IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

THE FAMILY FEDERATION FOR WORLD PEACE AND UNIFICATION INTERNATIONAL*, et al.*, **Plaintiffs,** **v.** **HYUN JIN MOON*, et al.*,** **Defendants.**	**2011 CA 003721 B** **Judge Alfred S. Irving, Jr.**

ORDER

Before the Court is Defendant Unification Church International's *Motion for Summary Judgment on Counts IV, V, and VI*, filed on January 20, 2023. Plaintiff Family Federation for World Peace and Unification Japan ("UCJ"), formerly known as the Holy Spirit Association for the Unification of World Christianity (Japan), filed its *Opposition* on February 17, 2023. Defendant Unification Church International ("UCI") filed its *Reply* on February 24, 2023. UCI seeks summary judgment as to the three outstanding counts against it, particularly in view of the August 25, 2022 Court of Appeals' decision in this case.

The questions before the Court are fully briefed and, thus, the Court requires no oral argument to rule. *See also* Super. Ct. Civ. R. 12-I(h). For the reasons set forth below, the Court will grant UCI's *Motion for Summary Judgment* and enter judgment on all three counts.

I. BACKGROUND

The Court will forego reciting, in their entirety, the allegations giving rise to this continuing lawsuit, and will decline to revisit in this order the lengthy and complex procedural history relating to the three D.C. Court of Appeals' decisions over the course of twelve years.

See Moon v. Fam. Fed'n for World Peace & Unification Int'l ("*Moon III*"), 281 A.3d 46, 51-60 (D.C. 2022); *Fam. Fed'n for World Peace & Unification Int'l v. Moon* ("*Moon I*"), 129 A.3d 234, 239-42 (D.C. 2015). In brief, at the heart of the controversy underlying this case is a "religious schism" in the "religion known as the Unification Church," which schism arose in the final years of the life of the Unification Church's founder, the late Reverend Sun Myung Moon ("Rev. Moon"), which precipitated a "struggle for power and money" among Rev. Moon's two sons and widow implicating Unification Church organizations and followers, assets and billions of dollars across three continents, which struggle continues to the present. *Moon III*, 281 A.3d at 49-50, 53-55, 59-60.

Relevant to the instant *Motion*, Rev. Moon founded a religious institution called the "Holy Spirit Association for the Unification of World Christianity" ("HSA") in 1954, with "[b]oth HSA and the religion it espoused [becoming] known colloquially as the 'Unification Church,' though there is no legal entity by that name." *Id.* at 51. As the Unification Church "grew into a global movement encompassing religious, cultural, educational, media, and commercial enterprises," Rev. Moon and his followers established "religious institutions," including Plaintiff UCJ, and "a large number of nonprofit organizations," including Plaintiff Universal Peace Federation (hereinafter "UPF") and Defendant UCI, and several for-profit corporations. *Id.* at 51-52. UCI, a District of Columbia corporation, was formed in the 1970s at the direction of Rev. Moon to serve "as a 'funding source for organizations and projects Rev. Moon founded or supported." *Id.* at 52. As the Court of Appeals summarized:

> Over the decades, UCI donated funds to a sweeping array of recipients, such as UPF, the Universal Ballet, the University of Bridgeport, *The Washington Times*, a firearms manufacturer, a recording studio and performing arts center, a martial arts association, and [the seafood distribution company True World Group]. UCI also transferred limited funds to Unification Church

> institutions like HSA, but far more money flowed in the opposite direction, with the churches subsidizing UCI, rather than UCI subsidizing them. [UCJ] in particular transferred around $100 million annually to UCI for many years.

