Br., at 13 (citing Ex. 25). Evidently, Sung gathered a group of people to sign a petition to authorize his conduct. It was undisputed that Sung did not invite any of the existing congregation to any meeting where the petition was discussed. See RP 806:15-807:5. Nor was there any evidence that

Upon learning of Sung's actions, Classis demanded that he void the legal documents and relinquish control of the church property. RP 174:12-75:12; Ex. 52. Again, Sung refused. After disregarding numerous requests, directives, and warnings, Sung was provisionally deposed and divested of his title as minister of the CRC in August 2005. Ex. 54.

Several days later, Sung executed a letter repenting for his actions, and promising to reconcile himself with the Church and abide by the earlier directives of the Classis. He stated:

Last Sunday, I announced before the congregation of the New Hope Christian Reformed Church of Tacoma, my apologies for causing division and strife in the body of Christ, and announced my intention to fully follow the six recommendations set by March 3, 2005 Classis meeting, including handing over full property rights to the New Hope Christian Reformed Church of Tacoma under the jurisdiction of its rightful board of directors as specified by the church order of the Christian Reformed Church. I already handed over the keys and exchanged words of reconciliation with Elder Choi.

Ex. 30. But Sung later reneged, and claimed he executed the letter under duress.

Sung had an opportunity to appeal the decisions of the Classis under the provisions of the Church Order, but he did not do so. See Ex. 102, 77:11-21; RP 633:1-19. Sung was finally and officially disassociated from the CRCNA in 2006. Ex. 55.

the persons who signed the petition had actually attended the church at any time in recent history.

Respondents filed suit to resolve the ownership issues in April 2006, and the parties have remained in a standoff since. Sung, or “Morning Star World Mission,” has retained control over the church property. Sung does not use the church himself, but instead allows another congregation to use the property in return for fees in the amount of \$1500 per month, allegedly to support his missionary work. *See* Ex. 88, 89, Ex. 102 at 95:8-16.¹² Meantime, Choi and his group worshipped in a private home, and then later obtained rented space in another church basement. RP 326:25-327:21.

G. Respondents Reinstated the “New Hope Christian Reformed Church” Entity to Hold the Church Property.

Elder Choi filed an Application for Special Reinstatement of the New Hope Christian Reformed Church -- *i.e.*, the original corporate entity that owned the church property prior to its dissolution in 2000 in June 2005. RP 438:3-443:14; RP 194:8-13; Ex. 3, 38, 63. Because Sung had, by this point, formed a new corporation with the same name, Respondents renamed the reinstated corporation as “New Hope Christian Reformed Church of Tacoma.” *Id.* The application for reinstatement was granted, and New Hope Christian Reformed Church of Tacoma now exists as a corporation in good standing. Ex. 38. Since reinstatement, Plaintiffs have adopted new Articles and By-Laws consistent with CRCNA rules. Ex. 63.

¹² Exhibit 88 is a ledger for Morning Star World Mission, as produced by Sung. Payments to “M&B” represent Appellants’ legal bills in this matter. *See* RP 600:3-602:7.

H. Procedural Summary.

Respondents filed this lawsuit in April 2006. The matter was tried to the bench over 10 court days in November, 2007. The court heard testimony from six church ministers, two members of the New Hope Church council, and several others, with much of the testimony presented through a Korean-language interpreter.

Following the conclusion of the trial, the court issued a letter ruling on January 3, 2008. CP 128-32. On March 31, 2008, the court entered formal Findings of Fact and Conclusions of Law. CP 133-42. Sung posted a bond pursuant to RAP 8.1(b)(2), and maintains possession of the property pending appeal.

IV. ARGUMENT

A. Standard of Review

In reviewing a bench trial, the court considers whether there is substantial evidence to support the trial court's factual findings, and whether those findings support the trial court's conclusions of law. *Dorsey v. King County*, 51 Wn. App. 664, 668-69, 754 P.2d 1255 (1988). Substantial evidence exists where the "record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." *King County v. Wash. State Boundary Review Board*, 122 Wn.2d 648, 675, 860 P.2d 1024 (1993) (quoting *World Wide Video, Inc. v. Tukwila*, 117 Wn.2d 382, 387, 816 P.2d 18 (1991)). Where a trial court's findings are based on conflicting testimony, the court considers only whether "the evidence most favorable to the prevailing

party supports the challenged findings.” *Peoples Nat'l. Bank of Wash. v. Taylor*, 42 Wn. App. 518, 525, 711 P.2d 1021 (1985); *State v. Black*, 100 Wn.2d 793, 802, 676 P.2d 963 (1984). Where factual findings are “equivocal,” the court of appeals will “interpret factual determinations to support the [trial] court's judgment whenever possible.” *Smith v. Shannon*, 100 Wn.2d 26, 35, 666 P.2d 351 (1983) (quoting *Shockley v. Travelers Ins. Co.*, 17 Wn.2d 736, 743, 137 P.2d 117 (1943)). The court reviews conclusions of law de novo. *Mountain Park Homeowners Ass'n, Inc. v. Tydings*, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994).

