No. 21-CV-262

COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

RE'ESE ADBARET DEBRA SELAM KIDEST MARIAM ETHIOPIAN TEWAHEDO CHURCH, INC.,

Appellant,

v.

AKLILU HABTE, ET AL.,

Appellees

Appeal of Dismissal of Complaint in Case No. 2015 CA 007574 B
Appeal of Denial of Motion and Memorandum in Support to Alter, Amend and Correct Order in Case No. 2015 CA 007574 B

APPELLANT'S REPLY BRIEF

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August 9, 2022

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REPLY BRIEF

SUMMARY OF ARGUMENT

The Second Dismissal Order's conclusion that Appellant/Plaintiff lacks standing to bring this case is erroneous and must be reversed.

The Church's 2014 and 2015 board elections were valid and not inconsistent with the 1996 bylaws. Thus, at the very least four board members' terms were still outstanding when the Appellee/Defendants purported to election eight board members in October of 2016.

The 2014 and 2015 Church elections did not violate the Church's bylaws based on the requirement that members must have been current for six months preceding the election in payment of their dues. This is plainly a requirement of the 1996 bylaws as Appellees themselves acknowledged when they purported to hold a

general assembly meeting – albeit an invalid one in November of 2015. The court below erred in interpreting those bylaws by artificially making a distinction between the bylaw terms "financial contributions of records for at least the six months preceding the election," dues and tithes. Read in proper context the terms mean the same thing. Adopting the trial court's interpretation of these bylaw provisions yields an irrational result.

That Church board elections were held in months other than October as specified in the 1996 Bylaws did not invalidate those elections. Appellees and the trial court's interpretation of DC Code Section 29-405.01(d), which specifically states that failure to hold an annual or regular meeting at the time specified in the bylaws or articles does not invalidate action taken at such a meeting, would render that code section meaningless. Contrary to the Second Dismissal Order, holding the meeting in a different month than October did not transform that meeting into an emergency meeting, a holding for which the decision below provides no legal authority. And even if it did somehow convert the meeting into an emergency meeting, it was plainly erroneous speculation on the part of the court below to conclude that the bylaw emergency meeting provision requiring at least 24 hours advance notice to members had not been complied with when the annual meeting requirement of both sets of bylaws 1996 and 2012 required advance notice well in excess of 24 hours (14 and 15 days respectively).

Finally, abundant evidence supports the conclusion that the 2015 election meeting was conducted with the required quorum. The decision below that a quorum was lacking was based on erroneous findings and rank speculation. Moreover, that decision ignored unrefuted testimony that a quorum was present.

The Second Dismissal Order's finding that the Church's 2016 election was invalid fails because it is based on the same erroneous conclusions the court made concerning the Church's 2014 and 2015 elections. Appellees arguments to buttress the decision below on this point are immaterial because the court below did not consider or resolve any of these additional matters Appellees now raise.

Appellees October 2016 election cannot be credited since Appellees now admit they did not follow the 1996 bylaw provision which limited voting to persons who were financial contributors of record for at least six months prior to the election. JA 548. Appellees admit they allowed persons to vote in the October 2016 election if they made any contribution to the Church, even only one dollar. This is plainly inconsistent with the 1996 bylaws. *Id.*

Appellees' board's vote to dismiss this action was invalid because Dr. Amare Kassaye, who has never been validly dismissed as the Aleka of the Church and thus an ex officio board member, and the four board members validly elected in 2015, had no notice and opportunity to participate in that meeting. The law is clear that

failure to provide proper notice to a board member, who subsequently does not attend a meeting, invalidates the meeting and actions taken thereat.

Finally, this case is not moot. A live controversy exists concerning the proper persons to govern the Church and Plaintiff's request for injunctive relief is outstanding. That this case has dragged on now for some seven years is not a reason to allow Appellees to prevail by prescription.

For all of these reasons, the trial court's conclusion that Plaintiff lacks standing to pursue this case must be reversed. Accordingly, the decision below should be vacated, and this case remanded for trial.