Id. at 52-53. While Rev. Moon lacked formal legal authority over the constellation of Unification Church religious institutions and related nonprofit organizations, "he held 'moral authority' over those organizations" by virtue of his "spiritual and charismatic authority" over the Unification Church religion. *Id.* at 52. That authority included control over the leadership of the various organizations, including UCI and UPF, with individuals Rev. Moon selected as having been duly elected or appointed as directors, chairpersons, or other high-ranking officers. *Id.* at 53; Mar. 28, 2019 Am. Omnibus Order on Mots. for Summ. J., at 3-6 (Cordero, J.). Most relevant here, Defendant Dr. Hyun Jin Moon ("Preston"), Rev. Moon's eldest living son, was elected by UCI's board of directors to serve as UCI's president and chairman in 2006, after Rev. Moon appeared to name Preston as Rev. Moon's spiritual heir in 1998, expanded Preston's leadership role within the Unification Church, and endorsed Preston's organization of "global peace festivals"[1] through initiatives at UPF, the governing board of which Preston co-chaired. *Moon III*, 281 A.3d at 53.

In 2008, however, Plaintiff Family Federation for World Peace and Unification International ("Family Federation"), an unincorporated organization established by Rev. Moon in the mid-1990s as the intended successor to the HSA, announced that Preston's younger brother, Hyung Jin Moon ("Sean"), had been named its new president.[2] *Id.* at 54. Sean replaced Preston

[1] The Court of Appeals described the "global peace festivals" as "multi-day events designed to promote world peace, involving speakers, entertainment, and service projects." *Moon III*, 281 A.3d at 53.

[2] Sean was later stripped of his leadership roles after Rev. Moon died in September 2012 and the Reverend's widow (and Sean's mother), Hak Ja Han, "laid claim to her husband's role as

as chair of UPF in 2009. *Id.* Preston remained chairman of UCI's five-member board of directors and refused several requests by Rev. Moon "to resign from all his positions with Unification Church affiliates[,]" including UCI. *Id.* at 55. Instead, Preston took steps to replace the other four directors at UCI "with associates who shared his view of the Unification Church as a decentralized and interfaith movement[,]" ultimately seating Defendants Michael Sommer, Richard J. Perea, JinMan Kwak, and Youngjun Kim as UCI's directors by the end of 2009. *Id.* at 54-55. Thereafter, Preston registered the "Global Peace Foundation" ("GPF") to continue organizing global peace festivals, in line with Rev. Moon's vision—according to Preston—of "a God-centered world in which people of every race, religion, nationality[,] and culture live in harmony as members of one family under God." *Id.* at 55.

UCI, under Preston's control, accordingly "ceased making contributions to UPF and began funding peace festivals through GPF[,]" donating more than $34 million to GPF until 2016, when the Hon. John M. Mott issued an injunction prohibiting the disbursement of additional funds. *Id.*; *see* July 22, 2016 Order (Mott, J.) (enjoining Defendants "from making donations to third parties unaffiliated with the Unification Church using UCI's assets"). UCI's board also amended its articles of incorporation in April 2010—the validity and effect of which remain disputed—before authorizing the transfer of UCI's interests and assets to the "Kingdom Investments Foundation" ("KIF"), a Swiss foundation created by "UCI's agents . . . for the purpose of receiving certain UCI assets." *Moon III*, 281 A.3d at 58-59. The transfer was made

---

spiritual leader of the Unification Church[.]" *Moon III*, 281 A.3d at 59. Sean's suit against his mother in federal court, seeking a declaration that he was the "worldwide Leader of the Unification Church and Family Federation," was dismissed on First Amendment grounds. *See Moon v. Moon*, 431 F. Supp. 3d 394 (S.D.N.Y. 2019), *aff'd*, 833 F. App'x 876 (2d Cir. 2020), *cert. denied*, 141 S. Ct. 2757 (2021). "To this day, Sean maintains that he is Rev. Moon's rightful successor, and he has created the 'Sanctuary Church' to carry out that role." *Moon III*, 281 A.3d at 59.

pursuant to a donation agreement between UCI and KIF that enumerated purposes "mirror[ing] the purposes set forth in UCI's amended articles" and set forth that UCI agreed to "'irrevocably transfer' . . . approximately half of UCI's total value" in assets to KIF. *Id.* "[T]hese assets' book value exceeded $469 million[.]" *Id.* at 58.

