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COURT OF APPEALS  
DIVISION II  
STATE OF WASHINGTON

STATE OF WASHINGTON  
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DEPUTY

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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.

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**OPENING BRIEF OF APPELLANTS**

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Justin D. Bristol, WSBA No. 29820  
McFerran, Burns & Stovall, P.S.  
3906 South 74<sup>th</sup> Street  
Tacoma, WA 98409  
(253) 471-1200  
Attorney for Appellants

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The first amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. Therefore, any inquiry into church doctrine and ecclesiastical polity must end with a determination of whether the church at issue is hierarchical, or congregational. If the church is hierarchical, then the court must defer to the highest authority of the church governing body. If the church is congregational, then the court applies neutral principles of law to resolve church property disputes.

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Applying neutral principles of law to the facts in this case, no respondent herein has a viable claim for title to the subject property, or any other cause of action asserted below.

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## I. INTRODUCTION

The non-profit corporation New Hope Christian Reformed Church, which was administratively dissolved in 2000, holds title to real property in Tacoma, Washington, which is the primary subject matter of this case.<sup>1</sup> Rev. Samuel Sung, Appellant, founded New Hope Christian Reformed Church in 1985, and acted as its President and Chairman of the Board of Directors from 1985, until 2005. In April of 2005, and as a means of winding up the affairs of the dissolved non-profit corporation, Rev. Sung transferred title to the Tacoma property at issue in this case, to another non-profit corporation, Appellant herein, Morning Star World Mission.

Two months after title to the subject property was transferred, in June of 2005, Respondent Tae Y. Choi filed for reinstatement of New Hope Christian Reformed Church corporation, using the same UBI number as the corporation that had been administratively dissolved in 2000, but calling the corporation "New Hope Christian Reformed Church of Tacoma." Neither Respondent Choi, nor any other Respondent herein, were ever officers, directors, managers, or authorized representatives of the New Hope Christian Reformed Church, which had been dissolved in 2000. In fact, Respondents Choi, Kim, Hinton, and the entity Choi created in June of 2005, were never affiliated with New Hope Christian Reformed

Church in any capacity, until 2-3 years after the corporation was administratively dissolved.

After Choi created New Hope Christian Reformed Church of Tacoma in June of 2005, Respondents proceeded to file suit, primarily for quiet title and trespass, against Rev. Sung and the non-profit corporation in title to the subject property, Morning Star World Mission. Respondent Choi was successful in petitioning Respondent Classis Pacific Northwest, an association of regional Christian Reformed Church congregations, for support of his claim to title of the subject property, based on ecclesiastical rules, religious doctrine, and church polity.

Respondents herein filed suit in the Pierce County Superior Court in April of 2006, as a means of enforcing the ecclesiastical decision of the Classis, respecting ownership of the church property at issue in this case. The trial court found that the denomination at issue, the Christian Reformed Church of North America, is a "congregational" church organization, but erroneously applied the "deference to hierarchy" rule and thereby deferred to the ecclesiastical ruling of the Classis, finding in favor of Respondents. Nonetheless, the decision of the trial court in this case is fundamentally an ecclesiastical ruling, prohibited under the First Amendment to the U.S. Constitution.

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<sup>1</sup> Commonly known as 905 54<sup>th</sup> Street, Tacoma, Washington.

## II. ASSIGNMENTS OF ERROR AND ISSUES PRESENTED

**No. 1:** In resolving the church property dispute at issue in this case, the trial court correctly determined as an issue of fact that the Christian Reformed Church of North America is a "congregational" church organization. However, the trial court erroneously applied the "deference to hierarchy" rule to resolve the church property dispute in this case, simply deferring the matter to Respondent Classis Pacific Northwest as the highest ecclesiastical authority to have decided the issue. The trial court erred, because the "deference to hierarchy" rule is only applicable to hierarchical church organizations. Church property disputes involving congregational church organizations are resolved by application of "neutral principles of law."

**ISSUE 1:** Does the "deference to hierarchy" rule apply in resolving church property disputes involving a congregational church organization, or is the court required to apply "neutral principles of law"?

**No. 2:** In resolving the church property dispute at issue in this case, the trial court erroneously framed the primary issue as "ecclesiastical," holding that a retired minister does not have authority to direct the disposition of church property subsequent to retirement. The trial court erred by making an essentially ecclesiastical ruling, based on church polity and religious doctrine.

**ISSUE 2:** Does a secular court have authority to resolve matters of ecclesiastical concern?

**No. 3:** The trial court erred upon ruling that an administratively dissolved non-profit corporation was legitimately and legally reinstated more than five years after the non-profit corporation was administratively dissolved, in direct contravention of RCW 24.03.302, by an individual who was never an officer or director of the dissolved non-profit corporation.

**ISSUE 3:** Can an administratively dissolved corporation be reinstated more than three years after dissolution by an individual who was never a corporate officer or director of the administratively dissolved non-profit corporation?

**No. 4:** The trial court erred upon ruling that an individual who was never a corporate officer, director, or otherwise authorized representative of an administratively dissolved non-profit corporation had authority to act on behalf of the dissolved corporation, for purposes other than winding up the corporations affairs, in direct contravention of RCW 23B.14.050(1).

**ISSUE 4:** Can a dissolved non-profit corporation carry on business as a going concern, post-dissolution, such as appointing newly authorized representatives, or is the dissolved corporation limited to action involving the winding up of corporate affairs?

**No. 5:** The trial court erred upon ruling that an unincorporated religious association, with no legal existence had standing to challenge a

transfer of title to real property on behalf of an affiliated religious organization.

**ISSUE 5:** Does an unincorporated religious organization with no legal existence, which has the stated and limited purpose of resolving ecclesiastical disputes, have standing to challenge transfer of title to real property on behalf of an affiliated religious organization?

**No. 6:** The trial court erred upon ruling that individuals who were never affiliated with an administratively dissolved non-profit corporation until 2-3 years after dissolution, and who were never officers, directors, or otherwise authorized representatives of the dissolved corporation, had standing to challenge a transfer of corporate assets by the founder, and Chairman of the Board of Directors for the dissolved non-profit corporation.

**ISSUE 6:** Do individuals who were never affiliated with an administratively dissolved non-profit corporation until 2-3 years after dissolution, and who were never officers, or directors of the dissolved non-profit corporation, have standing to challenge transfer of title to real property owned by the dissolved corporation by the sole remaining officer and director of the corporation?

**No. 7:** The trial court erred upon ruling that an agreement between ministers, for transfer of a ministry, which did not purport to be an agreement for the transfer of real property and, in any event, did not contain a legal description for any real property, conferred an obligation to transfer title to real property.

**ISSUE 7:** Does an agreement between ministers concerning ecclesiastical matters, with no legal description and no indication of intent to transfer title to real property confer an obligation to transfer title to real property?

**No. 8:** The trial court erred upon ruling that a non-profit corporation created in June of 2005 should be awarded title to real property, where the newly created corporation was never on title to the real property at issue, and never held any kind of security interest in the real property at issue.