ARGUMENT

I. The 2014 and 2015 Church Board elections were not held contrary to the Church's Bylaws.

The Second Dismissal Order found the 2014 and 2015 Board elections invalid because of the supposed difference between payment of the "monthly membership fee" – i.e., dues – under the 2012 Bylaws to vote and making financial contributions of record for at least six months preceding the election" as stated in the 1996 Bylaws. JA 45. The court below considered the "monthly membership fee" to be an additional requirement that excluded persons who paid "tithes or [made] other financial contributions." *Id.*

We pointed out in our opening brief that properly construed, the terms financial contributions of record for at least six months preceding any election, tithes

and dues as used in the 1996 Bylaws meant the same thing. Brief at 13-16. We further pointed out that no one testified that he or she was denied the right to vote at either the 2014 or 2015 board elections because they had made some financial contribution other than paying dues for the six-month period prior to the elections as the 1996 Bylaws require. Brief at 12-13.

Appellees' attempt to refute these points is unavailing. First of all, they do not and cannot dispute that no one testified he or she had been denied the vote because of making financial contributions for six months other than dues. Rather, Appellees cite parts of the record immaterial to this question and not relied upon by the court below. Contrary to Appellees' contention, Dr. Metaferia did not testify that four persons were disqualified for failure to pay dues. Opposition at 10, citing JA 222. Appellees misrepresent the record as shown by the following passage from JA 222:

> Q Okay. How many were disqualified?
> A There were five of them.
> Q And why were they disqualified?
> A **Maybe** they did not pay their dues.
> Q It says here the vote of five members was disqualified, because the voters did not write their names on the forms, right?
> A That's what it says.
> Q So how do you know that these five people who didn't put their names on the forms were actually members of the church?
> A We don't know. That's why it disqualifies them….

(Emphasis added). So, the cited passage shows that Dr. Metaferia did not testify that members were disqualified for not paying dues, the persons disqualified were

because they did not put their names on the ballots and thus it could not be confirmed that they were Church members.

Exhibit 9, JA 354, also cited by Appellees, does indicate that four persons were disqualified because "they **had not been members of the Church** for the required six months as per the bylaws." The cited exhibit makes no mention of the persons' failure to pay dues for six months. So that is no help to Appellees.

Thus, Appellees have not refuted our point that no one testified they had made financial contributions of record for six months preceding either the 2014 or 2015 elections but were denied the right to vote.

In any event it is plainly evident that the 1996 Bylaws required dues to the paid for at least six months prior to a member having a right to vote in a board election. JA 548. Appellees' attempt to refute our point that "tithes, dues and financial contributions of record for six months preceding an election" as referenced in the 1996 Bylaws all refer to the same thing, is equally unavailing. Appellees' reference to "tithe paying members" in the 2012 Bylaws has no bearing on the proper interpretation of the 1996 Bylaws, that were adopted 16 years prior. *See* Opposition at 11. And although it is true that the 1996 Bylaws do not place the amount of dues at $20, testimony adduced at the preliminary injunction hearing was clear that the requirement to pay dues of $20 a month to vote had been the Church's requirement well before the purported adoption of the 2012 Bylaws when elections were without

question being conducted pursuant to those 1996 Bylaws. *See, e.g.*, JA 260-61, 268-73. Like the court below, Appellees are completely silent regarding this unrefuted testimony. Moreover, Appellee Priest Abraham Habte Sallassie testified as to a purported General Assembly meeting conducted by the so-called "Interim Committee" on November 15, 2015. Feb. 11, 2016 Tr. 18-22. He confirmed that to vote at that meeting, members had to have paid their $20 a month dues for the preceding six-month period. *Id.* at 22. So even Appellees recognized this as a bylaw requirement.