B. The Trial Court Correctly Concluded that Sung Was Bound by the Parties' 2002 Contact.

Sung's 2002 agreement to “merge” the New Hope and Joo Shin congregations in return for cash compensation was not, from the Classis' perspective, an appropriate agreement for a minister to make. *See* RP 135:11-136:5. Nevertheless, having made the agreement and accepted its benefits, Sung is bound by it. The trial court's judgment on the “contract” claim should be affirmed.

1. The October 2002 Agreement Was Enforceable by the Congregation.

As a general proposition, the doctrine of standing requires that a litigant have a personal stake in the outcome of the case in order to bring suit. *Gustafson v. Gustafson*, 47 Wn. App. 272, 276, 734 P.2d 949 (1987). Washington courts have consistently recognized that church members and officers have standing to pursue claims regarding misallocation of church property. *See, e.g., Hendryx v. People's United Church of Spokane*, 42

Wash. 336, 84 P. 1123 (1906) (church members had standing to challenge expulsion from church and misuse of church property); *Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d 367, 369, 485 P.2d 615 (1971) (rejecting claim that Presbytery and member of church did not have standing to bring action to resolve dispute concerning control of church property).

Further, the New Hope congregation, as represented by Respondent Strickland, has standing to enforce the October 2002 agreement with Sung because it was a party to the agreement. The agreement provided that Rev. B. Kim would join the church “along with the member[s] of the Jooshin congregation.” Ex. 14. In return, “Rev. Kim *and the congregation* agree[d] to present . . . an amount of \$60,000 to Rev. Sung, and also assume[] responsibility for church mortgage debt . . .” *Id* (emphasis added). The agreement was signed by Respondent Strickland, as “*New Hope CRC Congregation Representative*,” and she personally contributed \$10,000 to the “gesture of appreciation” to Mr. Sung. Accordingly, there is no question that Strickland has standing to enforce the agreement.

2. The Trial Court Correctly Found that Sung Was Not Entitled to Rescission of the Agreement.

The trial court concluded that Sung was bound by the October 2002 agreement, and specifically rejected Sung’s arguments for “rescission” of the contract. The court explained:

The parties also dispute the effect and enforceability of the October 2002 agreement . . . in light of Reverend B. Kim’s failure to become an ordained CRC minister and his

departure from the church in 2004. Reverend Sung argues that Reverend Kim's actions constitute a material breach of the agreement, and justified rescission of the contract and return of the property to Reverend Sung. The Court concludes that Reverend Kim's actions were not a material breach justifying rescission, in light of the fact that the church council agreed and sought to replace Reverend Kim with a new CRC minister with the assistance of the Classis, in accordance with CRC procedures. Further, the Court concludes that Reverend Sung waived his right to rescission, by retaining the \$60,000 payment and other benefits of the agreement. [CP 138, Finding No. 19].

Whether a breach of contract is "material" is a question of fact.

TMT Bear Creek Shopping Center, Inc. v. Petco Animal Supplies, Inc., 140 Wn. App. 191, 165 P.3d 1271 (2007). Factors relevant to the determination are:

(1) whether the breach deprives the injured party of a benefit which he reasonably expected, (2) whether the injured party can be adequately compensated for the part of that benefit which he will be deprived, (3) whether the breaching party will suffer a forfeiture by the injured party's withholding of performance, (4) whether the breaching party is likely to cure his breach, and (5) whether the breach comports with good faith and fair dealing.

Bailie Commc'ns, Ltd. v. Trend Bus. Sys., 53 Wn. App. 77, 83, 765 P.2d 339 (1988) (quoting Rest. (Second) of Contracts, § 241 (1981)). Failure to take action to rescind a contract within a reasonable time after a breach constitutes a waiver of the right to rescission. *Bunting v. State*, 87 Wn. App. 647, 653-54, 943 P.2d 347 (1997).

The trial court's resolution of the issue here is supported by substantial evidence and should be affirmed. Rev. B. Kim's departure

from the church in November 2004 did not deprive Sung of any “benefit which he reasonably expected.” Sung’s only plausible interest in the matter was to ensure the continued operation of the New Hope church as a CRCNA church. But the congregation never threatened to disaffiliate from CRCNA; the only party to do that was Sung. Allowing Sung to rescind the contract would have worked a “forfeiture” on the congregation -- which had already paid \$60,000 to Sung, conducted his retirement ceremony, and acted in reliance on the contract for two years. And there was no reason the congregation should not have been allowed the “cure” the “breach,” by recruiting another CRCNA minister. Finally, Sung never even sought “rescission” of the contract. To the contrary, Sung retained the \$60,000 payment and other consideration that he received. Sung offers no authority for the proposition that he was entitled to retain the benefits of the agreement, while denying his own obligations.

3. Sung’s Further Arguments Are Unavailing.

Sung does not directly challenge the foregoing points, but he offers several related arguments under the heading of “real property transfers and contracts law.” App. Br., at 36-40. Each of these arguments should be rejected.

