

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. RICHARD E GORDON

CASE NO. C20155733

DATE: July 17, 2017

RIP G ECONOMOU
Plaintiff,

vs.

ST DEMETRIOS GREEK ORTHODOX CHURCH
Defendant

UNDER ADVISEMENT RULING

IN CHAMBERS UNDER ADVISEMENT RULING

Pending before the Court is St. Demetrios Greek Orthodox Church, Inc.'s ("St. Demetrios") July 19, 2016, Motion to Dismiss Plaintiffs' Complaint or, in the Alternative, Motion for Stay of All proceedings and to Compel Arbitration. On December 6, 2016, following extensive briefing and a hearing, the Court resolved much of the pending motion, finding that St. Demetrios' arbitration process potentially could be invoked. The Court, however, set an evidentiary hearing to determine whether appropriate notice of the arbitration procedures was provided. The hearing took place on May 2-3, 2017, with closing arguments on June 5, 2017. For the following reasons, the Court will grant the Motion in part and deny the Motion in part.

A. Background

Plaintiffs are a group of 20 former Parishioners ("Parishioners") at St. Demetrios who contributed money to the church beginning in 2006. Parishioners allege that the contributions were made solely to facilitate the purchase of land on River Road in Tucson as the site for St. Demetrios' new church. Although St. Demetrios purchased the River Road property, it has since sold it, and Parishioners have sued based in contract for return of their contributions.

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In this second Motion to Dismiss, St. Demetrios seeks to enforce the Greek Orthodox Archdiocese of America's Dispute Resolution Procedures ("Archdiocese Dispute Resolution Procedures") through dismissal or a stay. The Archdiocese Dispute Resolution Procedures are contained within a comprehensive set of written regulations that govern the Greek Orthodox Archdiocese of America ("Archdiocese Regulations"). Because the Archdiocese Dispute Resolution Procedures became effective in 2007, around the same time when solicitation of the contributions at issue began, the Court held an evidentiary hearing to assess what notice was given to Parishioners, and what knowledge Parishioners otherwise had, about the Archdiocese Dispute Resolution Procedures.

B. Factual Findings

The Court has considered the evidence, including the exhibits and testimony, and evaluated credibility as necessary. The Court finds the following facts:

1. The Greek Orthodox Church of America is a hierarchal organization.
2. The Greek Orthodox Church of America's Archdiocese Regulations have separate parts that directly apply to the "Archdiocese" (Part One), the "Metropolis" (Part Two), and the "Parish" (Part Three – entitled "Uniform Parish Regulations" or the "UPRs").
3. St. Demetrios is a Parish within the Greek Orthodox Church of America. The Archdiocese Regulations, including its UPRs, apply to St. Demetrios.
4. "Membership in a Parish means that you participate in the life of the church at the local level."
5. Members of a Parish are bound by the Archdiocese Regulations.
6. Parishioners were longtime members of St. Demetrios and were bound by the Archdiocese Regulations. Some of Parishioners' memberships date as far back as the 1960s.
7. The Archdiocese Regulations are changed from time to time. Hard copies of new versions are not sent to the Parishes but, instead, they are posted online on the Archdiocese website.

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8. In 2006, the written Archdiocese Dispute Resolution Procedures were approved to be added as Part Four to the Archdiocese Regulations.
9. The Archdiocese Dispute Resolution Procedures are mandatory and cover, among other things, disputes which involve “Church property” and disputes “that pertain to the life of the Parish or Church community.”
10. Beginning in 2006, St. Demetrios began efforts to solicit contributions which Parishioners contend was solely to facilitate the purchase of land on River Road as the site for a new church. Although St. Demetrios purchased the River Road property, it has since sold the land.
11. On February 10, 2007, the new version of the Archdiocese Regulations, with the addition of the Archdiocese Dispute Resolution Procedures, was placed on the Archdiocese’s website.
12. On September 15, 2008, Father Earl James Cantos, Jr. (“Father Earl”) became the head Priest at St. Demetrios. Father Earl is a trained attorney.
13. The Archdiocese Dispute Resolution Procedures were referenced in two editions of the church’s official newspaper, the *Orthodox Observer*, in September 2006 and March 2008. The Archdiocese Dispute Resolution Procedures were more fully discussed in the September 2007 edition of the *Orthodox Observer*.
14. In 2009, Father Earl spoke about the existence of the new Archdiocese Dispute Resolution Procedures in front of the congregation, but he did not go into any detail.
15. Hard copies of the Archdiocese Regulations were available at St. Demetrios within its office, at General Assemblies (churchwide business meetings), and sporadically in the narthex. The Court assumes and thus finds that hard copies would have contained the new Archdiocese Dispute Resolution Procedures some reasonable period after February 2007.