Finally, in what is an amazing admission from Appellees, they point out that under the Judge von Kann adopted procedures for their October 2016 purported election meeting, the "'requirement may be satisfied by "making a financial contribution, in any amount, prior to the election." *See* JA 80 Def.' MTD Ex. B at 3." Under that practice, Appellees state that simply donating a dollar was sufficient to allow a person to vote in Church elections. Far from refuting Appellant's interpretation of the 1996 Bylaws, Appellees have unequivocally admitted that their October 2016 election failed to conform with the 1996 Bylaws which explicitly requires financial contributions of record "***for at least six months preceding any such election***." JA 548 (emphasis added). Thus, contrary to Appellees' assertion and the Second Dismissal Order's findings, the 2014 and 2015 elections did not impose a requirement for financial contribution in excess of the requirements of the 1996

Bylaws. However, plainly Appellees' October 2016 election failed to meet the bylaw requirement that voting members' financial contributions had to occur for at least six months preceding the board election. And thus, any purported board elected by Appellees under such a procedure and any vote by such board to dismiss this action, are invalid.

II. Under DC Code Section 29-405.01(d), the Church's 2014 and 2015 elections were not invalid because held in a month other than October.

Appellees continue to cling to the argument that the Church's 2014 and 2015 elections were invalid because they were held in a different month than specified in the 1996 Bylaws.[1] Opposition at 12-16. DC Code Section 29-405.01 could not be clearer: " (d) The failure to hold an annual or regular meeting at the time stated in or fixed in accordance with the articles of incorporation or bylaws shall not affect the validity of any corporate action." Notwithstanding this provision, the Second Dismissal Order held that the 2014 and 2015 Church annual meetings were invalid because they were not held in October and that this code section was inapplicable because the Church did not meet the emergency meeting requirements set forth in the 1996 Bylaws. JA at 41-42. Appellees strain to support the Second Dismissal Order's plainly erroneous decision. They argue that "if there is an explicit bylaw

[1] We note that prior to the purported adoption of the 2012 Bylaws, the Church held its 2009 Board elections on August 5, 2009, not in October as the 1996 Bylaws provided. Among others, Appellee Abraham Habte Sallassie was elected to the Board at that time. *See* Plaintiff's Exhibit 20 (copy appended hereto).

provision for alternative procedures, such provision trumps Code § 29-405.01(d)." Opposition at 13.

That's an interesting argument but it finds no support in Section 29-405.01 or anywhere else in the DC Code; nor in the Church's 1996 Bylaws, which contrary to Appellees' argument contain no "explicit bylaw provision providing for alternative procedures." We could understand and possible agree with Appellees if the 1996 Bylaws **explicitly** stated that if an annual meeting failed to occur in October then the emergency meeting provisions of the bylaws would control. But the bylaws do not say that. The Church's bylaws simply provided a procedure to call emergency or special meetings. JA 549 (Def. Ex. 10, Article VIII(3).[2] Nothing in that provision can remotely be interpreted to transform the Church's annual meeting into an emergency meeting if the annual meeting is not conducted in October. Emergency or special meeting provisions in bylaws are not unusual. Indeed, DC law provides for the calling of special meetings. *See* DC Code Section 29-405.02. That does not mean that an annual meeting failing to be held on the date required by a corporation's

[2] The provision at issue in pertinent part states: "Emergency meetings of the General Assembly of parishioners may also be called by the Board of Trustees where circumstances justify such meetings, provided that parishioners shall receive notice of such special meetings at least 24 hours in advance." It does not say anything about an annual meeting held at a time other than October.

bylaws or articles of incorporation has to confirm to the special meeting requirements of DC Code Section 29-405.02.

Finally, Appellees take issue (Opposition at 14) with our fall back argument, and that is all that it was, pointing out that the Second Dismissal Order's finding that the Church failed to meet the emergency meeting notice requirement in the 1996 Bylaws was speculation unsupported by the record or record citation. Brief at 22-23. That is a plain and facial error of the order and a fair point for the Church to make on appeal. Indeed, the emergency meeting provision in the 1996 Bylaws required merely at least 24 hours advance notice, JA 549, whereas the 1996 Bylaws required 14 days advance notice of the annual meeting (JA 549, Article VIII(2)) and the 2012 Bylaws required 15 days advance notice of the annual meeting. JA 486. The trial court's findings based on speculation and contradicted by the record, cannot be allowed to stand.[3]

[3] Appellees seem to suggest (Opposition at 16 & n. 8) that the Church allowing Father Zelahem (one of the Appellees in this case) to address the 2015 annual meeting as to why he resigned from the election committee violated the emergency meeting provision in both sets of bylaws that limit the business to be conducted at such meeting to that which is identified in the meeting notice. If so, then that may render any action taken with respect to Father Zelalem invalid but cannot possibly infect action taken at the annual meeting that was properly noticed, such as electing board members. In any event, the election report plainly shows that other than allowing Father Zelalem to speak, the meeting took no action with respect to the matters he addressed. JA 359-60. So once again, Appellees' point is immaterial.

