

Excerpts Only

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CONGREGATION JESHUAT ISRAEL,
Plaintiff,

v.

CONGREGATION SHEARITH ISRAEL,
Defendant.

C.A. No. 12-CV-822-M-LDA

**MEMORANDUM, FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

JOHN J. MCCONNELL, JR., United States District Judge.

Bricks and mortar of a temple, and silver and gold of religious ornaments, may appear to be at the center of the dispute between the two parties in this case, but such a conclusion would be myopic. The central issue here is the legacy of some of the earliest Jewish settlers in North America, who desired to make Newport a permanent haven for public Jewish worship. Fidelity to their purpose guides the Court in resolving the matters now before it.

After a thorough and exhaustive review of the evidence, determination of the disputed facts, and application of the relevant law, this Court concludes that 1) Touro Synagogue is owned in charitable trust for the purpose of preserving a permanent place of public Jewish worship; 2) the pair of Myer Myers Rimonim previously owned by Newport's earliest Jews is now owned by Congregation Jeshuat Israel, which is free to do with its property as it wishes; 3) Congregation Shearith

Israel of New York should be removed as trustee of Touro Synagogue; and 4) Congregation Jeshuat Israel of Newport should be appointed as the new trustee.

I. PROCEDURAL BACKGROUND

On November 8, 2012, Congregation Jeshuat Israel brought an action in Rhode Island Superior Court (Newport County) against Congregation Shearith Israel over the ownership of a set of colonial-era finial bells (the Rimonim)¹ crafted by the silversmith Myer Myers, and the control of Touro Synagogue, the oldest active synagogue in the United States. Compl., ECF No. 1-2. Jeshuat Israel seeks an order: 1) pursuant to the Uniform Declaratory Judgments Act, R.I. Gen. Laws §§ 9-30-1, *et seq.*, declaring that it is the true and lawful owner of the Rimonim with full power to sell and convey them and to deposit the proceeds of such sale into an irrevocable endowment fund; 2) restraining Shearith Israel from interfering with Jeshuat Israel's planned sale of the Rimonim to the Museum of Fine Arts in Boston (MFA) for \$7 million in net proceeds;² 3) or in the alternative, declaring that Shearith Israel only owns the Rimonim in trust for the benefit of Jeshuat Israel,

¹ "Torah's importance was emphasized from ancient times by covering the scroll with silk mantles and ornamenting the staves with silver and gold decorations. . . . After removing the mantle and before reading the Torah, the reader raised the scroll with the finials still on the staves [] and an accompanying ringing of the bells would have focused the congregation's attention." David L. Barquist, *Myer Myers: Jewish Silversmith in Colonial New York* 154 (Yale University Press, 2001) (Exhibit P150 at 3248).

The Court uses the words rimonim, (which means pomegranates in Hebrew), finial bells, and finials, interchangeably in this opinion to refer to Torah ornaments that decorate the scroll's staves or handles. When capitalized, the word "Rimonim" refers to the finials at issue in this case.

² The Museum of Fine Arts has since withdrawn its offer to purchase the Rimonim. Trial Tr. vol. 3, 56, ECF No. 106 (Testimony of David Bazarsky).

financial future of Touro Synagogue, the Congregation, and ensure the preservation of public Jewish worship in Newport. Jeshuat Israel therefore decided to proceed with the sale. Trial Tr. vol. 4, 53, ECF No. 107 (Testimony of Bertha Ross). On June 29, 2012, Shearith Israel issued a letter demanding that Jeshuat Israel cease and desist from selling the Rimonim, and this litigation followed. Trial Tr. vol. 5, 156-57, ECF No. 108 (Testimony of Michael I. Katz); Shearith Israel Letter (Exhibit P231).