First, Sung suggests the 2002 contract was void based on the statute of frauds. App. Br., at 6, 36-39. This argument was not raised in the trial court, and should not be considered here. *See* CP 78-81. In any case, as Sung acknowledges, the October 2002 agreement was not a “contract for the sale or transfer of property.” App. Br., at 38.

Respondent Strickland and other members of the congregation were joining the New Hope church (Ex. 14, ¶ 1); there was no intention to transfer real estate to a different church entity. And, even if the 2002 contract were construed as an agreement to transfer property, it would not be invalid for failure to provide a legal description, as Sung maintains. The cases that Sung that relies upon hold that *executory* contracts to transfer real estate are not enforceable, absent certain formalities. (*See* App. Br., at 36-37, and cases cited therein). Lack of formalities does not justify a party in rescinding a contract that has already been performed. *Kruse v. Hemp*, 121 Wn.2d 715, 724-25, 853 P.2d 1373 (1993)

Second, Sung argues that the congregation breached the contract because they never made payments on two notes that were assumed under the agreement — the \$25,000 mortgage on the property, and the \$15,000 debt to the Classis. In fact, evidence showed that the congregation did make regular payments on the \$25,000 mortgage (RP 351-52; Ex. 74, ¶ 4), and there was no dispute that payments on the debt to the Classis were yet due. RP 926-28. Further, there was no dispute between the parties as to the fact that these obligations followed the property, and that the New Hope congregation would be responsible for them if they prevailed. *See* RP 926-28. The trial court correctly found that in the absence of any demand against Sung, any argument on this point would not lead to a “material” breach.

Finally, Sung offers what might be “equitable” reasons to void the contract, stating that he put all of the \$60,000 he received “back into the

subject property,” and that his family had “invested \$20,000 into the original church property in SeaTac.” App. Br., at 38, 39-40. Neither of these points was established at trial, and both of them are extremely doubtful.¹³ In any case, neither could establish any legal basis to rescind the October 2002 agreement. *Cf. Bailie Communications, supra.*

In summary, the trial court’s resolution of plaintiffs’ breach of contract claim was supported by substantial evidence and should be affirmed. If the Court affirms on this point, then further consideration of the “deference rule,” as discussed below, will not be necessary.

C. The Trial Court Properly Recognized Respondents as the Authorized Representatives of the New Hope Church.

The trial court recognized that the central issue in dispute was who had authority to act on behalf of the New Hope church. The court concluded this was an “ecclesiastical” matter, subject to resolution by the Classis under church rules. The court explained:

To be affiliated with the CRC, a church has to agree to certain rules or concepts. One of those is that the Classis or Synod resolve disputes concerning ecclesiastical matters, and that such rulings are binding on the local church unless they are shown to be contrary to the Word of God. . . .

The Court concludes that questions concerning membership and governance of the church are ecclesiastical matters, subject to resolution by the Classis under CRCNA rules. Indeed, the Reformation, which gave

¹³ See Note 7 above, regarding the \$20,000 “contribution” to the church. Regarding the \$60,000 payment: Mr. Sung vaguely testified that he used the money to pay of church debts (RP 947-48), but there were no records to verify this. As noted above, Sung had insisted on receiving the funds in cash. Neither he nor the church filed any tax returns or kept any formal of financial records for the years in question. Ex. 102, at 39:8-10.

birth to the CRCNA, was largely about governance. Thus, the congregation, church council, elders, deacons and pastor of New Hope CRC were bound to follow the rulings of the Classis on the issue of who is the congregation of the New Hope CRC, and what authority Reverend Sung had as a Pastor Emeritus. . .

The discussion above invokes what is often referred to as the deference rule. The Court must defer to the rulings of the church on ecclesiastical matters, which include church governance. [CP 137-39, ¶¶ 15, 22, 23].

Sung argues that the court erred in deferring to the Classis' resolution of this matter, because CRCNA is a "congregational" church. Sung maintains the trial court should have applied the so-called "neutral principles of law approach," and that under this approach, Sung should have been recognized as the authorized decision-maker for the church. App. Br., at 27.

Sung's analysis of this issue is fundamentally confused. Washington has rejected the "neutral principles of law" approach, which some other state courts apply to resolve disputes in "hierarchical" churches. *See Organization for Preserving Constitution of Zion Lutheran Church of Auburn v. Mason*, 49 Wn. App. 441, 446-47, 743 P.2d 848 (1987). In Washington, courts apply one of two approaches, depending upon the structure of the church at issue. If the church is "hierarchical," in the sense that there is a "higher church to which the aggrieved parties can appeal or to which [the] court can defer," then the court will defer to the resolution by church authorities. *Church of Christ at Centerville v.*

Carder, 105 Wn.2d 204, 208, 713 P.2d 101 (1986). If the church is “congregational, that is, governed independent of any other ecclesiastical body, [then] the property dispute is resolved ‘by the ordinary principles which govern voluntary associations.’” *Zion*, 49 Wn. App. at 447 (quoting *Watson*, 80 U.S. at 725). Sung cannot prevail under either approach.