III. No evidence supports the conclusion that a quorum was lacking at the Church's 2015 General Assembly Board election.

Appellees contend the Second Dismissal Order's conclusion that a quorum was lacking based on the top vote getter (Legesse Tessema) receiving 69 percent of the minimum quorum vote (he actually received 73 percent (Brief at 26)), is supported because the top vote getter in the 2014 election (Dr. Getachew Metaferia), received 152 votes out of 155 counted. Opposition at 17. That proves nothing, however. First, the Second Dismissal Order did not rely on how many votes the top finisher received in the 2014 election, so that cannot be considered now to support the Second Dismissal Order's conclusion that a quorum was lacking. Second, the record is abundantly clear that by the summer of 2015 there were deep divisions in the Church which made it extremely unlikely that any board candidate would receive a near unanimous vote as occurred in 2014. Third, Dr. Metaferia, the top vote getter in the 2014 election, was a long time Chairman of the Board and highly respected in the Church, so it is not surprising he was a near unanimous choice in the 2014 election.[4]

[4] Appellees falsely imply Dr. Metaferia's near unanimous election in 2014 was typical of Church elections, stating, "However, the reported results for every other purported election do in fact suggest that receiving votes equivalent to 69 % (again it was actually 73 percent) of the minimum quorum evinces the absence of a quorum." Appellees provide no citation to other Church election occurring prior to 2014 to support this assertion. The only other Church election report in the record prior to 2014 is the 2009 election report, Plaintiff's Exhibit 20, which does not support Appellees' claim that the top vote getter typically receives some 90 percent

Other than raising a variety of arguments never passed upon by the court below (*see* Opposition at 19-20), Appellees fail to answer the bulk of our argument on this issue. Particularly compelling is their failure, like that of the Second Dismissal Order, to address the unrefuted testimony of Ms. Seyoun, who was tasked with determining whether a quorum was present at the 2015 election, and Mr. Bekele, who participated in the actual count of members, that a quorum was present. Their testimony was independent unrebutted evidence a quorum was present at the 2015 General Assembly board election which the Second Dismissal Order inexplicably ignored. Ms. Seyoun testified a quorum was present. JA 262. She testified the quorum was verified by a count of the persons present which she witnessed. JA 263. Mr. Bekele likewise confirmed a quorum was present. JA 271-72. Neither the Preliminary Injunction Denial nor the Second Dismissal Order addressed this testimony. As we pointed out in our Brief (at 30), although a trier of fact may reject testimony it finds not to be credible, the court was at least required to acknowledge this testimony and to explain why it was rejecting it, given its unrebutted character. *See Blanken & Blanken Inv. v. Keg, Inc.,* 383 A.2d at 1078 (finding of clearly erroneous when issue should have been resolved by the trial

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of the vote. Refence to Appellees' purported October 2016 election and to the Church's March 2016 election (Opposition at 17-18) have little probative value on this point given that the divisions existing in the Church in the Summer of 2015 had as a result of Appellees actions in September, split the Church into two separate factions holding two separate elections.

court). Appellees further do not dispute that not one of them choose to take the stand and assert a quorum was lacking at the election meeting. Not even Priest Zelalem, who testified for 78 pages of transcript and who was unequivocally present for the 2015 election, asserted that it lacked a quorum. JA 277-355. *See also* testimony of Priest Sallassie, Feb. 4, 2016 Tr. Pages 344-386; Feb. 11, 2016 Tr. 5-25.

So, let's summarize the evidence on this question.