III. CONCLUSIONS OF LAW

The Court has jurisdiction over this dispute based on the parties' diversity of citizenship and the requisite amount in controversy. 28 U.S.C. § 1332(a) (2012). When sitting in diversity, a federal court must abide by state substantive law. *Hanna v. Plumer*, 380 U.S. 460, 465 (1965) (citing *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938)). The Court therefore turns to Rhode Island law to resolve the issues presented.

A. TOURO SYNAGOGUE AND LANDS ARE THE CORPUS OF A CHARITABLE TRUST

The first issue before the Court is ownership of Touro Synagogue. As explained below, the evidence is clear and convincing that Touro Synagogue is owned in trust for the purpose of public Jewish worship. *Desnoyers v. Metropolitan Life Ins. Co.*, 272 A.2d 683, 688-91 (R.I. 1971) (holding that certain types of trusts must be proved by clear and convincing evidence). The charitable trust — established for public Jewish worship over 250 years ago — lives on to this day.

First, Shearith Israel argues that it became the owner of Touro Synagogue when the Jewish community left Newport in the 1820s, and confirmed its exclusive ownership via the 1894 deeds. Shearith Israel's Proposed Findings of Fact and Conclusions of Law, June 29, 2015, ECF No. 91 at 35-40, 43-46. That argument does not bear out in law or fact. Touro Synagogue was the corpus of a charitable trust from its inception, and nothing that Shearith Israel did or the trustees' descendants signed, altered that trust. *See Wakefield Trust Co.*, 134 A. at 817 (holding that passage of time, period of disuse, and even statutory enactments do not alter title of property owned in a charitable trust.)

Shearith Israel asserts that the 1894 deeds conveyed full title and ownership of the Synagogue to it. However, because the Synagogue and lands were always owned in trust, neither the original trustees nor their descendants ever held equitable title, and so did not have full title to convey. Moreover, because the descendants had never exercised the responsibilities of a trustee, they could not transfer that role. Shearith Israel assumed legal title and the role of trustee not because of the 1894 deeds, but because of its active involvement in the affairs of the Touro Synagogue when no Jews remained in Newport. The deeds are legal nullities with absolutely no effect on the rights adjudicated in this litigation.⁴⁷

⁴⁷ Even if the 1894 deeds had some legal significance, they would not alter the outcome of this suit. Contrary to Shearith Israel's assertion that they confirmed its legal and equitable ownership, several of the deeds only purported to give Shearith Israel ownership "in trust." Furthermore, Shearith Israel has not produced evidence that it has collected signatures from all of Moses Levy's descendants. These shortcomings alone would have precluded the deeds from giving Shearith Israel equitable ownership of the Synagogue.

Fifth, Shearith Israel argues that the 1903 and 1908 leases, which identified Shearith Israel as the landlord and Jeshuat Israel as the tenant, preclude finding the existence of a charitable trust. That is not so. There is nothing incompatible about Shearith Israel's role as a charitable trustee and its decision to lease the Synagogue to Jeshuat Israel for the nominal price of \$1 per year. *See In re Ryan's Estate*, 294 N.Y. 85, 91 (1945) (referencing an arrangement where the beneficiary renting the trust's property reduced his rent from approximately \$10,000 per year to a symbolic \$10). On the contrary, by leasing the Synagogue at no profit to a group that uses it for public Jewish worship, Shearith Israel was executing its duties as the charitable trustee. *Cf. Ahuna v. Dep't of Hawaiian Home Lands*, 64 Haw. 327, 338 (1982) (requiring the state to lease land to eligible native Hawaiian trust beneficiaries).