**ISSUE 8:** Does a non-profit corporation created more than five years after the dissolution of a non-profit corporation holding title to real property, and which has never been on title to the subject property, have a viable claim for title to the subject property?

### **III. STATEMENT OF THE CASE**

#### **A. 1979 – 2002**

The Reverend Samuel Sung immigrated from South Korea to the United States in 1979, as a member of a Christian missionary organization called "Morning Star World Mission." Reverend Sung originally incorporated Morning Star World Mission as a non-profit corporation in the State of Washington, in 1980. **Tr. Ex. 95; RP 933:10<sup>2</sup> - 935:25.**

In 1985, Reverend Sung founded the "Hope Christian Reformed Church" (Hope CRC), which was incorporated in the State of Washington

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<sup>2</sup> Court Reporter error – date indicated should be 1958, rather than 1988, *see* context.

as a non-profit corporation in 1986. Hope CRC operated according to its own bylaws, which were initially executed in 1987. The Hope CRC bylaws were created as a blend between the rules of the Korean Presbyterian denomination in which Rev. Sung was originally ordained, and the Christian Reformed Church of North America (CRCNA). **RP 936:1 – 937:9; Tr. Ex. 1; Tr. Ex. 5.**

When Hope CRC was founded in 1985, Rev. Sung began the process of admitting the church into the CRCNA denomination.<sup>3</sup> In 1986, Hope CRC received an unsecured \$50,000 loan from the "Home Missions Committee," a subsidiary committee of the CRCNA. **Tr. Ex. 70.** To date, there is a \$10,000 balance remaining on the said loan. **Tr. Ex. 15 and 67.** Aside from this unsecured loan, Hope CRC never received any financial assistance from the denomination.

Also in 1986, Hope CRC purchased real property in SeaTac, Washington. The Sung family contributed \$20,000 to purchase the property. **RP 1058:20 – 1059:8; CP 134 ¶ 2.** Hope CRC was not officially recognized as a CRC church until 1991, when Rev. Sung signed a "form of subscription" with the denomination.<sup>4</sup> **CP 134:1-3.** In signing

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<sup>3</sup> The process of affiliation within the CRCNA denomination is described in the Manual of Christian Reformed Church Government at pp. 240 – 241. **Tr. Ex. 62.**

<sup>4</sup> *See Tr. Ex. 8.* Also in 1991, Hope CRC amended its bylaws to reflect membership within the CRCNA denomination. **Tr. Ex. 1.** CRCNA rules require an affiliation

the form of subscription, Rev. Sung agreed to abide by CRCNA religious doctrine in his teaching as a minister, and he also agreed to defer to the CRCNA on matters of religious teaching and doctrine, *i.e.*, "ecclesiastical" matters.<sup>5</sup> **Tr. Ex. 8.**

In regard to non-ecclesiastical matters, such as maintaining and disposing of real property, for 20 years, Hope CRC always operated according to the rules of its own bylaws, without input or oversight from the denomination. **CP 134-135 ¶ 5.** Also, Hope CRC bylaws contained qualifications for ministry positions, such as elder and deacon, in addition to the qualifications set out in the CRC church order.<sup>6</sup>

Rev. Sung and members of his family devoted their lives and financial resources to maintaining Hope CRC. For many years, the Sung family paid the mortgage on the church property. From 1985 – 1995, the church was never fully supported by the congregation. Rev. Sung, his

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process for prospective member churches, prior to being accepted for full membership. **Tr. Ex. 62 at 240 – 241.**

<sup>5</sup> For a discussion of what is considered an "ecclesiastical" matter pursuant to CRCNA doctrine, see the "Manual of Christian Reformed Church Government" at pp.165-166. **Tr. Ex. 62.** All authority of the CRCNA denomination is limited to "ecclesiastical matters," pursuant to CRCNA rules of governance. *Id.* at pp. 161 and 165.

<sup>6</sup> **RP 216:15-20.** Under the CRC church order, elders and deacons were required to sign the CRC "form of subscription," and meet Biblical standards for qualification, articulated in Scripture. **RP 219:22 – 220:19.** In addition, pursuant to Hope CRC bylaws, elders were required to serve Hope CRC for a minimum of five years prior to qualification. Deacons were required to serve Hope CRC for a minimum of one year prior to qualification. **Tr. Ex. 1** (translation Article 10(2) and Article 11).

wife, and three children all worked to subsidize the church. **CP 134 ¶ 3; RP 1059:9 – 1060:11.** Deacon Kwi-Chan Lee and his family, long time supporters of Rev. Sung, also devoted ten years of service, including building maintenance and repair and financial contributions. **RP 1054:3 – 1059:13; RP 402:23 – 403:7.**

In 1997, under authority and signature of Rev. Sung, Hope CRC sold its SeaTac property and purchased real property in Tacoma, which is the subject of this action. After moving to Tacoma, in 1998, under authority and signature of Rev. Sung, Hope CRC changed its name to "New Hope Christian Reformed Church" (New Hope CRC). *See*, Tr. Ex. 5 (Article VIII); Tr. Ex. 83; RP 944:11 – 946:4; Tr. Ex. 12, 29, and 44; RP 1063:22 – 1069:4.

In 1999, one of the church elders and founding members, Mark Jeong, passed away. **Tr. Ex. 37.** Mr. Jeong was the registered agent for New Hope CRC, so Rev. Sung filed a notice of change of registered agent with the Secretary of State, acting as Chairman of the Board of Directors for the New Hope CRC non-profit corporation. **Tr. Ex. 33.** In 2000, the New Hope CRC non-profit corporation was administratively dissolved by the Secretary of State. **CP 134:16-20; Tr. Ex. 10.**

**B. 2002 - 2005**

In 2002, Rev. Sung decided to retire from the New Hope CRC ministry, and he began looking for someone to replace him as Senior Pastor of the congregation. Consistent with his course of dealing throughout the prior 18 years, Rev. Sung did not look to the CRCNA denomination for a replacement minister, nor did he consult the ecclesiastical rules and regulations of the CRCNA. He acted of his own accord, and the CRCNA complied. **CP 135 ¶ 6.**

Without approval, or oversight from the CRCNA, in October of 2002, Rev. Sung signed an agreement with Rev. Byung Kim to replace Rev. Sung as Senior Pastor of New Hope CRC. Rev. B. Kim was an ordained minister from another denomination, the Presbyterian Church of the USA (PCUSA). *Id.* Rev. B. Kim also had his own congregation of church members and leaders, known as the "Joo-Shin" church.<sup>7</sup> Among the leadership of the Joo-Shin church at that time were Plaintiffs below, and Respondents herein, In Min Kim and Myung Soon Hinton. **CP 136 ¶ 10.**

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<sup>7</sup> The trial court's findings indicate that the Joo-Shin congregation consisted of "40 – 50" members. **CP 135:8-9.** The only evidence admitted in regard to this issue was from Rev. B. Kim. He testified that his congregation comprised of "30 – 35" members, and at most 40. **RP 389:16-19; see also, RP 401:6-13.** It remains a mystery why this finding was relevant. Counsel for Appellants timely objected to inquiry regarding the number of members in Rev. B. Kim's church, vs. the number of members in Rev. Sung's church, based on relevance. In overruling the objection, the trial court opined that the number of church members had "a lot of relevance in this case, frankly." **RP 376:1-11.**