1. Washington Applies the “Deference Rule” To Resolve Disputes in “Hierarchical” Churches.

Resolution of intra-church property disputes implicates both the “establishment clause” and the “free-exercise” clause of the First Amendment. Thus the U.S. Supreme Court articulated what came to be known as the “deference rule” in *Watson v. Jones*, 80 U.S. 679, 727 (1871):

[W]henver the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in their application to the case before them.

Subsequent U.S. Supreme Court decisions have refined and expanded the analysis of *Watson*. In cases involving “hierarchical” church structures, a state may choose one of three “constitutionally permissible” approaches to resolve the issue: (1) the deference rule (or “polity approach”), as exemplified by *Watson*; (2) according to “neutral principles of law,” which may or may not coincide with the highest hierarchical body’s decision; or (3) according to state-specific legislation governing

church property arrangements in a constitutionally-permissible manner.
See Carder, 105 Wn.2d at 207-8.

Washington has expressly rejected the “neutral principles of law” approach, in favor of the “polity” approach of *Watson*. *Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d at 371-73 (1971); *Zion Lutheran Church of Auburn*, 49 Wn. App. at 446-47 (1987) (noting that in *Rohrbaugh*, the Washington Supreme Court “expressly rejected the neutral principles method and, instead, reaffirmed the polity approach of *Watson*”). Here, the trial court appropriately applied the “polity” approach, and appropriately deferred to the resolution by the Classis.

2. The Trial Court Properly Applied the “Deference Rule” in This Case.

Churches with presbyterian form of government, such as CRCNA, are generally considered to be hierarchical for purposes of the deference rule. *See, e.g., Southside Tabernacle*, 32 Wn. App. at 823 n.3; *Watson v. Jones, supra*; *Presbytery of Seattle, Inc. v. Rohrbaugh, supra*; *see generally, Determination of property rights between local church and parent church body: modern view*, 52 A.L.R.3d 324 (1973), § 25 (collecting cases).¹⁴

Courts that have specifically considered the CRCNA have held that it is “hierarchical,” and that decisions of the Classis and Synod are

¹⁴ Notably, *Rohrbaugh* and many other published cases have applied the deference rule in the context of disputes between local church leadership, on the one hand, and denominational authorities, on the other. Sung’s position in this case is much less compelling. Classis did not seek to override or reject the authority of the local church council. Rather, it sought to recognize and uphold the authority of the elected council, in the face of an attempted coup by an unelected, retired minister with no ongoing connection to the church.

binding upon local churches. In *Borgman v. Bultema*, 182 N.W. 91 (Mich. 1921), for example, the Michigan Supreme Court recognized that the Classis and Synod had authority to resolve a dispute within a local church by removing the minister and church council from office. The Michigan Supreme Court quoted and adopted the reasoning of the trial judge as follows:

I do not see how any one could read the 86 articles of the Church Order of the Christian Reformed Church, which is the supreme law or constitution of the church, without coming to the conclusion that this religious denomination is much more than a federation of churches. In fact, the eighty-sixth article explicitly says that these articles are the supreme law of the church, and that no congregation or classis is at liberty to alter, augment, or diminish them, and that they shall be observed as such until otherwise ordained by the Synod. All the officers of the church are created, fixed, and determined by this constitution. Their duties are set forth and defined therein, and their terms, office, and manner of election are created thereby. There could be no such thing as a local church or a consistory of the ministers or a classis without this constitution. The minister of the local church can only be called and installed and hold his office in the manner provided by this constitution. This is equally true of the consistory. These articles provide that no minister or consistory can be installed without subscribing to the formula of subscription established by the church, and that in case they obstinately persist in refusing to subscribe to such formula they shall be deposed from their office. We cannot conceive of a form of church government more presbyterial in its nature than the one defined and set forth in these 86 articles

From what I heretofore said it is clear that I am of the opinion that the Synod, under the established law of the church, has full authority to hear, try, and determine this matter. It was determined adversely to the defendant, and in my judgment the determination of the Synod in this matter is final.

182 N.W. at 92-94; *see also Holwerda v. Hoeksema*, 206 N.W. 564 (Mich. 1925) (minister and church council who had been deposed by Classis had no ongoing rights to church property); *First Protestant Reformed Church of Grand Rapids v. DeWolf*, 75 N.W.2d 19, 22 (Mich. 1956) (governance of Protestant Reformed Church of America was “substantially the same as that of the Christian Reformed Church,” and therefore hierarchical); *Second Protestant Reformed Church of Grand Rapids v. Blankespoor*, 86 N.W.2d 301 (Mich. 1957) (same); *Reformed Bethanien Church v. Ochsner*, 31 N.W.2d 249 (S.D. 1948) (German reformed church was subject to superior judicatories of Classis).

