

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF
SUPERIOR COURT DIVISION
FILE NO.: 24 CVS 007245-910

Brian J. Hopper, Sr.; William Iffland;
Ruth Iffland; Gerald Hayes; Emily Hayes;
Mack Holder; Quida Holder; Matthew
Holder; Elizabeth Holder; Lloyed
Murphy; DiAnn Murphy; Jason Oliver;
Jennifer Oliver; Virginia Perry; Roney C.
Perry; Roger Taylor; Donna Wheeler;
Bonita E. Whitman; and Russell Wrenn,

Plaintiffs,

v.

Faith Baptist Church of Knightdale, N.C.,
Inc.,

Defendant.

ORDER GRANTING MOTION FOR
PRELIMINARY INJUNCTION
(NCRCP 65)

THIS MATTER comes before the undersigned, the Honorable Gale M. Adams, North Carolina Superior Court Judge, upon Plaintiffs' *Motion for Temporary Restraining Order and Preliminary Injunction*. The Court, having previously entered an order granting Plaintiffs' *Motion for Temporary Restraining Order* on March 13, 2024, heard Plaintiffs' *Motion for Preliminary Injunction* on April 12, 2024.¹ Having considered the parties' pleadings, testimony, affidavits, and arguments, the Court GRANTS Plaintiffs' *Motion* and enters a preliminary injunction.

1. This matter was initially filed on March 1, 2024, asserting claims for declaratory relief pursuant to N.C. Gen. Stat. §§ 1-253 to 1-267, and claims for injunctive relief pursuant to Rule 65 of the North Carolina Rules of Civil Procedure. Plaintiffs' claims arise from a March 3,

¹ The TRO was extended multiple times with the consent of the parties due to scheduling conflicts and the availability of the Court.

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2024 special business meeting for Defendant Faith Baptist Church of Knightdale, N.C. Inc., (“FBC”) a North Carolina nonprofit corporation. At the special business meeting, FBC members voted on whether to adopt a plan of corporate dissolution. Plaintiffs assert that the meeting was improperly noticed, that members ineligible to vote under FBC’s Bylaws voted, and that the otherwise eligible members were wrongfully excluded from voting.

2. On March 4, 2024, the Court heard the Plaintiffs’ *Motion for a Temporary Restraining Order* (TRO), ultimately granting it, and scheduling a return hearing on the TRO and Motion for Preliminary Injunction for March 18, 2024, which was continued until April 12, 2024 due to motions practice and scheduling conflicts.

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3. Defendant, filed a *Motion to Dismiss* pursuant Rules 12(b)(1) and 12(b)(6) on March 8, 2024.

4. On March 14, 2024, Plaintiff filed their First Amended Complaint, increasing the number of Plaintiffs from two to nineteen and asserting additional claims. Plaintiffs’ First Amended Complaint alleges that (1) the March 3, 2024 special business meeting was improperly noticed; (2) members that should have been eligible to vote were wrongfully excluded from voting, (3) Defendant allowed ineligible members to vote (4) the proposed *Plan Of Dissolution*, prominently and repeatedly branded a merger, violated Defendant’s Bylaws in that it made the church a member of a denomination; and (5) the proposed *Plan Of Dissolution* violated Defendant’s Bylaws in that the dissolution creates a personal benefit for individual members of the church in the form of gratuitous severances.

5. On March 15, 2024, Defendant filed Motions to Dismiss Plaintiffs’ Amended Complaint pursuant Rules 12(b)(1) and 12(b)(6).

6. On March 18, 2024, the Honorable Paul Ridgeway heard FBC's, *Motions to Dismiss the Amended Complaint*, denying the *Motion* on Rule 12(b)(1) grounds and withheld any ruling on Rule 12(b)(6) grounds. In particular, regarding Rule 12(b)(1), Judge Ridgeway found that this case presents a property dispute that can be resolved by using "neutral principles of law, developed for use in all property disputes" and that the matter may be "resolved on the basis of principles of law equally applicable to the use of properties of an unincorporated athletic or social club." *Atkins v. Walker*, 284 N.C. 306, 318 (1973).

7. The present Motion was heard April 12, 2024. Both parties were represented by counsel and witnesses were called and subject to cross-examination. Plaintiffs called William Iffland and Defendant's clerk Susan Curtis. Defendant's called Board of Trustees member Lynn Gay and Senior Pastor Jason Little.