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16. Parish members can serve on the “Parish Counsel,” which is the Board of Directors for the Parish. It is church policy for a member who serves on the Parish Council to acknowledge reading and understanding the Archdiocese Regulations, including the UPRs. Although the Priest is required to send his written acknowledgment to the Metropolis that newly elected Parish members received training on the UPRs, St. Demetrios could locate only one such acknowledgment and it was for the year 2014.
17. A “Welcome to the Parish Council” pamphlet, which is supposed to be given to incoming Parish Council members, includes an obligation “to know and abide by the Uniform Parish Regulations.”
18. Parish Council members recite an “affirmation” or an oath which includes an obligation to uphold “the Charter and Regulations of the Greek Orthodox Archdiocese of America.” A similar affirmation/oath is taken by directors and officers in the “Greek Orthodox Ladies Philoptochos,” a philanthropic society that helps the poor.
19. Parishioners Michael Papanikloas, Rip Economou, and Susan Parker Hotchkiss served on the Parish Council and took affirmations/oaths to uphold the Archdiocese Regulations. Their service and oaths postdate the 2007 addition of the Archdiocese Dispute Resolution Procedures. These Parishioners had access to the Archdiocese Regulations and, in fact, they were given their own hard copies.
20. Parishioner Kiki Kinkade also was on the Parish Council. But her term overlapped the 2007 addition of the Archdiocese Dispute Resolution Procedures and the last affirmation/oath she took was in 2005.
21. Parishioner James Ruboyianes, George Stathis, and Anthony Mamakos also were on the Parish Council. James Ruboyianes and George Stathis served before the 2007 addition of the Archdiocese Dispute Resolution Procedures, and no evidence was presented as to when Anthony Mamakos served.

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22. Parishioners Nora Retsinas and Beth Ruboyianes served on the Greek Orthodox Ladies Philoptochos. But they took their oaths in the 1970s and 1990s respectively.
23. Parishioner George Makris learned about the Archdiocese Dispute Resolution Procedures in 2009, he had discussions (and purportedly disagreements as well) about them with Father Earl, and he continued to make contributions to St. Demetrios.
24. On October 8, 2015, a dispute arose regarding, among other things, the use and sale of the River Road property. A letter was written to the San Francisco Metropolis which referenced the Archdiocese Dispute Resolution Procedures. Although some of the Parishioners joined the letter, it was written by a non-party parishioner (Dora LaManatia) and most joined without fully reading or fully understanding the totality of its contents.
25. The Archdiocese Regulations and the Archdiocese Dispute Resolution Procedures were not made available on St. Demetrios' local website until 2016. Father Earl placed them on St. Demetrios' website when he "realized that there were people that didn't know we were under the UPRs."

C. Discussion

Arizona contract law governs whether Parishioners are bound by the Archdiocese Dispute Resolution Procedures given their voluntary membership at St. Demetrios. *See Savoca Masonry Co., Inc. v. Homes & Son Const. Co., Inc.*, 112 Ariz. 392, 395, 542 P.2d 817, 820 (1975); *Rowland v. Union Hills Country Club*, 157 Ariz. 301, 304, 757 P.2d 105, 108 (App. 1988); *Aspell v. Am. Contract Bridge League of Memphis, Tenn.*, 122 Ariz. 399, 401–02, 595 P.2d 191, 193–94 (App. 1979). That St. Demetrios is a church does not necessarily change the analysis. *See, e.g., Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 360-61 (D.C. 2005). So long as a court does not cross into ecclesiastical matters, it is appropriate to apply neutral legal principles, including those based in contract, in resolving a dispute involving a religious organization. *See, e.g., Dobrota v. Free Serbian Orthodox Church St. Nicholas*, 191 Ariz. 120, 126-27, ¶¶ 26-30, 952 P.2d 1190, 1196-97 (App. 1998) (applying

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contract principles and reversing trial court's decision that a priest had not exhausted his administrative remedies under a church constitution).

Although neutral contract principles generally would require Parishioners to adhere to all of St. Demetrios' rules given their voluntary membership at the relevant time, this legal obligation is not without limit. It is well settled that a party cannot unilaterally alter the terms of a contractual relationship, but instead, there must be some evidence of notice and mutual assent before a change is enforceable. *See Angus Med. Co. v. Digital Equip. Corp.*, 173 Ariz. 159, 164, 840 P.2d 1024, 1029 (App. 1992); *Coronado Co., Inc. v. Jacome's Dept. Store, Inc.*, 129 Ariz. 137, 139, 629 P.2d 553, 556 (App. 1981). This is especially true with significant changes such as the addition of mandatory arbitration. *See, e.g., Douglas v. U.S. Dist. Court for Cent. Dist. of California*, 495 F.3d 1062, 1066–67 (9th Cir. 2007).

St. Demetrios has the burden to establish that Parishioners knew about and accepted the 2007 addition of the Archdiocese Dispute Resolution Procedures. *See Escareno v. Kindred Nursing Centers W., L.L.C.*, 239 Ariz. 126, 129, ¶ 7, 366 P.3d 1016, 1019 (App. 2016). St. Demetrios has done so with some, but not all, of the Parishioners.