Shearith Israel has pointed to no evidence, direct or circumstantial, that would lead this Court as fact finder to conclude that Shearith Israel possesses legal and equitable title to Touro Synagogue. The Court concludes, as a matter of fact and law, that the Touro Synagogue and lands are the corpus of a charitable trust, and that the original trustees were Jacob Rodrigues Rivera, Moses Levy, and Isaac Hart. Neither the Synagogue nor the lands ever belonged to Messrs. Rivera, Levy, and Hart alone — each had only an equitable interest equal to that of any other single member of their community. Shearith Israel has only ever served as trustee for that charitable trust, which has operated continuously in fact and law for over

P85 at 691, 698-99). Jeshuat Israel provided these amended by-laws to Shearith Israel, with no record of an objection from Shearith Israel. *See* Jeshuat Israel's minutes from October 28, 1945 (Exhibit P90 at 101). Finally, in 1983, Jeshuat Israel amended its By-Laws again to remove any reference to Shearith Israel. Jeshuat Israel's 1983 By-Laws (Exhibit P129).

Over 110 years after last exercising power to appoint trustees, over 70 years after its power was restricted, and over 30 years after its power was rejected, Shearith Israel is now too late to challenge Jeshuat Israel's governance. *See Puleio v. Vose*, 830 F.2d 1197, 1203 (1st Cir. 1987) ("The law ministers to the vigilant not to those who sleep upon perceptible rights.") Jeshuat Israel has adapted to Shearith Israel's abdication by running its own operations at its own discretion, and Shearith Israel's attempted takeover of Jeshuat Israel's governance at this late date would cause it prejudice. Laches bars Shearith Israel's attempt at upending Jeshuat Israel's corporate governance in this way. *See Hazard v. E. Hills, Inc.*, 45 A.3d 1262, 1271 (R.I. 2012) (applying laches and finding prejudice when party delayed an extremely long time in bringing suit); *Arena v. City of Providence*, 919 A.2d 379, 395-96 (R.I. 2007) (applying laches in declaratory action). The Court finds that Shearith Israel cannot rely on the 1897 By-Laws to intervene in Jeshuat Israel's governance or affairs.

6. Jeshuat Israel Has Title to the Rimmonim

The Court found that Congregation Yeshuat Israel was the original owner and possessor of the Rimmonim. When Yeshuat Israel disbanded, it left the Rimmonim

in the care of Shearith Israel, charging it with the duty to return the Rimonim to “the Congregation [thereafter] worshipping” in Newport. Shearith Israel’s minutes (Exhibits D26 and D26A at 1, 3). While Shearith Israel may have believed that it became the owner of Touro Synagogue and its contents in the 1820s, it nonetheless executed its obligations to Yeshuat Israel and returned the Rimonim to the congregation then worshipping in Newport — Jeshuat Israel. At that time, Jeshuat Israel became the lawful owner of the Rimonim, in accordance with the wishes of the original owners of the Rimonim — Yeshuat Israel.⁶⁹

Since that time, Jeshuat Israel has possessed and controlled the Rimonim for over 100 years. It has used them in its public worship, insured and repaired them, and sent them on various exhibitions all across the country. Even if Yeshuat Israel had not dedicated the Rimonim to the congregation thereafter worshipping in Newport, Jeshuat Israel’s long-standing possession of the Rimonim entitles it to a strong presumption of ownership, which Shearith Israel has failed to overcome. *Hamilton v. Colt*, 14 R.I. 209, 212 (1883) (treating possession of property as prima facie evidence of ownership). On the record before us, and in the absence of other challenges to Jeshuat Israel’s title, the Court finds, as a matter of fact and law, that Jeshuat Israel is the true and lawful owner of the Rimonim. There are no outstanding challenges before this Court that would prevent Jeshuat Israel from dealing with its personal property in any manner that it deems appropriate.

⁶⁹ Jeshuat Israel also argues that it is the legal successor to Yeshuat Israel. The Court does not need to reach this argument in making its decision.

C. SHEARITH ISRAEL IS REMOVED AS TRUSTEE

Jeshuat Israel seeks to remove Shearith Israel from its position as trustee over the Touro Synagogue and lands. Shearith Israel argues first that Jeshuat Israel does not have standing to call for removal, and second that grounds for removal do not exist. The Court concludes that Jeshuat Israel has standing as an interested third party, and that the overwhelming weight of the evidence compels this Court to remove Shearith Israel as trustee.