The agreement between Rev. B. Kim and Rev. Sung required Rev. B. Kim to change his denominational affiliation and become ordained as a CRCNA minister. The agreement between Rev. B. Kim and Rev. Sung also required Rev. B. Kim's congregation to make annual payments on the remaining balance of the aforementioned loan from the CRCNA. The balance of this loan in October 2002 was \$15,000.<sup>8</sup> **CP 135 ¶ 8; Tr. Ex. 14.**

Rev. Sung received \$60,000 as a gift from the Joo Shin congregation, which he put back into the New Hope CRC property, by paying various debts for building renovations that had been completed prior. **CP 135:24-26; RP 946:16 – 949:18.** Pursuant to his obligation under the agreement with Rev. B. Kim, Rev. Sung retired from the ministry in April of 2003. **CP 135 ¶ 9.** Rev. Sung then began a missionary ministry to the Dominican Republic, under the title of his original ministry affiliation, Morning Star World Mission.<sup>9</sup>

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<sup>8</sup> Evidence presented at trial concluded that there were two payments on the CRCNA loan since 2002, for \$2,500 each. These payments were made by Rev. Sung. Evidence at trial also demonstrated that the current balance of the loan is \$10,000. The Joo-Shin congregation never made a single payment toward this loan, and there was no evidence presented to the contrary. **RP 1062:7 – 1063:19; Tr. Ex. 15 and 67.**

<sup>9</sup> Morning Star World Mission was re-incorporated in the State of Washington on February 1, 2005. **Tr. Ex. 28.**

After the October 2002 agreement between Rev. B. Kim and Rev. Sung was executed, Rev. B. Kim began to conduct religious services at New Hope CRC, under the name "New Hope Presbyterian Church," and he also began the process of ordination within the CRCNA denomination. The CRCNA had actively assisted Rev. B. Kim in the process. **RP 385:23 – 388:24.** However, Rev. B. Kim never completed the process, and without becoming ordained in the CRCNA, in October of 2004, he abandoned the church and went elsewhere. **CP 136 ¶ 10; RP 395:7-22.**

One year after the agreement between Rev. Sung and Rev. B. Kim, and one year prior to Rev. B. Kim abandoning his position, in November of 2003, Plaintiff below and Respondent herein, Tae Y. Choi joined the church, based on his prior affiliation with Rev. B. Kim. **RP 427:21 – 428:19.** Prior to joining the church, Mr. Choi had been active in leadership in a variety of denominations, but he was never a member of the CRCNA. In January of 2004, while Rev. Sung was away, Tae Choi was installed by the Joo-Shin leadership as an "elder" of the church. **RP Vol. IV (Nov. 16, 2007) at 5:1 – 8:3.**

It should be noted that Mr. Choi did not qualify for an "elder" position under the bylaws of New Hope CRC, because he had not been a member of the church for more than five years. **Tr. Ex. 1** (Translation Article 10(2)). Mr. Choi did not qualify as an elder of the Joo-Shin

church, according to its rules, because Mr. Choi had not been a member of the church for more than 6 months. **RP Vol. IV (Nov. 16, 2007) at 9:9 – 11:19.** Also, Mr. Choi has never qualified for an elder position under the rules of the CRCNA, because he never executed a "form of subscription," which is a requirement of the CRCNA for anyone to be recognized as an elder of a CRCNA church.<sup>10</sup> **RP 220:10-14; RP 725:14-18.**

After Rev. B. Kim left, when Rev. Sung returned to Tacoma in December of 2004, he intended to resume his position as Pastor of the congregation, and again begin the process of selecting a suitable replacement. Tae Choi, In Min Kim and Ms. Hinton had their own ideas, however. Mr. Choi rejected Rev. Sung's leadership, and began looking to other denominations for a replacement. Rev. Sung then ejected the Joo-Shin congregation from the Tacoma property. **CP 136:11-12.**

In March of 2005, Rev. Sung took a vote of the members of his original New Hope CRC congregation and leadership, including Deacon Kwi-Chan Lee. New Hope CRC unanimously decided to deed title to the Tacoma property to Morning Star World Mission. **Tr. Ex. 25.** This was,

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<sup>10</sup> Whether Mr. Choi can be recognized as an "elder" of any church is likely only relevant to ecclesiastical concerns, unless the position of "elder" has corporate significance pursuant to the bylaws of New Hope CRC, *i.e.*, if the position of "elder" translates to a corporate officer or board position. It is not disputed that Mr. Choi, Rev. B. Kim, In Min Kim, and Myung Soon Hinton were never elected to corporate board or officer positions within the New Hope CRC non-profit corporation. This would have been impossible, as discussed under the corporations section herein, given that New Hope CRC had been

in essence, an act of disassociation from the CRCNA denomination. A quit-claim deed transferring title to Morning Star World Mission was executed and recorded by Rev. Sung on April 7, 2005. **Tr. Ex. 29.**

After learning that the Quit Claim Deed had been recorded, in May of 2005, Tae Choi filed a business license application, claiming to be 90% owner of the dissolved New Hope CRC corporation. **Tr. Ex. 85.** In June of 2005, Tae Choi filed for reinstatement of the non-profit corporation, New Hope CRC, usurping the UBI number for the original New Hope CRC, which was administratively dissolved in 2000. **Tr. Ex. 3; CP 134 ¶ 4 and CP 137:17.** Mr. Choi then established the name of the corporation as "New Hope Christian Reformed Church of Tacoma." **Tr. Ex. 38.** The following year, Mr. Choi and the other Respondents herein filed suit to quiet title to the Tacoma property at issue, conscripting the support of an unincorporated subsidiary of the CRCNA denomination, known as the "Classis Pacific Northwest" (Classis).<sup>11</sup>

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administratively dissolved in 2000, and they had no affiliation with the New Hope CRC until 2002-2003.

<sup>11</sup> Classis is an association of regional CRCNA affiliated churches. **CP 4:1.** It is doubtful that the Classis has standing to be involved in this suit, which is discussed in the standing section herein. Nonetheless, Classis involvement in this case is purely political. Choi's group is now lead by Rev. Gilbert Kim, an active member and leader within the Classis. **RP 720:20 – 722:11; 725:14-18; 727:2-19; 747:1-4; 749:3-14.**

### C. CONCLUSION

No Respondent herein has ever been on title to the Tacoma property at issue in this case. No Respondent herein has ever been elected, or appointed as a corporate officer, or director of the New Hope CRC non-profit corporation that was administratively dissolved in 2000, which held title to the subject property prior to the transfer of title to Morning Star World Mission. Classis has never held a lien or other secured interest against the subject property, has never been on title, and has never held title to any real property.

Within the CRCNA denomination, individual churches, such as New Hope CRC, operate according to their own bylaws and articles of incorporation. **RP 245:20-25**. Individual churches hold title to church property, and the CRCNA denomination is in no way involved in transfers of real property by individual churches, or any administrative affairs of individual churches. **RP 247:6-17**. The leadership of every individual CRCNA church is selected at the local level. The CRCNA does not appoint leadership to local churches. **RP 224:20-24**. There can be no doubt, as the trial court held in this case, that the CRCNA is a "congregational" church organization.