St. Demetrios met its burden to show that Parishioner George Makris knew about the Archdiocese Dispute Resolution Procedures and accepted them. Parishioner George Makris testified that he had actual knowledge of the Archdiocese Dispute Resolution Procedures as of 2009, he had significant discussions and even disagreements about them with Father Earl, and he continued to contribute money to the church. The record thus fully supports knowledge and assent as to George Makris. The current dispute arose after George Makris' assent and thus he is bound to use the Archdiocese Dispute Resolution Procedures to resolve it.

St Demetrios also met its burden to show that Parishioners Michael Papanikloas, Rip Economou, and Susan Parker Hotchkiss at least constructively knew about the Archdiocese Dispute Resolution Procedures and assented to them. These Parishioners served on the Parish Council, which is St. Demerios' Board of Directors,

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and they took affirmations/oaths to abide by the Archdiocese Regulations after the Archdiocese Dispute Resolution Procedures were added. Additionally, these Parishioners all had access to the Archdiocese Regulations and, in fact, they were given their own hard copies. St. Demetrios was entitled to rely on these Parishioners' express promises to uphold the Regulations – regardless of whether they made the effort to read the materials on which their promises were based. *Cf. Teran v. Citicorp Pers.-to-Pers. Fin. Ctr.*, 146 Ariz. 370, 372, 706 P.2d 382, 384 (App. 1985) (“[t]he general rule holds that one who signs a written document is bound to know and assent to its provisions in the absence of fraud, misrepresentation, or other wrongful acts by the other party”). The record, therefore, also supports both knowledge and assent as to Michael Papanikloas, Rip Economou, and Susan Parker Hotchkiss. Again, because the current dispute arose after their assents, these Parishioners likewise must use the Archdiocese Dispute Resolution Procedures to resolve it.

St. Demetrios, however, did not meet its burden as to the remaining 16 Parishioners. The Court has carefully considered all of the evidence including the affirmations/oaths, training, obligations, and the other circumstantial proof of knowledge such as the 2015 letter and the newspaper articles. The Court concludes that the evidence, collectively and individually, does not show that the remaining Parishioners knew about, much less assented to, the 2007 addition of the Archdiocese Dispute Resolution Procedures. Although these Parishioners perhaps should have read (or reread) the regulations given their extensive involvement with the church, St. Demetrios presented insufficient evidence to demonstrate that these Parishioners in fact were made aware of the 2007 change so that they could look closer and decide what impact, if any, it had on their ongoing membership and charitable giving. Without sufficient notice of a change, Parishioners cannot be legally bound to the 2007 addition of the Archdiocese Dispute Resolution Procedures regardless of any general responsibility to follow St. Demetrios' rules. *See Douglas*, 495 F.3d at 1066 & n.1 (there is “no obligation to check terms on a periodic basis to learn whether they have been changed by the other side” nor would there be any way to

“know when to check”). The record thus does not support knowledge or assent as to these remaining Parishioners.

The Court acknowledges the problem caused by compelling arbitration as to only one spouse in a married couple. The problem affects George and Sophia Makris, Rip and Delores Economou, and Michael and Barbara Papanikloas. But the issue was not raised or briefed and the record is insufficient for the Court to resolve it on its own.

Finally, the Court notes that A.R.S. § 12-3001 et seq. applies notwithstanding the Court’s prior citations to A.R.S. § 12-1501 et seq. A.R.S. § 12-3003(A)(3). The Court believes that both arbitration acts equally support its prior rulings.

D. Conclusion

Accordingly,

IT IS ORDERED GRANTING in part and **DENYING** in part St. Demetrios’ July 19, 2016, Motion to Dismiss Plaintiffs’ Complaint or, in the Alternative, Motion for Stay of All proceedings and to Compel Arbitration as set forth herein.

IT IS FURTHER ORDERED that Parishioners George Makris, Michael Papanikloas, Rip Economou, and Susan Parker Hotchkiss shall proceed with the Dispute Resolution Procedures set forth in Part Four of the Greek Orthodox of America Regulations; all judicial claims made by these Parishioners are **STAYED**. A.R.S. § 12-3007(G).

IT IS FURTHER ORDERED that the Parishioners James Ruboyianes, Beth Ruboyianes, Troy Ruboyianes, Kiki Kinkade, Sophia Markis, Sotirios Mitsios, Claire Mitsios, Barbara Papnikolas, Peter Fasseas, Paula Fasseas, James Retsinas, Nora Retsinas, Anthony Mamakos, Mary Mamakos, Delores Economou, and George Stathis need not proceed with the Dispute Resolution Procedures set forth in Part Four of the Greek Orthodox of America Regulations.

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IT IS FURTHER ORDERED AFFIRMING the Court's prior rulings concerning arbitration and the ecclesiastical abstention doctrine.

IT IS FURTHER ORDERED DENYING all pending matters not expressly ruled upon herein as moot.

IT IS FURTHER ORDERED that this division's Judicial Administrative Assistant email a copy of this Ruling to counsel.

cc: Peter Collins Jr., Esq.
Peter T. Limperis, Esq.
Clerk of Court - Under Adviseement Clerk

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