From the Second Dismissal Order: Mr. Tessema got 130 votes: non probative. A previous meeting on March 7, 2015, showed the Church had 564 members: factually false. *See* Brief at 26 (in actuality, the most previous meeting of the General Assembly in the record had been held on January 18, 2015, at which time the Church had 518 members. JA 347). Plaintiff produced a report (Plaintiff's Exhibit 26) stating the Church had 532 members and did not explain the "sudden drop" from the March 7 meeting (a meeting that did not occur, Brief at 26; in fact, the number of Church members increased to 532 from the January 18, 2015, meeting). Board Secretary Debela made a typo in saying one third of 532 was 175 instead of 178. Could she have made a typo in saying there were at least 178 members persons at the election?: pure speculation.

From the record: The election committee report stated a quorum was present. JA 359. The minutes of the General Assembly meeting stated that 178 members were present out of 532 Church members, which constituted a quorum. JA 443.

Wolita Seyoun, the person tasked with actually verifying the number of members present testified a quorum was present. JA 262-63. Mr. Frehiwot Bekele, who assisted in counting the members at the election, testified a quorum was present. JA 271-72. No one testified that a quorum was lacking, including Appellees who were called as witnesses, Priest Zelalem (JA 277-355) and Priest Abraham Habte Selassie (Feb. 4, 2016 Tr. Pages 344-386; Feb. 11, 2016 Tr. 5-25).

Based on the above discussion, the Second Dismissal Order's findings that a quorum was lacking at the 2015 board election is manifestly plain error and must be reversed.

IV. Appellee's discussion with respect to the Church's 2016 election relies entirely on matters on which the trial court did not rely.

Appellees discussion concerning the Church's March 2016 election meeting can be disposed of without further discussion because the court below relied on none of these alleged issues in making its ruling with respect to that election proceeding.

V. Dr. Amare Kassaye remains the Aleka (Administrator) of the Church and an ex officio member of the Board of Trustees.

Appellees assert Dr. Amare Kassaye was terminated by the eight board members they elected in October of 2016. Opposition at 23. First of all, that cannot be the case, because the terms of the four board members elected in 2015, as discussed above, had not expired and they were still board members. Since these

four members did receive notice and an opportunity to participate in that board meeting, that board meeting was invalid as discussed in more detail below.

Moreover, Appellees, do not dispute that Dr. Kassaye was by his position as Church administrator or Aleka, an ex officio member of the board of trustees, entitled to notice and the opportunity to vote on all matters coming before the board. Although they half-heartedly assert Dr. Kassaye was terminated by the so-called interim committee (which they sneakily call the "interim board" *Id.* at 23), the interim committee was no official organ of the church and its actions find no support from any bylaw provision, as Appellee Sallassie admitted in his testimony. Feb. 11, 2016 Tr. at 8-11. Thus, even assuming that Appellees' October 2016 election was valid – and Appellees have now admitted they failed to follow the bylaws in conducting that election rendering it invalid, *see* page 4, supra – Dr. Kassaye, as a member of the Board was entitled to notice and the opportunity to vote on the subject of his ouster, which Appellees unlawfully denied him. As such anything conducted at that meeting cannot possibly be valid. *See In re Southeast Neighborhood House,* 93 B.R. 303 (Bankr. D.C. 1988) ("Improper notice to only one board member is sufficient to render the meeting invalid..."); *In re Blue Pine Group Inc.*, 457 B.R. 64, 72 (B.A.P. 9th Cir. 2011) (meeting held invalid where directors had been denied notice of the meeting).[5] *See also Stile v. Antico*, 272 A.D.2d 403, 707 N.Y.S.2d 227

[5] The following passage from the decision is pertinent:

(N.Y. App. Div. 2000); *Darvin v. Belmont Industries, Inc.,* 199 N.W.2d 542, 40 Mich. App. 672, 64 A.L.R.3d 349 (1972) (meeting invalid because of defect of notice to shareholder of closely held corporation); *Bourne v. Muskegon Circuit Judge,* 327 Mich. 175, 41 N.W.2d 515 (1950) (directors meeting invalid for defective notice); *Rapoport v. Schneider*, 29 N.Y.2d 396, 328 N.Y.S.2d 431, 278 N.E.2d 642 (N.Y. 1972).