In May 2011, five Plaintiffs—the Family Federation, UPF, UCJ, and two former directors of UCI—on behalf of UCI, sued UCI as an actual and nominal Defendant and the five individuals comprising UCI's board of directors: Preston, Michael Sommer, Richard J. Perea, JinMan Kwak, and Youngjun Kim. *See generally* Compl. Of the six counts alleged in the forty-page *Complaint*, UCJ leveled the following three against UCI, arising from UCJ's monetary contributions to UCI, alleged conditions on their use, and UCI's breach thereof:

- Count IV, "Breach of Contract,"
- Count V, "Promissory Estoppel," and
- Count VI, "Unjust Enrichment."

See Compl. 33-34, 34-35, 35-36.

The Hon. Laura A. Cordero previously addressed the Parties' summary judgment arguments in her March 28, 2019 *Amended Omnibus Order on Motions for Summary Judgment* [hereinafter "Am. Omnibus Summ. J. Order"]. As to UCJ's three counts, Judge Cordero concluded that summary judgment was improper on all counts because genuine issues of material fact remained "as to [1] whether conditions were placed on [UCJ's] donations and [2] whether they were enforceable." Am. Omnibus Summ. J. Order, at 41-42. In doing so, Judge Cordero found: (1) "[t]here is no evidence that [UCJ] donated funds to UCI pursuant to a written agreement or written instrument," *id.* at 39; (2) the record "suggested that [UCJ] understood that UCI was to use donated funds to further UCI's charitable corporate purposes,"

including "support[ing] activities under the guidance of [Rev. Moon and his wife] and [the Unification Church's] international headquarters" and "support[ing] world mission activities," *id.*; (3) UCJ's "regular donation of funds to UCI was not contingent upon a written promise or repeated assurances about the use of funds," as evidenced by UCJ's donations to UCI "even in years [when] UCI made no funding requests or representations" as to their intended use, *id.*; (4) UCI's solicitation letters to UCJ from 1977 to 2005 enumerated "budgetary purposes" for funds that "were intentionally written with broad scope, . . . again suggesting a measure of discretion on UCI's behalf, albeit consistent with the Unification Church," *id.* at 40-41; and (5) UCJ "expected" UCI to use donated funds "in furtherance of [UCI's] 'original purposes,'" although UCJ lacked knowledge as to UCI's "business activities," *id.* at 41.

Although the Court of Appeals reversed and vacated Judge Cordero's *Amended Omnibus Order* on appeal in *Moon III*, UCJ's claims against UCI were "not the subject of [the] appeal," and, thus, "remain live" before this Court. *Moon III*, 281 A.3d at 60 n.15. UCI, citing *Moon III*, now seeks summary judgment as to all of UCJ's counts against it on the ground that the religious abstention doctrine of the First Amendment to the U.S. Constitution precludes this Court (or any United States civil court) from determining whether UCI's use of funds violated any alleged commitment to use its funds "solely to support UCI's religious mission as conceived of by UCJ." *See generally* Def. UCI's Mot. for Summ. J. on Counts IV, V, & VI [hereinafter "Def.'s Mem.]; Reply in Supp. of Def. UCI's Mot. for Summ. J. on Counts IV, V, & VI [hereinafter "Def.'s Reply"]. UCJ opposes UCI's *Motion* on the grounds that (1) *Moon III* did not disturb Judge Cordero's findings of disputed material facts; (2) the Court can determine whether UCI's use of funds violated any promise or condition using neutral principles of law; and (3) UCI's conduct falls within the "fraud or collusion exception to the religious abstention doctrine," as

suggested in *Moon III*. *See generally* Pl. UCJ's Opp'n to Def. UCI's Mot. for Summ. J. on Counts IV, V, & VI [hereinafter "Pl.'s Opp'n"]; *see also Moon III*, 281 A.3d at 70-71 (observing "the Supreme Court has strongly suggested that there is a 'fraud or collusion' 'exception to the general rule of non-interference'").

