

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

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NOTICE OF DECISION

**Daniel Hynes, ESQ
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Case Name: **The Church of the Sword v Town of Westmorland**
Case Number: **213-2014-CV-00185**

Enclosed please find a copy of the court's order of March 06, 2015 relative to:

Order on Motion for Summary Judgment

March 06, 2015

James I. Peale
Clerk of Court

(555)

C: Silas Little, III

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

CHESHIRE, SS.

No. 213-2014-CV-185

THE CHURCH OF THE SWORD

v.

TOWN OF WESTMORELAND

ORDER

The Plaintiff, the Church of the Sword, appeals the denial of a religious property tax exemption under RSA 72:23, III by the Town of Westmoreland. The Town has moved for summary judgment. The Church of the Sword objects. For the following reasons, the motion for summary judgment is GRANTED.

I. Standard

Summary judgment can only be granted if no genuine issue as to any material fact exists, and the moving party is entitled to summary judgment as a matter of law. RSA 491:8-a; see also Green Mtn. Ins. Co. v. Bonney, 131 N.H. 762, 766 (1989).

When considering a motion for summary judgment, the trial court cannot weigh the contents of the parties' affidavits and resolve factual issues, but must determine whether a reasonable basis exists to dispute the facts claimed in the moving party's affidavits at trial; if so, the trial court must deny the motion for summary judgment.

Sabinson v. Tr. of Dartmouth Coll., 160 N.H. 452, 460 (2010); Iannelli v. Burger King Corp., 145 N.H. 190, 192–93 (2000). The New Hampshire Supreme Court has emphasized that while summary judgment affords savings in time, effort and expense,

the value of judicial economy may not be gained at the expense of denying a litigant the right of trial where there is a genuine issue of material fact to be litigated. Concord Group Ins. Co. v. Sleeper, 135 N.H. 67, 69 (1991). A court cannot resolve issues of credibility or weigh evidence on summary judgment. Iannelli, 145 N.H. at 192. Mindful of this standard, the Court sets forth the facts of this case in the light most favorable to the non-moving Plaintiff.

II. Background

The Church of the Sword asserts that it is a religious organization located in Westmoreland, New Hampshire. On April 2, 2014, it applied for a religious based property tax exemption under RSA 72:23, III for property located at 1114 Route 12, Westmoreland. It claims that this property is used as a parsonage by its pastor, Kevin Bloom. The Town denied the request for tax exemption on June 30, 2014. The Church of the Sword submitted additional documentation including its Articles of Incorporation, Mission Statement, and Statement of Principles to the town on August 8, 2014. The Town denied the exemption again on August 26, 2014.

The Church of the Sword is not part of a larger religious organization. (Pl.'s Interrog. 2.) It holds weekly services, weddings and funerals, and performs community service. (Pl.'s Interrog. 2). Its mission statement provides:

It is our mission to provide not only a space, but a context and a community, so that people from different faiths, backgrounds, and locations can come together in a voluntary way to share knowledge and support; improving the conditions of ourselves as individuals and therefore of the Church and the world by logical extension.

(Pl.'s Exh. G.) Its Statement of Principles states “[m]embers of the Church of the Sword come from many faiths. We do not believe that any one religion holds a

monopoly on the truth, nor do we believe that the universe is fully knowable.” (Pl.’s Exh. H.) It further emphasizes the importance of education, self-ownership, independent thought, and Article X of the New Hampshire Constitution. (Pl.’s Exh. H.) It also states “[w]e believe in an active struggle against those against those who would deprive us of life and liberty. We believe in studying and applying the martial path in the judicial and legislative arenas, as well as in self-defense” and states “Ante Omnia Armari ‘Before all else, be armed.’” (Pl.’s Exh. H.)

The Church of the Sword’s weekly services include “[c]onfrontation, which is done with swords, Announcements of members in hospital or otherwise afflicted, Communion, Readings and Monologues, Instrumentals, the Offertory, and pie.” (Pl.’s Interrog. 3.) The Church of the Sword provides the following non-inclusive list of works forming the basis of its tenets: *The Book of Five Rings*, Miyamoto Musashi (1645); *The Tao de Ching*, Lau Tzu (c. 600 BC); *The Art of War*, Sun Tzu (1910); *Der Einzige und sein Eigentum*, Max Stirner (1845). (Pl.’s Interrog. 4.) It also ordains pastors who, among other requirements, must run a service, organize an “approved event”, and fulfill the “Trial by Combat” requirement by “win[ning] 6 of 10 bouts” against opponents chosen by the clergy. (Pl.’s Interrog. 6.)

III. Analysis

RSA 72:23, III exempts the following from property taxation:

Houses of public worship, parish houses, church parsonages occupied by their pastors, convents, monasteries, buildings and the lands appertaining to them owned, used and occupied directly for religious training or for other religious purposes by any regularly recognized and constituted denomination, creed or sect, organized, incorporated or legally doing business in this state and the personal property used by them for the purposes for which they are established.

The applicant bears the burden of demonstrating its eligibility for such a tax exemption.
RSA 72:23-m.

The Court construes RSA 72:23 according to the rules of statutory construction. In re Alexis O., 157 N.H. 781, 785 (2008). Statutory language must be construed according to its plain and ordinary meaning. Id.

We construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result. Moreover, we do not consider words and phrases in isolation, but rather within the context of the statute as a whole. This enables us to better discern the legislature's intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme.

Id. (internal citations removed). "In construing a religious exemption statute, we adopt neither a liberal attitude because it is charity, nor a hostile attitude because it seeks exemption from taxation." Appeal of Nashua (N.H. Bd. of Tax & Land Appeals), 155 N.H. 443, 445 (2007).