1. *Jeshuat Israel Has Standing to Bring an Action Removing the Trustee*

Who has standing to remove a charitable trustee can be a thorny question and requires some further background about trust law. In private trusts, beneficiaries are the equitable owners of a trust's corpus and the natural parties to police trustees. Charitable trusts are different, because everybody — the public — benefits from their existence. By definition, charitable trusts must have a charitable purpose that benefits society, rather than just one person or group. *See generally Bogert* § 362-63 at 19-36. For that reason, states' attorneys general, as the representatives of the public, have traditionally shouldered the responsibility of enforcing charitable trusts. *Id.* § 411 at 11-12.

Although a charitable trust must benefit the public at large, oftentimes "the settlor directs that his bounty be distributed among a class or group," which serves as the "conduit through which the settlor desires the public benefits to flow." *Id.* § 365 at 45. In other words, charitable trusts often work through a conduit, who uses the trust's assets to further the trust's purpose. Sometimes, courts colloquially refer

adjudicate abstract questions of public significance.” *Chu*, 2 F. Supp. 3d at 171. Jeshuat Israel again easily satisfies all three. The zone of interests protected by the process of removing a charitable trustee includes protecting the interests of third parties who serve as conduits of the trust’s benefits. Here, Jeshuat Israel is asserting its own rights and interests because it has been worshiping at Touro Synagogue since the late 1800s, and it has developed strong ties to the building and lands.⁷³ Finally, as Shearith Israel admits, there is “a live dispute and controversy . . . over the ownership, rights, status, and legal relations relating to the building, real estate, and any and all personalty used by or for Touro Synagogue.” Am. Answer and Countercl., ECF No. 8 at 20. If any third party has standing to enforce this charitable trust, that party is Congregation Jeshuat Israel.

2. *Shearith Israel’s Conduct Requires its Removal as Trustee*

Shearith Israel’s single role as charitable trustee is to ensure the preservation of Touro Synagogue for public Jewish worship. When Jews returned to Newport, Shearith Israel executed its duties by facilitating the use of the Synagogue by the new community. In 1903, after some unfortunate legal spats, Shearith Israel again executed its duties as trustee by leasing the Synagogue to

⁷³ Jeshuat Israel is the only congregation that presently prays at Touro Synagogue, and some of its members’ families have been praying there for four generations. Trial Tr. vol. 1, 104, 112, ECF No. 104 (Testimony of David Bazarsky). Jeshuat Israel has also purchased land abutting the Synagogue, and built a visitor center there, from where it runs tours from Memorial Day through Columbus Day. *Id.* at 118-19.

Furthermore, Jeshuat Israel is the only Jewish congregation in the city of Newport. *Id.* at 128. Of the 1,000 Jews or 300 Jewish families living in the six towns of Newport, Middletown, Portsmouth, Jamestown, Tiverton, and Little Compton, approximately 100 families belong to Touro Synagogue. *Id.* at 128-29.

Jeshuat Israel for only a nominal fee. By this action, Shearith Israel recognized that Jeshuat Israel is the representative of the Jews of Newport. Since that time, Jeshuat Israel has been the only congregation worshipping at Touro Synagogue.

“Trustees exist for the benefit of those to whom the creator of the trust has given the trust estate.” *Petition of Statter*, 275 A.2d 272, 276 (R.I. 1971). In this case, Yeshuat Israel created the trust estate for the benefit of public Jewish worship, which can only be accomplished if Jews have access to the Synagogue. Under Rhode Island law, the present beneficial interest in the charitable trust is held by Jeshuat Israel. *See Webster*, 31 A. at 827-28 (holding that beneficial interest in a charitable trust vests in the party receiving its benefits). Shearith Israel’s single obligation is to act for the benefit of Jeshuat Israel, unless doing so no longer ensures public worship at Touro Synagogue.