II. SUMMARY JUDGMENT STANDARD

"A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Super. Ct. Civ. R. 56(a)(1). "A fact is 'material' if a dispute over it might affect the outcome of a suit under governing law. An issue is 'genuine' if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Baker v. Chrissy Condo. Ass'n*, 251 A.3d 301, 305 (D.C. 2021) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A court views the evidentiary materials in the record "in the light most favorable to the non-moving party and draws all reasonable inferences in that party's favor." *Radbod v. Moghim*, 269 A.3d 1035, 1041 (D.C. 2022); *see also* Super. Ct. Civ. R. 56(c).

"A motion for summary judgment brings into question the legal sufficiency of a claim . . . ." *Lee v. Jones*, 632 A.2d 113, 114 (D.C. 1993). "The showing of a 'genuine issue for trial' is predicated upon the existence of a legal theory which remains viable under the asserted version of the facts, and which would entitle the party opposing the motion (assuming his version to be true) to a judgment as a matter of law." *Nader v. de Toledano*, 408 A.2d 31, 48 (D.C. 1979) (quoting *McGuire v. Columbia Broad. Sys., Inc.*, 399 F.2d 902, 905 (9th Cir. 1968)). Summary judgment is appropriate "against a party who fails to make a showing sufficient to

establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Night & Day Mgmt., LLC v. Butler*, 101 A.3d 1033, 1037 (D.C. 2014) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)); *see also Nader*, 408 A.2d at 49 ("Such party in essence must produce enough evidence to make out a prima facie case in support of his claim.").

III. ANALYSIS

The Court first addresses UCI's contention that *Moon III* "squarely forecloses UCJ's donative-intent-based claims" because UCJ "cannot establish any *breach* without resorting to inquiries into religious doctrine and practices that are flatly forbidden by *Moon III* together with the First Amendment." Def.'s Mem. 6-8 (emphasis in original); Def.'s Reply 2-6. The Court then addresses UCJ's arguments regarding the "fraud or collusion exception" to the religious abstention doctrine under the First Amendment. Pl.'s Opp'n 10-18; Def.'s Reply 6-8.

A. UCI's Alleged Wrongful or Unjust Use of UCJ's Contributions

1. All three of UCJ's counts require UCJ to show that UCI's use of funds was wrongful or unjust through breach of the alleged condition on UCJ's contributions.

As a starting matter, UCI is correct that UCJ's three counts, premised on UCJ's monetary contributions to UCI and alleged conditions attached to UCI's use of UCJ's contributions, require UCJ to show that UCI's use of funds was wrongful or unjust. *Cf.* Def.'s Mem. 6.

To prevail on Count IV, a claim for breach of contract, UCJ "must establish (1) a valid contract between [UCJ and UCI]; (2) an obligation or duty arising out of the contract; *(3) a breach of that duty*; and (4) damages caused by breach." *Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009) (emphasis added). As to Count V, premised on promissory estoppel, UCJ must show "[1] evidence of a promise, [2] the promise must reasonably induce reliance upon it, and [3] the promise must be relied upon to the detriment of the promisee," *Simard v.*

Resol. Trust Corp., 639 A.2d 540, 552 (D.C. 1994), with UCI liable only where "[4] *injustice* [*is*] *otherwise not . . . avoidable*." *N. Litterio & Co. v. Glassman Constr. Co.*, 319 F.2d 736, 739 (D.C. Cir. 1963) (emphasis added) (citing RESTATEMENT (FIRST) OF CONTRACTS § 90 (AM. L. INST. 1932)); *Bender v. Design Store Corp.*, 404 A.2d 194, 196 (D.C. 1979). Similarly, as to Count VI, unjust enrichment, UCJ must show that "(1) [UCJ] conferred a benefit on [UCI]; (2) [UCI] retains the benefit; and *(3) under the circumstances,* [*UCI's*] *retention of the benefit is unjust*." *Pearline Peart v. D.C. Hous. Auth.*, 972 A.2d 810, 813 (D.C. 2009) (emphasis added).