Appellees response of what difference does it make since Dr. Kassaye would have been outvoted anyway is unavailing. *See* Opposition at 24. The short answer is that since Dr. Kassaye was excluded from the purported meeting (as were the four board members elected in 2015), actions taken at that meeting are invalid. The case of *Dolan v. Airpark, Inc*., 513 N.E.2d 213, 24 Mass. App. Ct. 714 (1987) is instructive:

> At the close of the Dismissal Hearing, the bankruptcy court recited its findings of fact and conclusions of law. It determined that under Nevada law, the directors of a corporation must participate in transactions outside the ordinary course of business and that removal of a director requires 2/3 of the shareholders' votes. The bankruptcy court found, based on the undisputed facts in the record, that: (1) there were four directors and shareholders of Blue Pine; and, (2) neither Pink nor Sweeney were notified of (and they were not present for) the February 4, 2009 board of directors' meeting where Pink and Sweeney were removed as directors, or the March 2, 2009 meeting where the bankruptcy case was authorized.

Id.

> Dolan claimed by affidavit in proper form to have received no notice of directors' meetings in early 1982.
>
> A fair reading of this is that [Dolan] did not receive any notice of the "emergency" meeting of April 24, 1982, and the record [24 Mass.App.Ct. 719] of that meeting supports an inference that there was no notice. Without proper notice, the actions taken at that meeting would have been invalid, including the removal of Dolan as a director. *Hurley v. Ornsteen*, 311 Mass. 477, 480-481, 42 N.E.2d 273 (1942). Peairs, Business Corporations § 462 (2d ed. 1971). * * * For summary judgment purposes, therefore, it must be assumed that Dolan was still a director, but since the corporation (as represented by the Reardons) did not regard him as such, it is reasonable to infer further that Dolan did not get notice of the directors' meeting of June 11, 1982, and that any action taken at it, including the steps to obtain a discharge of the Beard lien, was invalid.

Id., 513 N.E.2d at 215-16. Because the purported board meeting at which Dr. Kassaye was removed was invalid, he remains the Aleka of the Church and a member of the board. He and the other four members of the board had the right to notice and to participate in any decision to dismiss this action. That did not happen.

VI. A valid Church board meeting has not voted to dismiss this action.

Since the purported board meeting at which Dr. Kassaye was allegedly terminated was invalid for lack of notice to Dr. Kassaye and to the four board members elected in 2015, any action by the board – to the extent it constituted the legitimate board of the Church, and it does not -- to dismiss this action is also invalid. *See* cases cited above. Thus, Appellees' assertion that a majority of the board voted to dismiss this action is unavailing because for the reasons stated above such a vote did not occur in the course of a valid board meeting.

VII. This case is not moot.

Appellees argue this case is moot. Opposition at 25-28. It is not. There is a continuing controversy over the rightful composition of the Church's board of trustees. Appellees statement that this court has affirmed Plaintiff's request for injunctive relief is simply untrue so the basic premise behind Appellees' assertion of mootness is false. *See generally* JA 27-36. Likewise, this Court vacated the trial court's judgement below and remanded this case for further proceedings (*Id.* at 36), and this proceeding is an appeal from those proceedings. So, the judgement of the court below is not final and binding.

This case still presents the issue of the proper Church board. In this connection, this Court did not validate Appellees' October 2016 board election as Appellees falsely states. Opposition at 26. It merely held that the attempted ouster of Church board members by Appellees in September of 2015 did not by itself taint Appellees' October 2016 election. This Court's exact words were, "Setting aside for the moment any potential problems in the execution of the October 2016 election, that election was not tainted simply because antecedent actions may have been unlawful." JA 34. We now know by Appellees' admission that this election meeting was clearly tainted by their failing to enforce the bylaw provision for payment of dues for a six-month period preceding the election in order to vote. *See* discussion at pages 7-8, supra. Thus, the board purportedly elected in Appellees' election was

not a valid board of the Church. As for elections beyond 2016 either by the Church or the Appellees there is (due to the length of time that this case has dragged on) an absence of evidence in the record from which this court could conclude at this time that any such elections were valid. Given Appellees' failure to follow the bylaws with respect to their 2016 election, it is a fair inference that their subsequent elections are likewise invalid. It is a sad and unfortunate fact that this case is now almost seven years old; but the length of time Appellees' have wrongly occupied the Church does not allow them to continue their illegal occupation by prescription.