Removal of Shearith Israel as trustee is appropriate because it has strayed from that obligation. *See Petition of Statter*, 275 A.2d at 276 (“In deciding [removal] cases, the court’s paramount duty is to see that the trust is properly executed and that beneficiaries are protected.”) Specific grounds for removal can include a serious breach of trust, a lack of cooperation between the trustee and beneficiary, or even a substantial change of circumstances. *See generally* Unif. Trust Code § 706(b) (Removal of Trustee). Here, Shearith Israel repudiated the existence of the trust and sought to evict Newport’s only Jewish congregation from the trust estate. Furthermore, the conditions that required Shearith Israel to step in as acting trustee no longer exist. In these circumstances, the Court finds it

necessary to remove Shearith Israel from its position as trustee, for the reasons stated below.

a. Serious Breach of Trust

No breach of trust is more egregious than when a trustee claims to own the trust property outright, and refuses to admit the trust's very existence. "[R]epudiation of the trust is a clear ground of removal even though the trust property has not yet been devoted to personal uses." *Bogert* § 527 at 87; see also *In re Matthew W.T. Goodness Trust*, No. PM/08-7349, 2009 WL 3328364, at *6-7 (R.I. Super. May 4, 2009), 5-8 (discussing appropriation of trust property by trustees as grounds for removal).

In this action, Shearith Israel claims to own the trust property — Touro Synagogue — outright, and refuses to acknowledge that a trust exists. Shearith Israel claims in its pleadings that "[f]or over 100 years Shearith Israel has owned the Touro Synagogue, including its land, building, and religious objects," and seeks "a declaration of Shearith Israel's ownership of legal and equitable rights in the Rimonim along with the land, building, and other personalty used by Touro Synagogue" Am. Answer and Countercl., 7, 9, ECF No. 8. Shearith Israel denies that Jacob Rodrigues Rivera's Will and Testament provided sufficient evidence of a trust, and repudiates any acknowledgement of a trust that could be gleaned from the 1894 deeds, the 1945 Agreement with the federal government, or any other sources. Shearith Israel's Post-Trial Mem., ECF No. 90 at 60-68. At

closing argument, when the Court directly asked Shearith Israel about this issue, it provided the following response:

Our position . . . is that *Shearith Israel owns equitable and legal title*, and the title is subject to a condition. . . . And when we obtained title, it was with the understanding that there was going to be a public place of Jewish worship in accordance with the specific kind of ritual forever. That is how we hold it. We will have breached — *I'm not sure who can enforce it at that point* — but will have breached it if we ever tried, if we turned it into a bowling alley or a bingo alley. So there is plenty that we have the right to do.

Trial Tr. vol. 9, 156-57, ECF No. 112 (Shearith Israel's Closing Argument) (emphasis added). In its briefing, Shearith Israel doubled down on its position, arguing "the Shearith Israel trustees . . . hold [the Touro Synagogue] property *for the benefit of Shearith Israel*." Shearith Israel's Post-Trial Rebuttal Mem., ECF No. 97 at 80 (emphasis added).

Shearith Israel's claim to own legal and equitable title to Touro Synagogue renders it unsuitable to act as trustee. **By claiming to own the Synagogue outright, Shearith Israel committed a serious breach of trust. Such a renunciation of one's role requires a trustee's removal**

b. Lack of Cooperation

"When friction between the trustee and beneficiary . . . impairs the proper administration of the trust . . . or if the trustees' continuing to act as such would be detrimental to the interest of the beneficiary, the trustee may be removed." *Petition of Statter*, 275 A.2d at 276. Charitable trustees are subject to the same standard. *See Nugent ex rel. Lingard v. Harris*, 184 A.2d 783, 785 (R.I. 1962) (stating that a charitable trustee's "lack of sympathy for the objects of the trust" is grounds for

removal).⁷⁴ The animosity between the parties is evaluated by a subjective standard from the point of view of the holder of the equitable interest. *See Petition of Statter*, 275 A.2d at 276 (“When the ill feeling has reached the point that it interferes with the administration of the trust, the trustee may be removed even though the charges of his misconduct are either not made out or greatly exaggerated.” (internal citations omitted)).