## IV. ARGUMENT

### A. NEUTRAL PRINCIPLES OF LAW v. DEFERENCE TO HIERARCHY

THE FIRST AMENDMENT PROHIBITS CIVIL COURTS FROM RESOLVING CHURCH PROPERTY DISPUTES ON THE BASIS OF RELIGIOUS DOCTRINE AND PRACTICE.<sup>12</sup> THEREFORE, ANY INQUIRY INTO CHURCH DOCTRINE AND ECCLESIASTICAL POLITY MUST END WITH A DETERMINATION OF WHETHER THE CHURCH AT ISSUE IS HIERARCHICAL, OR CONGREGATIONAL. IF THE CHURCH IS HIERARCHICAL, THEN THE COURT MUST DEFER TO THE HIGHEST AUTHORITY OF THE CHURCH GOVERNING BODY. IF THE CHURCH IS CONGREGATIONAL, THEN THE COURT APPLIES NEUTRAL PRINCIPLES OF LAW TO RESOLVE CHURCH PROPERTY DISPUTES.

This case belongs to a class, happily rare in our courts, in which one of the parties to a controversy, essentially ecclesiastical, resorts to the judicial tribunals of the State for the maintenance of rights which the church has refused to acknowledge, or found itself unable to protect. Much as such dissensions among the members of a religious society should be regretted, a regret which is increased when passing from the control of the judicial and legislative bodies of the entire organization to which the society belongs, an appeal is made to the secular authority; the courts when so called on must perform their functions as in other cases.

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<sup>12</sup> Directly *quoted* from Jones v. Wolf, 443 U.S. 595, 602, 99 S.Ct. 3020 (1979) (*citing*, Serbian Orthodox Diocese v. Milivojevic, 426 U.S. 696, 710, 96 S.Ct. 2372 (1976); Maryland & VA Eldership of the Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 368, 90 S.Ct. 499 (1970); and Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 449, 89 S.Ct. 601 (1969)).

**Religious organizations come before [secular courts] in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints.**

Watson v. Jones, 80 U.S. 679, 713-14 (1871) (*emphasis supplied*).

[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are **neutral principles of law**, developed for use in all property disputes, which can be applied without ‘establishing’ churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern . . . **the [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine.**

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 449, 89 S.Ct. 601 (1969) (*emphasis supplied*).

Relying on the same language from the Presbyterian v. Mary Elizabeth case, *id.*, in the last case wherein the U.S. Supreme Court has ruled on matters involving church property disputes, the Court said:

**Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice.** As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. Subject to these limitations, however . . . a State may adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenants of faith . . . we think the 'neutral principles of law' approach is consistent with the forgoing constitutional principles.<sup>13</sup>

\* \* \*

The primary advantages of the neutral principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice.

Jones v. Wolf, 443 U.S. 595, 602-03, 99 S.Ct. 3020 (1979) (*emphasis supplied*).

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<sup>13</sup> For citations, *see* fn. 1, *supra*.

Relying on Jones v. Wolf, *id.*, in 1982 the Washington State Court of Appeals, Division II, noted that "the U.S. Supreme Court has warned against civil courts resolving church property disputes based on religious doctrine and practice." Southside Tabernacle v. Pentecostal Church of God, 32 Wn. App. 814, 825, 650 P.2d 231 (1982). The Washington Court of Appeals deduced from this warning that if deciding church property disputes requires "immersion into doctrinal issues or extensive inquiry into church polity, a civil court would have to find another ground for its decision such as the neutral principles of law approach." Id. (*quoting, Maryland and Virginia Eldership*, 396 U.S. at 370 n.4 (*Brennan, J. concurring*)). The Washington Court of Appeals concluded in Southside Tabernacle, 32 Wn. App. at 825-26, that "to avoid an impermissible inquiry" into religious doctrine and teaching, the Courts must limit any such inquiry to resolving the issue of whether the church at issue is "hierarchical," or "congregational."<sup>14</sup>

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<sup>14</sup> In a "congregational" church, "each local congregation is self governing." Southside Tabernacle, 32 Wn. App. at 823, n.3 (*quoting, Judicial Intervention in Disputes Over the Use of Church Property*, 75 Harvard Law Review 1142, 1143 (1962)). A "hierarchical" church has been defined by the U.S. Supreme Court as a "general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete in some supreme judicatory over the whole membership of that general organization." Watson, 80 U.S. at 722-23; *see also*, **RP 282:21 – 283:1**.

Southside Tabernacle, *supra*, involved a church property dispute between a national denomination and a local congregation, which had decided to disassociate from the national denomination. The denomination held title to the church property at issue, in trust for the local church. The trial court ruled, on summary judgment, that the church at issue was a "hierarchical" church, and therefore applied the "deference to hierarchy" rule thereby deferring to the denomination's judgment on the issue.

The Court of Appeals reversed the trial court, and remanded the case for determination of whether the church at issue should be considered "congregational," or "hierarchical." The Court of Appeals identified this issue as an issue of *fact*, Southside Tabernacle, 32 Wn. App. at 821-22 (*list of 5 citations omitted*), and ruled that it was not possible for the trial court to reach such a decision on summary judgment, given that there were facts in the record indicating the church may be congregational. The Court of Appeals in Southside Tabernacle then concluded that if, on remand, the church organization was found to be "congregational," then the denomination would be required to demonstrate it was entitled to legal title pursuant to neutral principles of property law. Id. at 826.

In the case currently before the Court of Appeals, the Pierce County Superior Court (Hon. Judge *Pro Tem* B. Cohoe) determined that the CRCNA was a "congregational" denomination. **CP 138:3-5** (*finding that the CRCNA is "clearly more congregational" than hierarchical*). Despite its finding of fact on this issue, and in direct contravention of the analysis applied in the Southside Tabernacle case, the trial court applied the "deference to hierarchy" rule, and deferred to the decision of the CRCNA denominational representatives on that basis. **CP 140:18-19** (*"The Court's ruling is based on the deference rule"*).

In essence, what the trial court decided in this case, was that Plaintiffs'/Respondents' causes of action for quiet title and trespass were not really about church property. In the trial court's opinion:

This case really comes down to a simple question, with a relatively simple answer. Does a retiring minister get to take church property with him when he retires? Of course not, but that is exactly what Reverend Sung is asking me to rule.

**CP 140:13-15** (Conclusion of Law ¶ 27).<sup>15</sup>

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<sup>15</sup> Appellants herein, and Defendants below, Morning Star World Mission and Rev. Samuel Sung asked the trial court to conclude no such matter. Appellants asked the trial court, repeatedly, on summary judgment and at trial, to decide that the CRCNA was a congregational church and apply the "neutral principles of law" standard to determine which party has lawful title to the church property at issue. **CP 72-76; RP 57:13 – 59:10; RP 850:4 – 857:19.**

Assuming *arguendo* that this quiet title and trespass case is really about whether a retired minister can direct the disposition of church property, under what secular law can we find a determination that a retiring minister has no authority to dictate the disposition of church property? There is no such law. Under neutral principles of law, the issue would be determined according to whether the retired minister had corporate authority to act on behalf of the non-profit corporation in title to the subject property, in addition to several other issues discussed in the "neutral principles of law" argument herein, below.