Under DC law, board members continue to serve in their positions until successors are elected. DC Code Section 29-406.05(d).[6] Assuming just for argument that both the Church's and Appellees' 2016 elections were invalid, that means the board consisting of the validly elected 2014 and 2015 members continue to constitute the Church's true board until there is a valid election. All of this is to say that a valid controversy exists as to the rightful governing board of the Church and that this proceeding needs to be remanded for an evidentiary trial on the merits with full discovery to resolve this issue.

[6] DC. Code Section 29-406.05(d) reads, "Despite the expiration of a director's term, the director shall continue to serve until the director's successor is elected, appointed, or otherwise designated and until the director's successor takes office, unless otherwise provided in the articles of incorporation or bylaws."

VIII. Conclusion.

The Second Dismissal Order's conclusion that Appellant lacks standing to bring this case is erroneous and must be reversed.

The 2014 and 2015 Church elections did not violate the Church's bylaws based on the requirement that members must have been current for six months preceding the election in payment of their dues. This is plainly a requirement of the 1996 bylaws as Appellees themselves acknowledged when they purported to hold a general assembly meeting – albeit an invalid one in November of 2015.

That Church board elections were held in months other than October as specified in the 1996 Bylaws did not invalidate those elections. Appellees interpretation of the DC Code Section 29-405.01(d), which specifically states that failure to hold an annual or regular meeting at the time specified in the bylaws or articles does not invalidate action taken at such a meeting, would make that code section meaningless. Contrary to the decision below, holding the election meeting in a different month than October did not transform that meeting into an emergency meeting. And even if it did somehow convert the annual meeting into an emergency meeting, it was plainly erroneous speculation on the part of the court below to conclude that the emergency meeting provision requiring at least 24 hours advance notice had not been complied with when the annual meeting requirement of both sets

of bylaws required advance notice well in excess of 24 hours (14 and 15 days respectively).

Finally, abundant evidence supports the conclusion that the 2015 election meeting was conducted with the required quorum. The decision below that a quorum was lacking was based on erroneous findings and speculation, and ignored contrary unrebutted evidence that a quorum existed.

The court below's finding that the Church's 2016 election was invalid fails because it is based on the same erroneous conclusions the court made concerning the Church's 2014 and 2015 elections. Appellees arguments to buttress the decision below on this point are immaterial because the court below did not consider or resolve the matters Appellees raise.

Appellees October 2016 election cannot be credited since Appellees admit they did not follow the 1996 bylaw provision which limited voting to persons who were financial contributors of record for at least six months prior to the election. JA 548. Appellees admit they allowed persons to vote if they contributed but one dollar to the Church; this was plainly inconsistent with the 1996 Bylaws. *Id.*

Appellees' board's vote to dismiss this action was invalid because Dr. Amare Kassaye, who has never been validly dismissed as the Aleka of the Church and thus remains a board member, and the four board members validly elected in 2015 had no notice and opportunity to participate in that meeting.

This case is not moot. A live controversy exists concerning the proper persons to govern the Church and Plaintiff's/Appellant's request for injunctive relief is outstanding. Accordingly, the decision below should be vacated, and case remanded for trial.

Respectfully submitted,

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August 9, 2022

CERTIFICATE OF SERVICE

I certify that I have caused the foregoing Brief to be served on counsel for the parties listed below, on or before August 9, 2022, via the Court's electronic filing system and/or via email (if indicated). I further certify that I have reviewed Super. Ct. Civ. R. 5.2 and the Court's Order No. M-274-21, and that this brief complies with the applicable requirements of those provisions.

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Appendix: Case 21-CV-0262

Plaintiff's Exhibit 20

Redaction Certificate

Plaintiff's Exhibit 20

08/05/2009

Present at Today's Meeting:

1. Father Hailu Zeleke;
2. Father Ayele Woldehawariat;
3. Deacon Elias Meaza;
4. Mr. Yared Seifu;
5. Mrs. Yemiwedish Bekele;
6. Mrs. Rahel;
7. Mrs. Almaz Fekadeselassie.