Congregation Jeshuat Israel is currently the holder of the equitable interest in the Touro charitable trust. It has used the Synagogue for public Jewish worship for over 100 years. As discussed *infra*, the trustee, Shearith Israel, has not had any relationship with the trust property or with Jeshuat Israel for at least the past 20 years. Furthermore, Shearith Israel's positions in the current litigation have engendered such animosity in the relationship, that its continued service as trustee would be detrimental to the trust's purpose.

Jeshuat Israel had absolutely no relationship with Shearith Israel when David Bazarsky became president of Jeshuat Israel in 1993.⁷⁵ Trial Tr. vol. 1, 162, ECF No. 104 (Testimony of David Bazarsky). Mr. Bazarsky testified that during his

⁷⁴ Rhode Island law recognizes that the conduits of charitable trusts often occupy the same position as the beneficiaries of private trusts, and are entitled to similar rights and protections. *See Webster*, 31 A. at 827-28; *see also* R.I. Gen. Laws § 18-9-16 (“A charitable trust . . . may be terminated at any time . . . with the consent of . . . [inter alia] the beneficiary or beneficiaries by delivery of the assets to the beneficiary or beneficiaries.”); *see also* R.I. Gen. Laws § 18-9-9 (beneficiary, among other parties, must comply with attorney general's investigation into administration of charitable trust); § 18-9-10 (similar); § 18-9-11 (similar); § 18-9-13(a) (charitable trustee shall make annual written report that includes names and addresses of trust's beneficiaries).

⁷⁵ The Court found Mr. Bazarsky to be a credible witness, and his testimony was compelling.

tenure as president, he unsuccessfully attempted to reestablish a connection with Shearith Israel. In 1996, he organized a trip to New York to meet with members of Shearith Israel, in part to discuss fundraising efforts to restore Touro Synagogue. *Id.* at 163-64. He summarized Shearith Israel's response as, "[w]e're not paying; [w]e're not giving you any money; [y]ou're on your own. . . . We have our own synagogue to take care of; [w]e're not taking care of your synagogue." *Id.* at 165. He testified that Shearith Israel even refused to provide Jeshuat Israel's delegation with its membership list, because they did not want Jeshuat Israel syphoning off its members' resources. *Id.* Mr. Bazarsky reported that Jeshuat Israel's delegation left that meeting with the impression that Shearith Israel had "no interest in us." *Id.* at 166. Mr. Bazarsky's impression was confirmed by another fruitless meeting between the two Congregations about restoring Touro Synagogue in 2004. *Id.* at 166-69. The record is entirely devoid of any meaningful interaction or cooperation between the two Congregations for the past several decades. This shows a lack of sympathy by trustee Shearith Israel toward the object of the charitable trust.

Through this litigation, Shearith Israel is seeking to evict Jeshuat Israel from Touro Synagogue, without any other congregation standing ready to take its place. This act would undermine the very reason for the trust's existence — public Jewish worship in Newport. Witnesses for Jeshuat Israel have testified with one voice that the eviction threatened by Shearith Israel "would be devastating . . . [because] it would be the destruction of . . . the congregation." Trial Tr. vol. 1, 126-27, ECF No. 104 (Testimony of David Bazarsky).

Bertha Ross, the current co-President of Jeshuat Israel, described the relationship between the two Congregations as follows: "I would say there is a lot of friction, a lot of tension between the organizations. I think Shearith Israel has been disloyal to us." Trial Tr. vol. 4, 56, ECF No. 107.⁷⁶ Ms. Ross concluded that Jeshuat Israel could no longer work with the leadership of Shearith Israel. *Id.* Shearith Israel offered no evidence to refute this testimony of an acrimonious relationship between the two Congregations.