Rather than deciding the primary issue in this case under neutral principles of law, *i.e.*, whether Rev. Sung had legal authority to transfer title to the subject property in April of 2005, the trial court repackaged the issue as ecclesiastical and chose to defer to the decision reached by the Classis, even though the denomination was found to be congregational. But the trial court didn't *really* defer to the Classis decision here. After reviewing a multitude of evidence regarding the religious doctrines and ecclesiastical rules of the CRCNA denomination,<sup>16</sup> and the

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<sup>16</sup> CRCNA Church Order and Rules for Synodical Procedure 2006 (Plntf Tr. Ex. 45) and 2001 (Plntf Tr. Ex. 69); Rules of Procedure for the Classis Pacific Northwest (Plntf Tr.

application of those doctrines and rules by the Classis, in determining whether the Classis had acted according to CRCNA ecclesiastical mandates, the trial court found one key piece of evidence missing. "There was no evidence presented that the Classis decision on these matters was contrary to the Word of God." **CP 137:13-14** (Finding of Fact ¶ 15).<sup>17</sup>

In its findings of fact at ¶ 15, *id.*, the trial court examined the Classis' action in this case, in light of CRCNA religious doctrine and ecclesiastical rules, and concluded that Classis actions are binding, "unless they are shown to be contrary to the Word of God." **CP 137:5-8**. In its conclusions of law, the trial court ruled that Rev. Sung and his church were an affiliated church, required to abide by the decisions of the Classis and the ecclesiastical rules of the CRCNA as interpreted by the Classis, unless the Classis'

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Ex. 68); CRCNA "Form of Subscription" (Plntf Tr. Ex. 8); A Confession of Faith Commonly Known as the "Belgic Confession" (Plntf. Tr. Ex. 46); CRCNA Form of Ordination (Plntf Tr. Ex. 47); The Manual of Christian Reformed Church Government (Plntf Tr. Ex. 62); minutes of Classis meetings and correspondence regarding ecclesiastical deliberations (Plntf Tr. Ex. 4, 7, 9, 16, 43, 49-55, and 92); *See CP 113-117*. After careful review of Classis' action, based on the foregoing, the trial court was careful to note that it was in agreement with the Classis' ecclesiastical ruling. **CP 139:23-24**. (Conclusions of Law ¶ 25). It should also be noted that Defendants did not object to some of the trial exhibits referenced. These exhibits were conceded as admissible to determine the issue of whether the CRCNA was hierarchical, or congregational.

<sup>17</sup> In context, *see CP 137*, Findings of Fact ¶ 15, in its entirety. The trial court analyzes whether the Classis adhered to CRCNA ecclesiastical rules and doctrines in reaching its decision. The trial court concluded that the Classis' decision was binding, because it was

decisions could be demonstrated as contrary to the Bible. **CP 139**  
(Conclusions of Law ¶ 22).

In stark contrast, the trial court issued a finding of fact that, during his 20+ years as a CRCNA minister, Rev. Sung "never really followed the CRCNA rules of governance." Rather, the trial court found Rev. Sung "generally ran the church as he saw fit," and "without regard to CRCNA rules." **CP 134-135** (Findings of Fact ¶¶ 5-6). The trial court here appears to be enforcing ecclesiastical rules by analyzing religious doctrine. If Rev. Sung never bothered to follow the CRCNA rules, but ran his church as he saw fit, then how can a secular court step in after over 20 years and require him to abide by those same ecclesiastical rules? The trial court would have to sit in the seat of ecclesiastical authority to render such a decision. Nevertheless, the CRCNA ecclesiastical rules are silent with respect to church property. Only the Hope CRC bylaws address the issue. **Tr. Ex. 1 (translation) at p.5, Article 24.**

There can be no doubt that the trial court in this case has resolved a church property dispute on the basis of religious doctrine and practice. The trial court's ruling, therefore, is in defiance of the clear constitutional prohibitions against resolution

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not "contrary to the Word of God." *See also*, Conclusions of Law ¶¶ 18:3-8, and 22:10-

of ecclesiastical matters by secular courts. Most importantly, the trial court's decision deviates from the rule of law, because it found that the CRNCA is a "congregational" church, but applied the "deference to hierarchy" rule anyway.

In the Southside Tabernacle case, this Court confirmed that in Washington, the "compulsory deference rule" applies to hierarchical churches. This Court also clarified that the "neutral principles of law" analysis does *not* apply to church property disputes involving *hierarchical* churches. See Southside Tabernacle, 32 Wn. App. at 820 n.2.

This Court's ruling in regard to application of the deference rule was based on the Washington Supreme Court's *pre-Jones v. Wolf* decision in Presbytery of Seattle, Inc. v. Rohrbaugh, 79 Wn.2d 367, 485 P.2d 615 (1971). Rohrbaugh involved a dispute concerning ownership of church property, between a local congregation and a local denominational authority. The Rohrbaugh Court applied the deference rule, deferring to the decision of the denomination. However, it was conceded that the church at issue in Rohrbaugh was hierarchical; therefore, the

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15 (CP 138-139).

deference rule was applied. *See, Southside Tabernacle*, 32 Wn. App. at 820-21 (analyzing Rohrbaugh).

In Southside Tabernacle, rather than apply the deference rule in a church congregation v. denomination property dispute, as the Washington Supreme Court did 10 years earlier in Rohrbaugh, this Court remanded the case for determination of whether the church at issue was hierarchical or congregational. That issue is significant, only if a different legal analysis applies, depending on the structure of church government as hierarchical, or congregational. This Court, in Southside Tabernacle, indicated quite clearly that **(1)** trial court review of religious doctrines and ecclesiastical rules is only appropriate for a determination of whether a church is hierarchical, or congregational; and **(2)** if a church is determined to be congregational, neutral principals of law should be applied to resolve a dispute concerning church property. *See, esp., Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull*, 393 U.S. 440, 89 S.Ct. 601 (1969) (*Georgia court inquiry regarding religious doctrines and ecclesiastical rules of hierarchical church in deciding church property dispute was impermissible under the First Amendment*).

The trial court's ruling in this case should be reversed, because the "deference to hierarchy" rule should not apply to congregational churches, under the only intellectually honest and fair reading of this Court's precedent. Furthermore, this case does not need to be remanded for determination of Plaintiffs' claims, under neutral principles of law. The material facts that would defeat Respondents' quiet title and trespass causes of action, in addition to their breach of contract claim, are all conceded.

**B. CASE ANALYSIS UNDER NEUTRAL PRINCIPLES OF LAW**

APPLYING NEUTRAL PRINCIPLES OF LAW TO THE FACTS IN THIS CASE, NO RESPONDENT HEREIN HAS A VIALBE CLAIM FOR TITLE TO THE SUBJECT PROPERTY, OR ANY OTHER CAUSE OF ACTION ASSERTED BELOW.