The CRCNA Church Order today is the same in all material respects as it was in *Borgman v. Bultema*, *supra*. Most important, the Church Order confirms the Classis’ authority to resolve disputes presented by local church councils, such as the dispute at hand. Relevant provisions of the Church Order provide:

Article 27

a. Each assembly exercises, in keeping with its own character and domain, the ecclesiastical authority entrusted to the church by Christ; the authority of councils being original, that of major assemblies being delegated.

b. The classis has the same authority over the council as the synod has over the classis.

Article 28

a. These assemblies shall transact ecclesiastical matters only, and shall deal with them in an ecclesiastical manner.

b. A major assembly shall deal only with those matters which concern its churches in common or which could not be finished in the minor assemblies.

c. Matters referred by minor assemblies to major assemblies shall be presented in harmony with the rules for classical and synodical procedure.

Article 29

Decisions of ecclesiastical assemblies shall be reached only upon due consideration. **The decisions of the assemblies shall be considered settled and binding, unless it is proved that they conflict with the Word of God or the Church Order.**

Article 30

a. Assemblies and church members may appeal to the assembly next in order if they believe that injustice has been done or that a decision conflicts with the Word of God or the Church Order. ...

Id (emphasis added).

As a minister of the church, Sung expressly committed to abide by these rules, and submit to the government of the church. *See* Ex. 102, 33:14-16; Ex. 8, 47. Indeed, at the outset of this dispute, Sung was adamant that the “*New Hope CRC stands on the doctrine of the Christian*

Reformed Church,” and “[a]ny person [who] denies to the confession of CRC or the church order of CRC, or is dissenting from the teaching and the direction of the senior pastor, will be barred from the church membership and the usage of the church.” Ex. 26. At trial, Sung acknowledged that the Classis has authority to resolve disputes, so long as they are “properly appealed,” and that the decisions of the Classis are binding in these circumstances. RP 536:5-23; 539:23-540:6; 617:18-619:7

Sung suggests the trial court erred in viewing the parties’ dispute as an “ecclesiastical matter” subject to the resolution of the Classis under Art. 28 of the Church Order. Sung suggests that “ecclesiastical” refers only to matters of “religious teaching and doctrine,” and not to matters of church governance. App. Br., at 8. But Sung’s reading of the phrase is far too narrow; it is not supported by church doctrine, or the usual and customary interpretation of words. *See* RP 111:25-112:9; 113:22-115:4; 617:18-619:7; Ex. 45, at Art. 1(a) (indicating that the Church Order defines the “ecclesiastical organization” of the church); *see also* Black’s Law Dictionary, 8th Ed. (2004), at 550 (“Ecclesiastical” means “[o]f or relating to the church, esp. as an institution”; an “ecclesiastical matter” is one “that concerns church doctrine, creed, or form of worship, *or the adoption and enforcement, within a religious association, of laws and regulations to govern the membership . . .*” (emphasis added)).

Sung’s argument below was that CRCNA should not be considered as “hierarchical” in a philosophical sense, because the authority of church officers is delegated authority which flows from the “bottom up.” *See* CP

74-76. This point is valid so far as it goes, but has nothing to do with the analysis under the deference rule. A Michigan court addressed a similar argument in a Presbyterian church setting as follows:

The Church contends that the lower court should have applied the neutral principles test . . . because the Denomination in fact is neither strictly hierarchical nor strictly congregational in that the power of the governing body flows upwards to it from the individual church members. . . . This analysis fails when we analogize to our own national government. It is certainly one in which power is granted to the government by the people, but once granted, that representative government then has whatever power the law gives it-unless and until the law is changed. The people cannot refuse to follow duly enacted laws or executive decisions because they feel the current government is not true to the tenets of the founding fathers or the current electorate. *Calvary Presbyterian Church v.*

Presbytery of Lake Huron, 384 N.W.2d 92, 110-11 (Mich. App. 1986).

The central question for purposes of the deference rule is whether the dispute is subject to resolution by a higher tribunal within the church. *Rohrbaugh*, 72 Wn.2d at 373. The trial court appropriately found, and Sung essentially conceded, that the dispute here was subject to resolution by the Classis. Accordingly, the deference rule applies.

3. (Cross Appeal) Insofar as the Trial Court Found that the CRCNA Is a “Congregational” Church for Purposes of the Deference Rule, the Finding Was Not Supported by Substantial Evidence.

Sung argues that the trial court erred in applying the deference rule, in light of the court’s “finding” that the CRCNA was a “congregational” church organization. The trial court stated:

The primary issue upon which both sides spent a large portion of the trial was whether the CRC is hierarchical or congregational. *There was testimony that it is a blend, and that is probably true, but it is clearly more congregational.* That however, doesn’t resolve the issue. In order to be affiliated with the CRC, a church has to agree to certain rules or concepts. . . . [CP 138, Finding No. 18 (emphasis added).].