Shearith Israel's bid to evict the only organized Jewish congregation in Newport from Touro Synagogue does not bode well for its continuing capacity to maintain the Synagogue for public Jewish worship. The contentious course of this litigation also renders unlikely "the smooth functioning of the [t]rust" with Shearith Israel as trustee. *See Dennis v. Rhode Island Hosp. Trust Nat. Bank*, 571 F. Supp. 623, 639 (D.R.I. 1983) *aff'd as modified* 744 F.2d 893 (1st Cir. 1984) (citing parties' litigation positions, rather than any conduct by trustee, as independent reason for removal). In sum, the Court finds that the lack of cooperation between Jeshuat Israel and Shearith Israel over at least the past 20 years, and the recent animosity between the parties engendered by this litigation, require the removal of Shearith Israel from its role as trustee.

c. Substantial Change of Circumstances

Shearith Israel was a valuable trustee for Touro Synagogue from the 1820s through the 1880s, when no Jews were permanently settled in Newport. Several

⁷⁶ The Court found Ms. Ross to be a credible witness, and her testimony was compelling.

times during those lean decades, Shearith Israel sent its own religious representatives to officiate lifetime events in Newport. *See supra*. While the Synagogue was maintained and restored with funds from the Touro brothers, Shearith Israel stepped in to provide a religious lifeline to the Newport Jewish tradition.

Likewise, Shearith Israel was instrumental in restarting organized Jewish worship at Touro Synagogue by sending its own officials to hold regular services there in the late 1800s. It then arranged for the father of its own rabbi to relocate from London to Newport and serve as Touro Synagogue's first permanent rabbi for Newport's new Jewish community. In sum, despite some discord at the turn of the 20th century, Shearith Israel contributed positively to Newport's Jewish revival.

These events all took place well over 100 years ago. In the meantime, Shearith Israel's involvement with public Jewish worship in Newport waned. By 1993, there was no longer any communication between Shearith Israel and Jeshuat Israel. It is natural that Shearith Israel's involvement with Touro Synagogue receded over the last several decades, while Jeshuat Israel has assumed responsibility for the building and lands. Speaking plainly, Shearith Israel has long ago ceased to function as the trustee.

Shearith Israel's attempt to disturb that desuetude by seeking to evict Jeshuat Israel from Touro Synagogue in this legal action is contrary to its duties. It did not need to do so to prosecute its claim for the Rimonim.

By disavowing the trust and seeking to evict Jeshuat Israel from its place of worship, Shearith Israel has shown itself unfit to continue to serve as trustee. The law and the evidence in this case support removing Shearith Israel from its position as trustee over the Touro Synagogue and lands, and the Court does so now. As a result, Shearith Israel no longer holds legal title to Touro Synagogue.

D. THE COURT APPOINTS JESHUAT ISRAEL AS THE NEW TRUSTEE

Having removed Shearith Israel, this Court must next address the question of who shall serve as the new trustee. The documents the Court relied upon to find that the trust exists, do not name a residuary trustee. In this circumstance, the trial court is authorized to appoint an appropriate successor trustee. *Lux v. Lux*, 288 A.2d 701, 705 (R.I. 1972) (citing R.I. Gen. Laws § 18-2-1) (“the Superior Court . . . is authorized to appoint a trustee whenever an instrument creating a trust fails to name the residuary fiduciary”). Because this Court, when sitting in diversity, has the same role as the state superior court, and because it is familiar with the parties and issues animating this charitable trust, this Court will exercise its power to appoint a new trustee in order to avoid an interruption in the operations of Touro Synagogue.