"[T]here are neutral principles of law, developed for use in all property disputes, which can be applied without establishing churches to which property is awarded." Southside Tabernacle, 32 Wn. App. at 819 n.1 (*quoting*, Mary Elizabeth, 393 U.S. at 449). The neutral principles of law method of resolving church property disputes "relies exclusively on objective, well-established concepts of . . . property law familiar to lawyers and judges," such as "examination of deeds" and "state corporations law." Southside

Tabernacle, 32 Wn. App. at 819-20 (*analyzing Jones v. Wolf*, 443 U.S. at 603-04).

Respondents' causes of action in this case were: (a) quiet title<sup>18</sup>; (b) trespass; (c) conversion (of real property); (d) breach of fiduciary duty; (e) breach of contract (as to Plaintiffs / Respondents Kim and Hinton); (f) breach of contract (as to Classis); (g) promissory estoppel (as to Classis); and (h) declaratory relief. **CP 8-11**. The trial court granted Plaintiffs' requested relief pertaining to quiet title, trespass, declaratory relief, and breach of contract (as to Kim and Hinton). The trial court did not rule on Respondents' claims for breach of fiduciary duty, and promissory estoppel, holding that these causes of action were moot based on the trial court's ruling.<sup>19</sup> The trial court dismissed Appellants' counterclaims, and also dismissed Respondents' claim for conversion of real property as a non-existent claim. **CP 140-145; RP 1253:17 – 1254:2**.

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<sup>18</sup> Fourth Cause of Action, CP 11.

<sup>19</sup> Ruling on Appellants' CR 41 Motion to Dismiss, the trial court ordered dismissal of Respondents' claims that were conceded, *i.e.*, breach of contract as to Classis, and breach of fiduciary duty. **RP 846:3-9; RP 918:18-21**. Also, at the close of the trial, the trial court dismissed Respondents' breach of fiduciary duty claim. **RP 1253:17 – 1254:2**.

The relevant facts to consider, under the Neutral Principles of Law analysis are not disputed:

- The non-profit corporation, New Hope Christian Reformed Church, which held title to the subject real property, which is the subject of Respondents' quiet title and trespass claims, was dissolved in 2000. **CP 134:16-20; Tr. Ex. 10.**
- At the time of dissolution, Rev. Samuel Sung was acting Chairman of the Board of Directors. **Tr. Ex. 33.** Rev. Sung had been Chairman of the Board of New Hope CRC, as well as its President, since it was originally incorporated in 1986.<sup>20</sup> No Respondent herein was ever affiliated with New Hope CRC prior to 2000, and no Respondent herein was ever a member of the board of directors, or a corporate officer of the New Hope CRC dissolved in 2000. **CP 136:3-5** (demonstrating Respondents Kim, Hinton, and Choi never had any affiliation prior to 2002 and 2003 . . . there is no evidence in the record of this case, identifying any of the said Respondents as corporate board members or officers, prior to Respondent Choi's "reinstatement" of the dissolved corporation, in June of 2005).
- In October of 2002, Rev. Sung entered in to an agreement with Rev. B. Kim and his congregation, including Respondents In Min Kim and Myung Soon Hinton, for the transfer of a ministry. The material terms of the agreement were that (i) Rev. Kim was to become an ordained CRC minister; (ii) Rev. Kim's congregation were to assume a \$25,000 mortgage on the subject property, and an outstanding balance of \$15,000 owed to the Classis, pursuant to an agreement executed by Rev. Sung in 1986; (iii) Rev. Sung was to receive \$60,000 "as a gesture of appreciation"; and (iv) Rev. Sung was to retire, and a retirement ceremony was to be held for Rev. Sung. **CP 135 ¶ 8; Tr. Ex. 14.**

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<sup>20</sup> Tr. Ex. 5 (Article VIII); Tr. Ex. 83; RP 944:11 – 946:4; Tr. Ex. 12, 29, and 44; RP 1063:22 – 1069:4.

- Rev. Sung retired as promised. Rev. B. Kim's congregation paid Rev. Sung \$60,000 "as a gesture of appreciation." **CP 135 ¶ 9; Tr. Ex. 14.** However, Rev. B. Kim's congregation never made a single payment toward the \$15,000 balance owed to the Classis. Rev. Sung made two payments of \$2,500 each, which brought the balance to \$10,000. **RP 1062:7 – 1063:19; Tr. Ex. 15 and 67.** Finally, and most importantly, Rev. B. Kim never became ordained as a CRC minister, and abandoned the congregation. **CP 136 ¶ 10.**
- After Rev. B. Kim abandoned the congregation, this dispute ensued between the remaining leadership of Rev. B. Kim's congregation and Rev. Sung. After consulting with the leadership of his congregation, and the congregation itself, Rev. Sung, as the only remaining officer, or director of any kind respecting the non-profit corporation, which held title to the subject property and had been dissolved since 2000, transferred title to the subject property in April of 2005. **Tr. Ex. 25 and 29.**
- In June of 2006, Respondent Choi filed for reinstatement of the dissolved non-profit corporation, which held title to the subject property prior to the transfer, changed the name of the corporation, and then filed this action for quiet title and trespass. **CP 138 ¶ 20.5; Tr. Ex. 3 and 38.** Respondent Choi's group also recorded a notice of lis pendens against the subject property. (CP Amendment Pending; *see* **CP 118-123 and CP 124-126**).
- Respondent Classis has never been on title to the subject property, has never held a deed of trust against the subject property, or any other security interest. Respondent Classis has no legal existence. **RP 252:14-19; RP 258:8-16.** It is a purely ecclesiastical association.

#### 1. THE DOCTRINE OF STANDING

"The doctrine of standing requires that a claimant must have a personal stake in the outcome of a case in order to bring

suit." Gustafson v. Gustafson, 47 Wn. App. 272, 276, 734 P.2d 949 (1987). To attain standing to sue, a litigant is required to "show a clear legal or equitable right." Defunis v. Odegaard, 82 Wn.2d 11, 24, 507 P.2d 1169 (1973) (*quoting*, State ex rel. Hays v. Wilson, 17 Wn.2d 670, 673, 137 P.2d 105 (1943)); *vacated and remanded on other grounds*, 416 U.S. 312, 94 S.Ct. 1704 (1974)). Further, the doctrine of standing prohibits a party from asserting another person's rights. Timberlane Homeowners Ass'n, Inc. v. Brame, 79 Wn. App. 303, 307, 901 P.2d 1074 (1995) (*citing*, Haberman v. WPPSS, 109 Wn.2d 107, 138, 744 P.2d 1032 (1987)) (*homeowners' association did not have standing to litigate property rights of individual members*); *see also*, Nelson v. Appleway Chevrolet, Inc., 129 Wn. App. 927, 939, 121 P.3d 95 (2005) (*citing*, Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake, 150 Wn.2d 791, 802, 83 P.3d 419 (2004)).