The court went on to conclude that under church rules, members of the church were “bound to follow the rulings of the Classis on the issue of who is the congregation . . . and what authority Reverend Sung had.” *Id.*

In context, the trial court’s equivocal statement that the CRCNA was “more congregational” should not be understood as a finding that the CRCNA was a purely “congregational” church for purposes of the deference rule. *See Smith v. Shannon*, 100 Wn.2d at 35 (equivocal findings should be interpreted in a manner that “sustains the judgment, rather than one which would defeat it.”); *Redmond v. Kezner*, 10 Wn. App. 332, 343, 517 P.2d 625 (1973).¹⁵

¹⁵ Sung argued at trial (erroneously) that a church structure should not be considered “hierarchical” so long as title to property was held by the local church, and local churches were free to elect their own officers and manage their own affairs. RP 850:25-857:19; *cf. Rohrbaugh*, *supra*. The trial judge indicated he did not believe “the determination of whether it’s hierarchical or congregational or something in between is the ultimate answer

In any case, for purposes of the deference rule, any finding that the CRCNA was “congregational” cannot be squared with the statements that follow. The trial court expressly concluded that under the CRCNA Church Order, the Classis’ resolution of the issue was binding on the parties. Given the latter conclusion, which is well-supported by the evidence, any finding that the CRCNA was “congregational” cannot be supported by substantial evidence and should be set aside on appeal.

4. Even if the New Hope Church is Considered a “Congregational Church,” the Result in this Case is No Different.

Insofar as the New Hope church is considered a “congregational” church, then the dispute would be resolved in accordance with “ordinary principles governing voluntary associations.” *Carder*, 713 Wn.2d at 209 (quoting *Watson*, 80 U.S. at 725). The result in this case would be no different.

Courts resolve disputes within “congregational” churches by looking to the governing rules of the church to determine who has authority to resolve the issue. In *Carder*, for example, the Court reviewed a dispute between two church factions concerning ownership of church property. The court stated the rule as follows:

[W]hen a schism exists in a congregational church which leads to a separation into distinct and conflicting bodies, “the rights of such bodies to the use of the property must be determined by the ordinary principles which govern *voluntary associations*. If the

to whether [the deference rule] applies;” rather, the relevant question was whether the case presented an ecclesiastical matter subject to resolution by the church as a matter of church governance. (RP 1179).

principle of government in such cases is that the majority rules, then the numerical majority of members must control the right to the use of the property. *If there be within the congregation officers in whom are vested the powers of such control, then those who adhere to the acknowledged organism by which the body is governed are entitled to the use of the property.*”

105 Wn.2d at 209 (quoting *Watson v. Jones*, 80 U.S. 679, 725, 20 L.Ed. 666 (1872) (emphasis in *Carder*). Recognizing that the church’s constitution vested control in the church board, the *Carder* court held that the board was entitled to resolve the matter in controversy, and could not be dissolved by “majority rules.” *Id.*; see also *Bower v. Root*, 14 P.2d 965 (where rules of Baptist church authorized trustees to control church property, challenge by church congregation was subject to dismissal); *Church at Seattle v. Hendrix*, 422 P.2d 483 (1967) (dispute within congregational church resolved on the basis of “majority controls” rule).

Application of this approach here would produce exactly the same result. Neither the CRCNA Church Order, nor Sung’s asserted church “by-laws,” authorized Sung to seize and convey church property. Sung’s argument that he was authorized to act by “corporations law” is equally unavailing.

a. The CRCNA Church Order Does Not Support Sung’s Position.

There is no dispute that the New Hope church was governed at all times the CRCNA Church Order. RP 488:5-24; 535:23-536:3. The Church Order should be considered “by-laws” of the association. *Id.*; see

RCW 24.03.005 ("Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated).

There is also no dispute that the Church Order provides for governance by an elected council. RP 90:3-17; 92:22-93:4; 532:9-533:15. Once emeritated, a former pastor is not eligible to serve as acting senior pastor of a church. RP 278:5-11. Unless he is otherwise elected to a position on the council (other than pastor) after his retirement, an emeritated pastor has no position on the church council. RP 102:18-103:13; Ex. 45, Art. 3(b), Art. 18. Sung attended the church only sporadically after his retirement, and he did not serve in any position on the church council. RP 471:3-6; 475:7-12. Accordingly, consistent with the governing rules of the New Hope church, Sung had no authority to seize and transfer the assets of the church.

Sung does not make any attempt to show that he was authorized to control church property. Instead, Sung argues that the members of the council, including Respondents, could not legitimately hold their offices because the record did not establish that they had executed a CRCNA "Form of Subscription" upon taking office. App. Br., at 13.

Sung is wrong in arguing that execution of the Form of Subscription was necessarily a pre-condition for council members to assume their offices. The Church Order states that council members are to execute a Form of Subscription "on occasions stipulated by council, classical, and synodical regulations." Ex. 45, Art. 5. During the Classis'

investigation of this matter, no one raised the question of whether the Respondents had signed a Form of Subscription. RP 227-29; 276-77. There was certainly no evidence that council members had *refused* to sign Form. The Classis simply did not consider the issue.