“A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate.” *Cuzzone v. Plourde*, No. 03-0524, 2005 WL 2716749, at *3 (R.I. Super. Oct. 17, 2005) (quoting *Meinhard v. Salmon*, 249 N.Y. 458, 464 (1928))

(Cardozo, C.J.)). The new trustee must serve with “the punctilio of an honor the most sensitive” in the furtherance of the trust’s original purpose, passed down from Yeshuat Israel through Jacob Rodrigues Rivera’s Will, by preserving the Touro Synagogue and lands for public Jewish worship. *Id.*

For over 100 years, Congregation Jeshuat Israel has done exactly that. Jeshuat Israel “maintains the synagogue [and] pays the utilities . . . mow[s] the lawn . . . [and] make[s] repairs on the synagogue.” Trial Tr. vol. 4, 17, ECF No. 107 (Testimony of Bertha Ross). But more than just taking care of the building, Jeshuat Israel has ensured that Touro Synagogue is available for public Jewish worship. It holds services at Touro Synagogue at least twice a week, which are open to any member of the public. Trial Tr. vol. 1, 104, 112, ECF No. 104 (Testimony of David Bazarsky). In the summer, the Congregation opens up the Synagogue seven days a week to accommodate visitors from all over the world. *Id.* at 117, 119. The Congregation also offers free membership to naval officers serving at the nearby Naval War College. *Id.* at 118. Significantly, Jeshuat Israel is the only Jewish congregation in the city of Newport. *Id.* at 128.

This litigation has clarified that Jeshuat Israel is the party responsible for public Jewish worship in Newport. Even without the Court’s appointment, Jeshuat Israel has been executing all of the duties of a trustee for many years. Evicting it from Touro Synagogue is unthinkable. Appointing it as the legal owner and trustee for the Synagogue only recognizes in law, that which is already obvious in fact.

IV. CONCLUSION

A. PLAINTIFF'S CLAIMS

I. The Court finds for Plaintiff, Congregation Jeshuat Israel as to Count I and DECLARES, pursuant to the Uniform Declaratory Judgments Act, R.I. Gen. Laws §§ 9-30-1, *et seq.*, that Congregation Jeshuat Israel is the true and lawful owner of the Rimonim, with full power to sell and convey them, and to deposit the proceeds of such sale into an irrevocable endowment; and

II. The Courts finds that Count II is moot in light of its finding on Count I and therefore DISMISSES Count II; and

III. The Courts finds that Count III is moot in light of its finding on Count I and therefore DISMISSES Count III; and

IV. The Court finds for Plaintiff, Congregation Jeshuat Israel as to Count IV and DECLARES that the Touro Synagogue and its lands are owned in a charitable trust for the purpose of public Jewish worship. The Court orders the removal of Congregation Shearith Israel as trustee over that Touro Synagogue charitable trust. The Court appoints Congregation Jeshuat Israel as trustee of the Touro Synagogue and its lands; and

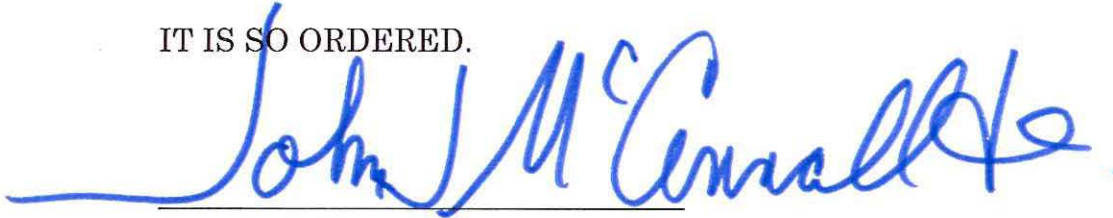
V. The Court dismisses Count V because the declaration sought is overly broad and therefore not justiciable.

B. DEFENDANT'S COUNTERCLAIMS

The Court DISMISSES all of Congregation Shearith Israel's counterclaims.

Both parties' requests for attorneys' fees and costs are DENIED.

IT IS SO ORDERED.

A handwritten signature in blue ink, reading "John J. McConnell, Jr.", is written over a horizontal line.

John J. McConnell, Jr.
United States District Judge

May 16, 2016