**(a) Classis does not have standing with respect to Respondents' quiet title, trespass, and declaratory relief claims.**

Classis involvement in this law suit is essentially to assert the alleged rights of another party, *i.e.*, the remaining Plaintiffs below, Choi, Kim, and Hinton, and their entity call "New Hope Christian Reformed Church of Tacoma." All claims that were

directly related to Classis were either not ruled on (promissory estoppel), or dismissed pursuant to Appellant's CR 41 motion (breach of contract). Classis has no business, or involvement in this case, respecting any of the claims the trial court did rule on.

Classis is an unincorporated entity, with no legal existence. It is a purely ecclesiastical society. Assuming, *arguendo*, that Classis has the capacity to sue and be sued, Classis does not have standing to assert property rights on behalf of Choi, Kim, Hinton, or their entity, New Hope CRC of Tacoma. Further, Classis does not have standing to request the trial court to issue declaratory relief in favor of Choi, Kim, Hinton, or New Hope CRC of Tacoma. Finally, although Classis never argued it was seeking to obtain title to the subject property for itself, Classis would certainly not have standing to directly challenge the title transfer in this case. Classis was never on title to the subject property, has never held a deed of trust on the subject property, and in fact does not hold, and has never held title to any real property. **RP 252:1-19.**

- (b) Neither Choi, Kim, Hinton, nor their entity, New Hope CRC of Tacoma, have standing to challenge a corporate board member's action respecting property owned by another corporation, when none of them were ever members, officers, or directors of the non-profit corporation holding title to the subject property.**

With respect to nonprofit corporations in particular, it has been specifically held in this State that neither individual directors of a nonprofit corporation, nor private individuals have standing to bring derivative lawsuits on behalf of the nonprofit corporation. Lundberg ex rel. Orient Foundation v. Coleman, 115 Wn. App. 172, 177-79, 60 P.3d 595 (2002) (*individual director of nonprofit corporation did not have standing to bring action against other corporate directors for breach of fiduciary duty, among other claims*). Plaintiffs/Respondents Choi, Hilton, and Kim were never members of the dissolved nonprofit corporation, which held title to the subject property, New Hope Christian Reformed Church, let alone officers or directors. They were never affiliated with New Hope CRC in any capacity until two years after the corporation was dissolved. Yet, even if they had been officers or directors of the nonprofit corporation holding title to the subject property, they would not have standing to bring a claim against a former director of the corporation, on behalf of the corporation.

New Hope CRC was administratively dissolved in 2000. Plaintiffs Kim, and Hilton were never associated with any church meeting at the subject property, until 2002, and Respondent Choi was never associated until 2003. Title to the subject property was transferred by authority of

Rev. Sung on April 7, 2005. Choi created an entity called "New Hope Christian Reformed Church of Tacoma" in June of 2005. An organization established by Plaintiff Choi two months after title was transferred does not have standing to claim title to the subject property. Thus, no Plaintiff in this action has standing to challenge the transfer, or current use of the subject property.

## 2. CORPORATIONS LAW

A dissolved corporation continues its existence only for the purpose of winding up its affairs and liquidating its assets. RCW 23B.14.050(1). A dissolved non-profit corporation may not continue business as a going concern. "A dissolved corporation continues its existence so as to wind up business affairs, but it is prohibited from conducting any other business." Equipto Div. Aurora Equipment Co. v. Yarmoth, 134 Wn. 2d 356, 365, 950 P.2d 451 (1998).<sup>21</sup> **Revised Code of Washington 24.03.302** specifies the procedure for reinstating an administratively dissolved nonprofit corporation. **"A corporation which has been dissolved by operation of this section may be reinstated within a period of three years following its administrative dissolution . . . by the secretary of state."**

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<sup>21</sup> CP 93 - 101.

It is undisputed that New Hope CRC was administratively dissolved in 2000. It is undisputed that Respondents Choi, Kim, and Hinton had no association with New Hope CRC until 2002 and 2003, when they began attending church services at the subject property under the leadership of Reverend Byung Kim. There was no evidence presented at trial to indicate that any Respondent herein ever served New Hope CRC as a board member, or corporate officer.

Nonetheless, it would have been legally impossible for the dissolved non-profit corporation holding title to the subject property to elect new board members, or appoint new corporate officers. Pursuant to RCW 23B.14.050(1), the only legal transaction conducted by the dissolved non-profit corporation was when Rev. Sung transferred the only remaining asset of the dissolved corporation, to another like non-profit, consistent with the only effective articles of incorporation in existence at that time. **Tr. Ex. 11.** In April of 2005, Rev. Sung, as the only remaining board member, or corporate representative of the dissolved non-profit corporation holding title to the subject property, transferred title to the subject property to another non-profit corporation, Morning Star World Mission. *See, Tr. Ex. 28, 29, and 61.*

Two months later, Respondent Choi filed an application for special reinstatement of New Hope CRC with the Secretary of State, on June 15,

2005. **Tr. Ex. 3.** There are no articles of incorporation, bylaws, or any other documents identifying any Respondent in this case as a board member, officer, or director of any corporation, except the documents filed by Respondent Choi in June of 2005 and thereafter. Nevertheless, it is statutorily impossible for Plaintiff Choi to have legally reinstated New Hope CRC in 2005, because the statute authorizing special reinstatement of a nonprofit corporation requires an application for reinstatement to be filed within three years of administrative dissolution. RCW 24.03.302. Therefore, the entity created by Plaintiff Choi in June of 2005 is a separate and distinct legal entity from the New Hope CRC administratively dissolved in 2000. The trial court's ruling that Mr. Choi's entity legally reinstated the corporation formerly holding title to the subject property, and that Mr. Choi's entity was a "successor entity," is legally untenable. CP 138 (Finding of Fact ¶ 20.5).

3. **REAL PROPERTY TRANSFERS AND CONTRACTS  
LAW**

Any contract to convey an interest in real property must be in writing pursuant to the statute of frauds, and must contain 13 material terms. Sea-Van Invs. Assocs. v. Hamilton, 125 Wn.2d 120, 128, 881 P.2d 1035 (1994) (*citing*, Kruse v. Hemp, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993)). "[E]very contract or agreement involving a sale or conveyance of

platted real property must contain, in addition to the other requirements of the statute of frauds, the description of such property by the correct lot number(s), block number, addition, city, county and state." Martin v. Seigel, 35 Wn.2d 223, 229, 212 P.2d 107 (1949); *see also*, Key Design, Inc. v. Moser, 138 Wn.2d 875, 983 P.2d 653 (1999) (*written purchase and sale agreement for real property unenforceable absent correct legal description for property to be sold or conveyed*).

In general, Washington State follows the objective theory of contracts, which focuses on the objective manifestations of the agreement, rather than the less precise subjective intent of the parties not otherwise manifested. Max L. Wells Trust by Horning v. Grand Central Sauna and Hot Tub Co. of Seattle, 62 Wn. App. 593, 815 P.2d 284 (1991). A failure to perform a contractual duty manifest in the agreement constitutes breach of contract. Seabed Harvesting, Inc. v. Dep't of Natural Resources, 114 Wn. App. 791, 60 P.3d 658 (2002).