In *Applequist v. Swedish Evangelical Lutheran Gethsemane Church of Seattle*, 154 Wash. 351, 358, 282 P. 224 (1929), the court considered and rejected a similar post-hoc challenge to the authority of church officers: “There is no merit in the contention of appellant that the trustees had not taken the oath required by law and the by-laws of the church. They were, at all events, de facto officers, and were permitted so to act by and for the corporation.” Here, the Court should likewise conclude that any after-the-fact arguments regarding council officers’ own compliance with church formalities did not alter the fact that they were the officers of the church.

b. The 1987 “Governing Rules” of the “Hope” CRC Do Not Support Sung’s Position.

Sung’s arguments are primarily focused on a document entitled “Seattle Hope Christian Reformed Church Governing Rules.” Ex. 1. These rules were evidently first drafted in 1987, before the church was organized as a CRCNA church, and then modified sometime in 1991.¹⁶

¹⁶ The Governing Rules, which are partially translated in Exhibit 1, are somewhat confusing. As Sung notes, they include a “blend” of Presbyterian and CRCNA references, evidently resulting from the fact that Sung was coming from a Presbyterian background. (App. Br., at 7). But they also indicate that the church was a member of CRCNA, and would be governed in accordance with CRCNA Church Order. Ex. 1, Art. 2-5.

There was no evidence that the 1987 Governing Rules were ever considered or adopted by the “New Hope” CRC after it moved to Tacoma.

Sung offers nothing to suggest that as a retired and emeritated pastor, he was authorized to control church property under the 1987 Governing Rules. The Rules identified the “senior pastor” as:

. . . a person .. who has been ordained by a presbytery or general assembly that complies with the provisions of Articles 6 to 25 of the constitutions of the Christian Reformed Church and Article 13 of Chapter 4 of the Presbyterian Council Governance.”
[Ex. 1, Art. 8]

Sung could not be the “senior pastor” under these provisions, because he had been emeritated; he had not been re-called by the congregation, or re-installed by the Classis. *See* Ex. 45, Art. 8-10, 18. There was nothing in the 1987 Rules to indicate that Sung was to be “senior pastor” for life.

The focus of Sung’s argument was that Respondent Choi was not eligible to serve as a church “elder,” because he had not been with the church for five years. The “qualifications of the ruling elder,” as listed in Article 10 of the Rules, included a statement that:

The seniority as a Christian shall be considered. (1Timothy 3:6) He shall be a person who has served the church for five years or longer as a confirmed church member in good standing and as a role model, and has also served our church for three years or longer as a role model.

At the time Mr. Choi became an elder, there were no regular members of the church who had been with the church for more than 3 years. RP 474:2-23.

Regardless of Mr. Choi's status, there was no basis to argue that other council members, including Respondent Strickland, were not qualified for their offices. Sung acknowledged that the only requirement for a "kwonsa," such as Ms. Strickland, were that she had been baptized for five years, and registered with the church for one year. RP 1025. As of the time of the dispute in this matter, Ms. Strickland met these requirements. Sung's expert, David Sung, acknowledged that there was nothing to disqualify Ms. Strickland from serving as a council member under the 1987 Governing Rules. RP 586:19-587:3.

Finally, in the best case for Sung, application of the 1987 Governing Rules would lead to a situation where none of the existing council were "qualified" to serve. Under these circumstances, as Sung acknowledged, the CRCNA church order would apply by default. RP 1028-29. Article 32 of the 1987 Governing Rules provided that:

For any matters that are not dealt with in this bylaw or exceeding the scope of this bylaw, the laws of the Christian Reformed Church shall be applied, and the church running policies of the Session moderator [*i.e.*, the senior pastor] shall be applicable.

Accordingly, the analysis would proceed under the CRCNA Church Order, in any event. *See* § IV(C)(4)(a), *supra*.

c. “Corporations Law” Does Not Support Sung’s Position.

Sung argues that the trial court’s ruling should be reversed under “corporations law,” based on the following reasoning: (1) after the New Hope corporation was administratively dissolved in 2000, the only lawful activity it could undertake was to “wind up” its business; and (2) Sung, as the “only remaining board member” of the original entity, was the only person authorized to wind up the business; and (3) Sung’s transfer of the church’s assets to Morning Star was properly undertaken for purposes of winding up the business; and (4) the church council’s act of reinstating the corporation in 2005 was “statutorily impossible” and could not stand as an impediment to Sung’s conduct. App. Br., at 34-36. Each of these points is substantially incorrect.

(i) Dissolution of the New Hope corporate entity did not terminate church governance.

Sung is wrong in arguing that it was “legally impossible” for the New Hope to continue its activities — and specifically, elect new officers — after its dissolution. Sung’s argument is founded on the Washington Business Corporations Act, RCW 23B.14.050(1), which provides that a for-profit corporation, upon dissolution, “may not carry on any business except that appropriate to wind up and liquidate its business and affairs.” This section does not apply to the New Hope church because it was not a business corporation. *See* RCW 23B.01.400 (defining corporations subject to act). The church was and is a non-profit, governed by the

Washington Nonprofit Corporation Act, RCW 24.03. Further, even the Business Corporations Act does not prohibit a corporation from electing new officers post-dissolution. *See* RCW 23B.14.050(2)(d) (dissolution does not “change provisions for selection, resignation, or removal of its directors or officers.”). Sung offers no authority for the proposition that the New Hope entity could not continue to govern itself after 2000.