Here, UCJ pleads that "UCI breached the contract with [UCJ] when it used [UCJ's] contributions for purposes for which they were not intended," with the "purposes" allegedly understood by both Parties to be the "mission and purpose . . . reflected in the Articles of Incorporation of UCI prior to their unauthorized amendment in April 2010," namely, "[t]o serve as an international organization assisting, advising, coordinating, and guiding the activities of Unification Churches organized and operated throughout the world." Compl. ¶¶ 133, 134. Similarly, as to its quasi-contractual claims, UCJ pleads that UCI promised to use UCJ's funds in accordance with the same "mission and purpose" quoted above, with UCI's alleged failure to abide by the terms of the promise giving rise to UCI's liability for restitution and other damages. *Id.* at ¶¶ 140-146; *see also Moon I*, 129 A.3d at 247 n.20 (indicating that a "nonprofit organization 'may not . . . receive a gift made for one purpose and use it for another . . . .'").

Therefore, notwithstanding the Parties' dispute over whether such a contractual condition or promise existed, *see, e.g.*, Am. Omnibus Summ. J. Order, at 38-41, and presuming that UCJ's claimed condition on use of its contributions is otherwise enforceable, *but see Moon III*, 281 A.3d at 67 n.26, the issue before the Court is whether UCI used UCJ's contributions in a manner

contrary to the "mission and purpose" of "assisting, advising, coordinating, and guiding the activities of Unification Churches organized and operated throughout the world."

2. The Court is precluded from determining whether UCI's use of funds was wrongful or unjust because such a determination requires a constitutionally impermissible inquiry into contested matters of Unification Church doctrine, polity, and practice.

UCJ, as Plaintiff, must proffer evidence showing that UCI used UCJ's contributions for purposes other than "assisting, advising, coordinating, and guiding the activities of Unification Churches organized and operated throughout the world." UCJ identifies, *inter alia*, UCI's donations to GPF and KIF as falling outside of UCI's "mission and purpose." *See* Pl.'s Opp'n 1-2, 6-10; Compl. ¶ 82; Def.'s Mem. 5. The Court must therefore be able to identify "the activities of Unification Churches" as a precondition for ascertaining whether UCI's donations to GPF and KIF (or any other use of UCJ's contributions) were in line with furthering said "activities." *Cf. Rosenthal v. Nat'l Produce Co.*, 573 A.2d 365, 369-70 (D.C. 1990) ("[A] court cannot enforce a contract unless it can determine what it is . . . . [T]he contract [must] provide[] a sufficient basis for determining whether a breach has occurred . . . ."); *In re U.S. Office Prods. Co. Sec. Litig.*, 251 F. Supp. 2d 77, 97 (D.D.C. 2003) ("[T]hough a promise need not be as specific and definite as a contract, it must still be a promise with definite terms on which the promisor would expect the promisee to rely." (citing *Bender*, 404 A.2d at 196)).

The Parties advance differing explanations of what such "activities" are,[3] with the differences largely predicated on the identity of the rightful successor to Rev. Moon—including (1) the person(s) serving as Rev. Moon's "spiritual successor" and, (2) if the faith is so

[3] The phrase at issue is plainly ambiguous, as "activities of Unification Churches" (not to mention the scope of the series of verbs preceding "activities") is "susceptible of more than one meaning" and requires "a choice of reasonable inferences" from evidence extrinsic to any purported agreement between UCI and UCJ and UCI's 1980 Articles of Incorporation, the textual source of the written condition. *Aziken v. District of Columbia*, 70 A.3d 213, 219 (D.C. 2013).

organized, (3) the entity serving as the "institutional embodiment" of the Unification Church—and the doctrinal variances that accordingly follow. *See Moon III*, 281 A.3d at 50, 53-54 (noting Preston advanced an "interfaith" vision of the Unification Church, in contrast to Sean and Hak Ja Han's "denominational" vision, both of which ostensibly derive from Rev. Moon's pronouncements, acts, and apparent endorsements at differing times prior to his death). The First Amendment, however, precludes the Court from inquiring further into the definition and scope of "activities of Unification Churches"—and, consequently, whether UCI's use of UCJ's contributions were wrongful or unjust. As the Court of Appeals explained:

> The First Amendment's Religion Clauses "severely circumscribe the role that civil courts may play in the resolution of disputes involving religious organizations." *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 353 (D.C. 2005) (citing *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, [393 U.S. 440, 449 (1969)]). Courts "must be careful" to avoid adjudicating "church fights that require extensive inquiry into matters of ecclesiastical cognizance." *Bible Way Church of Our Lord Jesus Christ of Apostolic Faith of Washington, D.C. v. Beards*, 680 A.2d 419, 427 (D.C. 1996) (internal quotation omitted).
>
> For example, civil courts are barred from deciding disputes that turn on "the interpretation of particular church doctrines" or "the importance of those doctrines to the religion." *Presbyterian Church*, 393 U.S. at 450. Likewise, a civil court may not ordain matters of "church polity or administration," *Meshel*, 869 A.2d at 353, by, for instance, "determin[ing] the religious leader of a religious institution." *Samuel v. Lakew*, 116 A.2d 1252, 1261 (D.C. 2015); *see also Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, [565 U.S. 171, 186 (2012)] (religious bodies must have the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine") (citation omitted). Court involvement in such disputes would "impermissibly entangle the judiciary in ecclesiastical matters," *Meshel*, 869 A.2d at 353, jeopardizing the values underlying the Religion Clauses and "inhibiting the free development of religious doctrine." *Presbyterian Church*, 393 U.S. at 449.

> That is not to say that the First Amendment precludes civil courts from resolving any dispute with religious implications. *See Bible Way Church*, 680 A.2d at 427; *United Methodist Church v. White*, 571 A.2d 790, 795 (D.C. 1990) ("[T]he church is not above the law."). A civil court may, for instance, resolve a property dispute between factions of a church, so long as it can do so through "neutral principles of law" without deciding contested matters of church doctrine, polity, or practice. *Moon I*, 129 A.3d at 250, 252. Similarly, a court may enforce a contract—even when one or more of the parties to it is a religious organization—when the terms of the contract require no incursion into the ecclesiastical domain. *See, e.g.*, *Meshel*, 869 A.2d at 346 (invoking "neutral principles of contract law" to enforce an arbitration clause, even though the underlying dispute involved a religious controversy); *Second Episcopal Dist. African Methodist Episcopal Church v. Prioleau*, 49 A.3d 812, 817-18 (D.C. 2012) (holding that a civil court can resolve a dispute over an employment contract between a church and a pastor when the breached provision did not "require the court to entangle itself in church doctrine," and the pastor was not seeking reinstatement). In determining whether a controversy is justiciable, we must look past "the label placed on the action" and consider "the actual issues the court has been asked to decide." *Moon I*, 129 A.3d at 249 (quoting *Samuel*, 116 A.3d at 1259). *Compare Meshel*, 869 A.2d at 358 (suit to compel arbitration appears religious on its face, but sounds in "well-established, neutral principles of contract law"), *with Heard v. Johnson*, 810 A.2d 871, 885 (D.C. 2002) (defamation claim appears secular, but implicates religious practice).

Moon III, 281 A.3d at 60-62 (footnote omitted).

In *Moon III*, the Court of Appeals held that the First Amendment precluded this Court from deciding whether UCI's directors "breached their fiduciary duties to UCI" when they (1) "substantially alter[ed] UCI's articles of incorporation" in 2010, *id.* at 62, and (2) "voted to transfer around half of UCI's assets to KIF and GPF," two entities "not affiliated with the Unification Church," *id.* at 67. As to the 2010 amendments to UCI's 1980 articles of incorporation, the Court of Appeals observed that no "neutral principles of law" existed for any civil court to ascertain whether substitution of the term "Unification Movement" for "Unification Church," or striking of "assisting, advising, coordinating, and guiding the activities of

Unification Churches . . . throughout the world" from UCI's enumerated purposes, changed the "essential character of UCI's purposes without a deep dive into religious questions." *Id.* at 64-66, 67.[4] Similarly, as to UCI's transfer of assets to KIF and GPF, the Court of Appeals rejected the premise that "donations approved by Rev. Moon comport with UCI's mission, whereas those approved by Preston (and his co-directors) do not," *id.* at 68-69:

> We cannot adopt that reasoning. For one thing, it would require us to decree that the Unification Church is a hierarchical organization, in which the judgments of church leaders carry dispositive weight in church disputes. That is a contested issue of church polity. Moreover, even if we assume that the Unification Church is a charismatic religious movement that places a single individual atop its hierarchy, the First Amendment bars us from resolving a dispute as to the identity of that leader. Here, the directors have offered testimony that Rev. Moon's health was fading and that—at the time of key events in this case—he was being manipulated by others, contrary to his vision for the religion's future. Preston, on the other hand, had been dubbed the "fourth Adam" by his father. He was elected president and chairman of UCI's board of directors. Several of his co-directors testified that, in their view, Preston was the true leader of the religion—even before Rev. Moon's death. We can discern no neutral principle to resolve a dispute as to which party had "spiritual and charismatic authority" over the Church and its affiliates at the time the relevant transfers were approved.

Id. at 69 (internal citations omitted). The Court of Appeals further explained:

> UCI's stated purposes are plainly broader than merely supporting institutions that are formally affiliated with the Church. And the directors contend that the transfers to GPF were consistent with UCI's purposes because GPF's "peace-building work fulfilled Rev. Moon's providential vision" for the movement, and that the transfer to KIF was consistent with UCI's purposes because it was essential to secure project financing for the Parc1 real estate

[4] The Court of Appeals also held that "the directors' excision of the term 'the Divine Principle' from [UCI's] amended articles" was not justiciable because "[i]t is not for a civil court to determine whether a religion is built around a single canonical text. And it is not for us to determine the religious significance of Rev. Moon's [post-1980] works expounding upon the Divine Principle." *Moon III*, 281 A.3d at 66.

> development, which was necessary to achieve Rev. Moon's "lifelong dream" of developing that plot . . . .
>
> The [trial] court did not consider the directors' argument that the articles should be interpreted to embody a more "providential vision" of the Church. Nor could it have rejected that argument based on neutral legal principles. To determine which party was correct about the meaning of the 1980 articles—which are steeped in overtly religious language—the [trial] court would have needed to adjudicate longstanding debates over the direction of the Church, including whether it is best understood as a denominational institution or an interfaith movement. Such determinations are not permissible under the First Amendment. In short, the trial court erred in finding that UCI's donations to KIF and GPF ran afoul of UCI's corporate purposes.

Id. at 69-70.

Moon III's reasoning is applicable here to UCJ's three counts against UCI because the propriety of UCI's donations necessarily turns on resolving disputes attaching to almost every single word of the phrase at issue: "activities of Unification Churches." The Court is barred from determining whether the "global peace festivals" and specific land development projects, funded through UCI's donations to GPF and KIF (*i.e.*, "assisting . . . activities"), fall within the scope of "activities" of the "Unification Church[]" because such a determination requires the Court to decide, *inter alia,* the nature of "Rev. Moon's providential vision" and "lifelong dream" for the Unification Church, the identity of Rev. Moon's successor and the meaning and effect of their interpretations of Rev. Moon's teachings, and the organization of the Unification Church's polity. *Id.*; *see also id.* at 62 n.17 (listing non-exhaustive "host of material factual disputes inhibiting [the Court of Appeals'] ability to resolve this case on neutral principles of law"). To the extent that UCJ asserts that the contractual nature of its three counts against UCI reveals neutral principles of law that render its claims justiciable, *see* Pl.'s Opp'n 6-8 (asserting that UCI's directors' lack of knowledge about whether KIF's use of UCI's donations was consistent with UCI's purposes permits argument that UCI breached UCJ's claimed restrictions "no matter

what the donative restrictions were and regardless of whether they were entangled with religious doctrine or not"), the Court must reject such assertions because UCJ's challenge goes to whether UCI's directors breached their fiduciary duty through donating UCI's assets to KIF, which *Moon III* plainly forecloses. *See Moon III*, 281 A.3d at 69-70. In any event, the Court would still have to examine whether KIF's use of funds exceeded the scope of the donation agreement between UCI and KIF to ascertain whether UCI breached UCJ's claimed condition and any resulting damages or injustice. *See Tsintolas Realty Co.*, 948 A.2d at 187; *Bender*, 404 A.2d at 196; *Pearline Peart*, 972 A.2d at 813. The First Amendment bars such an examination and determination.[5] *Moon III*, 281 A.3d at 69-70.