The Court first notes that the Church of the Sword offers no evidence that it is "regularly recognized" as a religious denomination as required under RSA 72:23, III. It is not part of any larger religious organization and it has been holding services for only four and a half years. Therefore, to the extent that this provision of the statute is consistent with the First Amendment to the U.S. Constitution, the Church of the Sword does not meet the definition of a "regularly recognized" religious denomination and as such cannot qualify for a tax exemption under RSA the statute.¹

¹ The U.S. Supreme Court has held that a state may not "pass laws which . . . prefer one religion over another." Walz v. Tax Comm'n of City of N.Y., 397 U.S. 664, 667 (1970); see also Larson v. Valente, 456 U.S. 228, 244 (1982) ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another."). Considering this, the Supreme Court upheld a state property tax exemption because it granted exemptions to "all houses of religious worship." Walz, 397 U.S. at 673. In the context of federal tax exemption for churches, the U.S. Court of Federal Claims has held that "[a] new religious organization should not be held to a standard only an established church can satisfy." Church of the Visible Intelligence that Governs the Universe v. United States, 4 Cl. Ct. 55,

The Church of the Sword also does not qualify for a tax exemption under the statute because it is not a church or other religious group. It bases its application on the grounds that Mr. Bloom occupies a “church parsonage.” The property in question can only be a “church parsonage” if the Church of the Sword is a “church.” RSA 72:23, III. Moreover, the statute states that the Church of the Sword must be a “denomination, creed, or sect”. *Id.* Given the context of the statute and the ordinary meaning of these words, “denomination, creed, or sect” clearly refers to a *religious* denomination, creed, or sect. See Appeal of Liberty Assembly of God, 163 N.H. 622, 629 (2012) (exempt property must be owned by a “religious entity”); E. Coast Conf. of the Evangelical Covenant Church of Am., Inc. v. Town of Swanzey, 146 N.H. 658, 663 (2001) (property must be owned by a “religious organization”).

The Court recognizes that there is no concrete definition of “church” or “religious.” See Found. of Human Understanding v. United States, 88 Fed. Cl. 203, 219 (2009) (discussing the complexities of defining “church”). There are, as the Church of the Sword argues, a wide variety of religions and churches, that are not easily summed up with simple definitions. Current New Hampshire case law offers little guidance as to what constitutes a church or a religion within the meaning of the statute, as most of the cases about RSA 72:23, III involve clearly religious entities engaging in non-religious uses of properties. See Appeal of Liberty Assembly of God, 163 N.H. at 631 (church bathrooms, caretaker quarters, and dorms did not serve religious purpose); Nashua,

65 (1983); see also United States v. Meyers, 906 F. Supp. 1494, 1509 (D. Wyo. 1995) (suggesting that the First Amendment forbids governmental discrimination against new religions). With that in mind, the Court recognizes that there may be constitutional concerns in denying a property tax exemption to a newly formed religious group solely because it has not yet become “regularly recognized”. However, because the Church of the Sword fails to qualify under other provisions of RSA 72:23, III, the Court need not further address this matter.

155 N.H. at 445–46 (2007) (storage of religious items by church did not have religious purpose). The New Hampshire Supreme Court case Haas v. Town of Ashland is instructive, however. See 122 N.H. 865, 865 (1982). In that case, the Court found that an alleged church whose primary mission was “to search for the holy grail and other treasures” did not qualify for a religious property tax exemption under RSA 72:23, III. Id.

In this case as well, the Court need not arrive at a precise definition of “church” or “religious”. Like the church in Haas, the Church of the Sword does not fall into the grey area of what might be considered a “church” or “religious” under the plain and ordinary meanings of the words. Id. It is clear that to be a “church” or to be “religious”, an organization must do more than simply have a set of beliefs about something and apply traditionally religious vocabulary to its practices.

Based on the evidence before the Court, the Church of the Sword is clearly a social organization that uses religious vocabulary to describe its practices. Its doctrine relates to the importance of education, self-ownership, and Article X to the New Hampshire Constitution, all of which are far more related to politics and self-improvement than to religion. Its primary mission, according to its Mission Statement, is about “sharing knowledge and support”, which is clearly social, not religious. Although it holds a weekly event that it calls “services,” it provides no evidence that the topics discussed at these services are in any way religious. Moreover, the fact that it engages in community service and has members who may be religious, is hardly unique to religious organizations and churches. There is therefore no genuine issue of material fact on the question of whether the Church of the Sword is a church or religious within

the meaning of the RSA 72:23, III. Because it offers no facts suggesting that it is a church or religious, the Town is entitled to judgment as a matter of law.

On a final note, the Church of the Sword argues that this determination violates the First Amendment because “[i]t appears Defendant is denying the tax exemption because they do not like and/or share defendant’s [sic] religious beliefs.” (Pl.’s Obj. at 8.) The Church of the Sword offers no evidence to suggest that this was the basis of the Town’s denial. Rather, all evidence suggests that the exemption was denied because the Church of the Sword is neither a church nor religious. Making such a determination is well within the constitutional powers of the Town and this Court, as the New Hampshire and U.S. Supreme Courts have both upheld the constitutionality of religious based property tax exemptions. Waltz, 397 U.S. a 676–80; Appeal of Emissaries of Divine Light, 140 N.H. 552, 558 (1995) (upholding constitutionality of RSA 72:23, III). The power to make religious based property tax exemptions necessarily includes the power to decide what organizations qualify as “religious.” The Court makes no judgment as to the merits of the Church of the Sword’s beliefs or practices, but rather finds that those beliefs and practices do not meet the definition of religious. See Assembly of God, 163 N.H. at 631.

Conclusion

For the foregoing reasons, the Defendant's motion for summary judgment is
GRANTED.

SO ORDERED.

Date

3/6/15


John C. Kissinger, Jr.
Presiding Justice