THE AGENDA OF MEETING: COUNTING OF VOTES

On this day the names of the nominees for the Board of Trustees was presented to the general membership for voting and the election proceeded. In the presence of the complete nomination committee the votes were counted and the results are as follows:

1. Dr. Getachew Metaferia (86)
2. Father Abraham Habtie Selassie (73)
3. Mrs. Wessen Debela (57)
4. Mr. Samuel Berhanu (53)
5. Mr. Shemeles Arega (52)

The following persons have been registered as alternates:

1. Miss Teguaded Kebede (44)
2. Mr. Shewakena Haileyesus (40)

The remainder of the nominees obtained the following votes:

1. Mr. Getachew Degefu (39)
2. Mr. Mesfin Abebe (30)
3. Mr. Debebe Beyene (29)

With these results the meeting was concluded.

08/05/09
፳፱/፲፩/፳፻፩

<u>በዕለቱ፡ በስብሰባው፡ ላይ፡ የተገኙ</u>

፩ መጋቤ፡ ሃዲሳት፡ ቀሲስ፡ ኃይሉ፡ ዘለቀ
፪ ቀኝ፡ጌታ፡ አየለ፡ ወ/ሐዋርያት
፫ ሊቀ ዲያቆን፡ ቴዎድሮስ፡ መንገሻ
፬ አቶ፡ ደረጀ፡ ሠይፉ
፭ ወ/ሮ፡ የምወድሽ፡ በቀለ
፮ ወ/ሮ ሁሴል (?)
፯ ወ/ሮ፡ አለምነሽ፡ ሊቀይ ሠገጎ

<u>አጀንዳ ፦ የድምፅ፡ ቆጠራ</u>

በዛሬው፡ ዕለት፡ ለገለልተኞቹ፡ ቦርዱ፡ ያገለገሉትን፡ በዕጩነት፡
የቀረቡትን፡ ማንኛውንም፡ ለድምፅ፡ ለመገናኘት፡ ፖሊስ፡ ሰሚዎች፡
ሁሉም፡ ምርጫውን፡ ተካሂዷል። የኮሚቴው፡ የምርጫ፡ ውጤት፡
ከጠቅላላ፡ ውስጥ፡ የአስመራጭ፡ ኮሚቴው፡ በተገኘበት፡
ተቆጥሮ፡ ተቀምጧል፡

፩ ዲያቆን፡ ፈቃዱ፡ መስፍን ፹፮ (86)
፪ ፊታውራሪ ደበበ፡ ከበደ፡ ሃ/ሥላሴ ፸፫ (73)
፫ ወ/ሮ፡ ሠናይት፡ ደበላ ፶፯ (57)
፬ ዶ/ር፡ ተመስገን፡ ገብሬ ፶፫ (53)
፭ አቶ፡ ተመስገን፡ ከበደ ፶፪ (52)
በመጨረሻም፡ በመሰረቱ፡ ያለፉ፡ ሰዎች፡ በተጠባባቂነት፡ ይቆያሉ፡
፮ ወ/ት፡ ፍሬሕይወት፡ ገበያ ፵፬ (44)
፯ አቶ፡ ሽፈራው፡ ሃይለስላሴ ፵ (40)
ደግሞ፡ በመጨረሻ፡ ተመርጠዋል፡፡ ቀሪዎቹ፡ ዕጩዎች፡
፰ አቶ፡ ዳንኤል፡ ደጉ፡ ፴፱ (39)
፱ አቶ፡ መኮንን፡ አበበ ፴ (30)
፲ አቶ፡ ደበበ፡ በየነ ፳፱ (29) በመሆኑም፡ የምርጫው፡ ውጤት፡ ይሄ፡ ነበር።

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/*George L. Lyon, Jr.*	21-CV-0262
Signature	Case Number(s)
George L. Lyon, Jr.	August 9, 2022
Name	Date
gll@bergstromattorneys.com	
Email Address	