8. The Court finds Plaintiffs have demonstrated a likelihood of success on the merits.

9. There is ample evidence of irreparable harm and the need for protecting the Parties' rights during the pendency of litigation. Plaintiffs will suffer immediate and irreparable harm absent an injunction in that the church will be dissolved and the church's assets disposed of prior to such time as Plaintiffs' claims may be adjudicated. This harm is irreparable in that upon dissolution of Defendant, Plaintiffs cannot achieve redress.

NOW THEREFORE, upon the foregoing finds, it is hereby **ORDERED**:

10. Plaintiffs' *Motion Preliminary Injunction* is **GRANTED** and Defendant Faith Baptist Church of Knightdale N.C., Inc. and each and all of their directors, trustees, officers, agents, representatives, employees, attorneys, successor, and assigns, and any and all persons or entities acting in concert or participation with Defendant are hereby **ENJOINED** from taking

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The Court finds that on March 3, 2024, FBC scheduled a special business meeting to vote on whether to adopt a *Plan Of Dissolution* (see *Compl.* Exhibit E), which would terminate Plaintiffs' membership interest in the church which they have called home for many years. FBC circulated formal notice of the meeting to "active members" sometime after February 22, 2024. That February 22, 2024 notice included a copy of the proposed *Plan Of Dissolution*. However, under the terms of FBC's Bylaws, "[n]otice of a special business meeting must be given from the pulpit for at least two (2) consecutive services before the scheduled date of the meeting." *Compl.* Exhibit A, Art. V, ¶ 2. The Court finds that pursuant to FBC's Bylaws, notice of the March 3 special business meeting should have been provided no later than February 18, 2024.

Pursuant to N.C. Gen. Stat. § 55A-14-02(d), whenever dissolution is proposed, "the corporation shall give notice of the membership meeting to those members in accordance with G.S. 55A-7-05. The notice shall state that "the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and contain or be accompanied by a copy or summary of the plan of dissolution." (emphasis added).

Prior to February 22, 2024, the only notice of the March 3 special business meeting provided by Defendant was a series of announcements made from the church pulpit on February 18 and February 25, which discussed "uniting" or "merging" with the Summit Church Knightdale. FBC's extract of the announcement is attached to the *Complaint* in this matter as Exhibit D.

The Court finds that these "announcements" did not include a summary or copy of the *Plan Of Dissolution* as required by N.C. Gen. Stat. § 55A-14-02(d) and were therefore defective as notice of the special business meeting because they did not include a "summary of copy of a plan of dissolution." Further, Plaintiffs presented competent evidence that FBC members who should have been allowed to vote, did not receive the February 22 mailing. Accordingly, the Court finds that not all eligible members received the required notice of the March 3 special business meeting. Plaintiffs have demonstrated a likelihood of success on the merits that the March 3 meeting was improperly noticed.

The Verified First Amended Complaint and the testimony of Plaintiff Iffland and Ms. Susan Curtis, the church clerk, leads the Court to find that the "active" and "inactive" membership rolls maintained by the church (*Compl.* Exhibit G), contained errors which precluded otherwise eligible FBC members from voting. In order to be "inactive" under FBC's Bylaws, a member must have "been absent from regular services of the church for a period of three (3) months or more without being considered as providentially hindered." (*Compl.* Exhibit A, Art. III.2.D.1.) Plaintiff Iffland testified that, except for a brief period of time in December 2023, he consistently attended FBC's services. Earlier in this case, at the March 4 temporary restraining order hearing, Gerald Hayes, who later joined as one of the nineteen Plaintiff... [1]

Deleted: The Court's findings include discrepancies as to the formation and population of the eligible voter pool, notice of the special business meetings, and that at the proposed *Plan Of Dissolution* conflicts with the "affiliations" and "dissolution" articles of FBC's Bylaws.

any action in furtherance of corporate dissolution or any action to execute and/or perform the above-referenced *Plan Of Dissolution*.

11. The injunction set forth in the preceding paragraph shall remain in effect until Plaintiffs' claims are adjudicated on the merits; entry of a dispositive order disposing of all of Plaintiffs' claims, or further order of the Court.

12. Plaintiffs shall tender a cash security bond of \$25,000.00 to the Wake County Clerk of Superior Court within two (2) days of entry of this order.

IT IS SO ORDERED, this the ____ day of April, 2024

The Honorable Gale M. Adams
Superior Court Judge Presiding

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