(ii) Sung was not the “only board member” of the church entity.

Sung’s attempted reliance on his status as the “only board member” of the New Hope corporate entity is both factually and legally misguided. The only “director” identified in the New Hope entity’s corporate filings was the former elder, Mark Jeong.¹⁷ Sung testified that Jeong was essentially tasked by church council to deal with corporate matters. RP 813:17-814:17. Mr. Jeong died in 1999. Ex. 37. There was no subsequent meeting to elect new board members (Ex. 102, 27:4-28:2), and thus Sung cannot lay claim to the property by way of any exclusive position as a corporate board member.

Further, Sung’s focus on the label of “director” in corporate filings is misplaced. For purposes of the non-profit corporations act, a “board of directors” means the group of persons vested with the management of the

¹⁷ Hope CRC, New Hope CRC’s predecessor, last filed Articles of Incorporation with the Secretary of State in 1997. Ex. 11). Under these articles, Mark Jeong was identified as the sole director of the entity, while Sung was identified as an “incorporator.” *Id.* Mr. Jeong was likewise identified as the sole director in the Articles of Amendment filed on February 12, 1999, which changed the name of Hope CRC to New Hope CRC. Ex. 38, at p. 9. Jeong died February 14, 1999. Ex. 37. Shortly thereafter, Sung filed a “Statement of Change of Registered Agent” unilaterally identifying himself as “Chairman” of the corporate entity (Ex. 33), but there is no evidence of any meeting or action of the corporation to make Sung a “director.”

affairs of the corporation *irrespective of the name by which such group is designated in the articles or bylaws.*” RCW 24.03.005(7); *see also* RP 1092-93, and Ex. 62 at 230 (explaining that under CRC governance, church council is typically considered to be “board of trustees” of the corporate entity). Pursuant to its own constitution and by-laws, the New Hope church was governed by a church council. *See* §IV(C)(4)(a), *infra*. Other than the corporate filings themselves, there is no evidence of any activity by any “directors” denominated as such. There is no evidence that the corporation conducted “board meetings,” separate and apart from church council meetings. Under the circumstances, the church council constitutes the “board,” and the members of the council were appropriate authorized to govern the entity’s affairs.

(iii) Sung’s transfer of church property was not an appropriate means of “winding up” church affairs.

Sung’s characterization of his actions as a means to “wind up” the New Hope CRC is a fiction. Sung did not adopt any “plan of distribution,” or otherwise follow any formalities to wind up a corporation. *See* RCW 24.03.225, 230. He was not authorized by any corporate board to take such action. And even if Sung were authorized to act, his transfer of church assets to a new entity solely controlled by himself — for no monetary consideration, and without regard to church debts, or the wishes of the congregation — would have constituted a breach of his fiduciary obligations.

(iv) The New Hope corporate entity was duly reinstated by Respondent Choi.

Finally, Sung argues that Respondents' reinstatement of the church corporation was "statutorily impossible," citing to the three-year deadline described in RCW 24.03.302. But Sung ignores the following provision, RCW 24.03.303, which allows for reinstatement under "exigent or mitigating circumstances" whenever the lapse of corporate status is first discovered by the board. The New Hope entity evidently *was* reinstated by the Secretary of State under this provision, and Sung never challenged this decision. There was substantial evidence to support the trial court's finding that the New Hope entity exists, and that it was a successor to the entity that originally acquired the property.

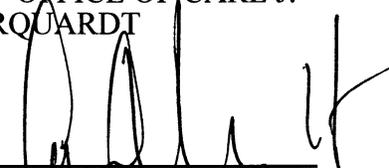
In sum, the Court should defer to the decision of church authorities with respect to governance of the New Hope Church. As Sung did not have any right or authorization to quitclaim the property in any event, title should remain with the New Hope Christian Reformed Church of Tacoma, as successor to the original New Hope Christian Reformed Church.

V. CONCLUSION

For the foregoing reasons, the Court should affirm the judgment of the trial court in this matter.

DATED this 10^r day of November, 2008.

LAW OFFICE OF CARL J.
MARQUARDT

By: 

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(WSBA #23257)

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CERTIFICATE OF SERVICE

STATE OF WASHINGTON
BY CM
DEPUTY

I hereby certify that on this 12th day of November, 2008, I caused true and correct copies of the Respondent's *Motion for Extension of Time to File Respondent's Brief* and *Respondent's Brief* to be served upon each of the following, by electronic mail and mailing first class United States mail, postage prepaid.

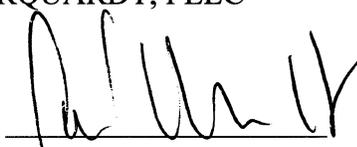
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington this 12th day of November, 2008.

LAW OFFICE OF CARL J.
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By: 

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