Referencing the October 2002 agreement between Rev. B. Kim (who is not a party in this litigation) and Rev. Sung, the trial court found that the following were the material terms of the contract: (a) Rev. B. Kim was to take over as Senior Pastor of New Hope CRC; (b) Rev. B. Kim was to become ordained in the CRCNA; (c) Rev. Sung was to be paid \$60,000 "as a gesture of appreciation," and Rev. B. Kim's congregation was to

assume a \$25,000 mortgage on the subject property, and a \$15,000 debt to Classis; and (d) a retirement ceremony would be held for Rev. Sung. **CP 135:14-23; Tr. Ex. 14.**

Rev. Sung retired from the ministry, as agreed, and a retirement ceremony was held. Rev. Sung was paid the \$60,000 "gesture of appreciation," and Rev. Sung put all of the money back into the subject property. **CP 135:24-26; RP 946:16 – 949:18.** However, Rev. B. Kim never became ordained in the CRCNA, and Rev. B. Kim's congregation never made a single payment toward the then remaining \$15,000 debt to the Classis. **CP 136:4-7.** Because Rev. Kim's congregation never made payments on the loan, Rev. Sung made two \$2,500 payments himself. Nevertheless, the trial court found that Rev. Kim's failure to become a CRCNA minister, and the congregation's failure to make payments did not constitute a material breach of contract. **CP 138** (Conclusions of Law ¶ 19).

Regardless of whether the trial court's conclusions of law on the contract between Rev. B. Kim and Rev. Sung are correct, the question remains, what was the import and purpose of the contract? Certainly, there is no legal description for real property in the agreement. It was not a contract for the sale or transfer of real property. It was a contract for transfer of a ministry from one minister to another. However, Rev. B.

Kim and his congregation did not follow through with the conditions and their requirements under the agreement.

In ruling on whether Rev. B. Kim and his congregation's breach was material, the trial court's finding is an abuse of discretion. The trial court on one hand identifies the material terms of the agreement, and then on the other hand, rules that the failure of Rev. B. Kim and his congregation to meet the identified material terms was not a material breach. It is an oxymoron. Moreover, Rev. Kim's congregation received the full value of their \$60,000 "gesture of appreciation" to Rev. Sung, because they held services at the subject property, rent free, for two years, but the trial court did not address that issue.

Respondents herein never argued that the October 2002 agreement between Rev. B. Kim and Rev. Sung was a contract for the transfer, or sale of real estate, but that is essentially the effect of the trial court's ruling. The trial court's holding in regard to the agreement between Rev. B. Kim and Rev. Sung is that Rev. Sung effectively transferred title to the real property at issue, over to Rev. B. Kim's congregation, in exchange for \$60,000 that went back into the property, and a retirement ceremony. This result is an abuse of discretion, a manifest injustice, and an legally untenable ruling, especially in light of the fact that Rev. Sung's family invested \$20,000 into the original church property in SeaTac, paid the

mortgage on the SeaTac property for many years, and then used \$15,000 from the sale of the SeaTac property to repay the loan from the Classis.  
**RP 1058:20 – 1061:13.**

**4. ATTORNEY FEES AND COSTS**

RCW 4.28.328 allows defendants to recover damages and attorney fees in the event (1) a lis pendens is wrongfully filed and the defendant prevails on a motion to cancel the lis pendens, or (2) where an aggrieved party prevails in defense of the action in which a lis pendens was filed, unless there is substantial justification for filing the lis pendens. (Lis Pendens filed in the trial court on April 26, 2006, to be included in amended Clerk's Papers).

Respondents / Plaintiffs herein should be required to pay Appellants' reasonable attorney fees and costs, pursuant to RCW 4.28.328. Given that the CRCNA was determined to be a congregational church, as explained above, no Respondent herein had any substantial justification to file a lis pendens at the inception of this litigation. Without application of the deference to hierarchy rule, no Respondent in this case ever had a tenable claim for title to the subject property. Respondents herein, and Plaintiffs below, wrongfully filed a lis pendens in this case, and Defendants should be awarded attorney fees and costs pursuant to RCW 4.28.328. *See, CP 118-123.*

## V. CONCLUSION

In church property disputes, once it is determined whether the church at issue is hierarchical, or congregational, there is no need to inquire further into church doctrine and ecclesiastical polity. If the church is hierarchical, the deference rule applies. If the church is congregational, the court must analyze the case under neutral principles of law. This disparity is necessary, so that under no circumstances are secular courts judging cases according to ecclesiastical law. Neutral principles of law, in the congregational setting, protects non-profit organizations that have specifically chosen to affiliate with non-hierarchical church structures, to preserve independence in the corporate structure, and simultaneously maintain adherence to the doctrines and creeds of their chosen religion or denomination.

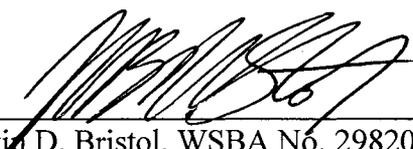
The trial court's decision in this case was based on its interpretation of ecclesiastical rules governing the CRCNA, including the Bible, which is the foremost authority under the CRC Order and rules of ecclesiastical governance. **Tr. Ex. 62 at p.21** ("The Bible is the final authority in Reformed Church polity.") Thus, the trial court made an ecclesiastical ruling in this case, thinly veiled as deference, *i.e.*, deference to a congregational church. However, the trial court was required to address the issues in this case under neutral principles of law. The issues in this

case are not who is an elder, or who is a pastor. **RP 179:17 – 180:1**. The CRCNA is a congregational church, and so the issue is, who is authorized to act on behalf of the dissolved non-profit corporation, New Hope CRC? That question can be easily answered in this case, with the application of neutral principles of law.

Based on the foregoing, Appellants request the Court of Appeals reverse the trial court's decision in this case, and award attorney fees and costs to Appellants under RCW 4.28.328.

Respectfully submitted this 6<sup>th</sup> day of October, 2008.

**McFERRAN, BURNS & STOVALL, P.S.**

By:   
Justin D. Bristol, WSBA No. 29820  
Attorney for Appellants

FILED  
COURT OF APPEALS  
DIVISION II

08 OCT -6 PM 4:49

**CERTIFICATE OF SERVICE**

STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on October 6, 2008, at Tacoma, Washington, I caused true and correct copies of the *OPENING BRIEF OF APPELLANT* to be served upon all parties and/or their counsel of record at their last known addresses:

Attorney for Plaintiffs/Respondents:

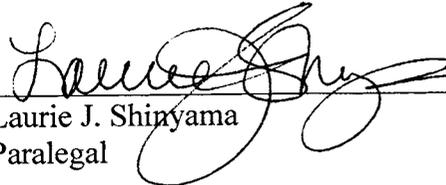
Carl J. Marquardt  
Law Office of Carl J. Marquardt  
800 Fifth Ave., Suite 4000  
Seattle, WA 98104-3179

VIA U.S. MAIL  
& E-MAIL

DATED this 6 day of October, 2008, at Tacoma, Washington.

**McFERRAN BURNS & STOVALL, P.S.**

By

  
\_\_\_\_\_  
Laurie J. Shinyama  
Paralegal