[5] UCJ also contends that "the Court should consider that neither the donor UCI, nor the donee KIF, are religious organizations, and under Swiss law, KIF could not have a religious purpose or be dedicated to supporting any particular religious group" because "if the jury were to find that [UCJ's] donative restrictions were tied to the Unification Church . . . , giving funds restricted for Church purposes to an entity that cannot exist for religious purposes could be found a breach under neutral principles of law." Pl.'s Opp'n 9-10.

The Court must reject UCJ's contention. First, the Court observes that, as UCJ quotes, KIF's purposes included "furthering world peace, harmony of all humankind, [and] interfaith understanding among all races, colors and creeds throughout the world," mirroring UCI's amended articles of incorporation. Pl.'s Opp'n 10; *see Moon III*, 281 A.3d at 57. Whether such an ostensibly nonsectarian, nonreligious purpose is beyond the scope of "activities of Unification Churches," especially in light of the dispute over the denominational-versus-interfaith nature of the Unification Church, is a question that the First Amendment bars the Court from resolving. In addition, UCJ's categorical preclusion of non-religious entities receiving donations "restricted for Church purposes" ignores "the substance of those purposes." *Moon III*, 281 A.3d at 69.

Second, the Court of Appeals discussed and rejected attempts to distinguish "the transfers to KIF and GFP from UCI's historical donations to other unaffiliated organizations." *Id.* at 68. "Indeed, UCI's history appears to refute the notion that the articles ever prohibited donations to entities unaffiliated with the Unification Church." *Id.* (listing the Universal Ballet, University of Bridgeport, *The Washington Times*, a New York private school, a martial arts organization, a firearms manufacturer, and "several anti-communist organizations" as nonsectarian, secular recipients of UCI's donations).

Therefore, the Court cannot determine whether UCI's use of funds was wrongful or unjust because such a determination requires assessing UCI's compliance with the "mission and purpose" UCJ invokes—an assessment that necessarily requires an inquiry into contested matters of Unification Church doctrine, polity, and practice forbidden by the First Amendment.

3. Summary judgment is therefore proper because UCJ has no viable legal theory that would entitle it to judgment as a matter of law.

UCJ therefore cannot establish a prima facie case for any of its three claims against UCI because the First Amendment precludes the Court from ascertaining whether UCI's use of funds constituted breach or injustice. There is no "genuine issue for trial" on UCJ's counts because UCJ fails to present "a legal theory which remains viable under [UCJ's] asserted version of the facts . . . which would entitle [UCJ] (assuming [its] version to be true) to a judgment as a matter of law." *Nader*, 408 A.2d at 48. Summary judgment is accordingly appropriate in favor of UCI and against UCJ on all three of UCJ's counts because UCJ has "fail[ed] to make a showing sufficient to establish the existence of an element essential to [UCJ's] case, and on which [UCJ] will bear the burden of proof at trial." *Butler*, 101 A.3d at 1037.

B. "Fraud or Collusion" Exception

UCJ contends that the Court should not decide the instant *Motion* prior to determining whether the "fraud or collusion exception" to the religious abstention doctrine applies to the facts of this case.[6] Pl.'s Opp'n 10-11. In support of its contention, UCJ asserts the following: (1) "there has already been robust recognition of [the fraud or collusion exception] in the law," *id.* at 10-12; (2) "the religious abstention doctrine is limited by self-dealing, . . . as well as the [fraud or collusion exception]," especially in cases where there is "alleged self-dealing, bad faith,

[6] As briefly explained *infra*, and as the Court of Appeals noted in the final footnote of *Moon III*, "[t]he Supreme Court has never definitively endorsed the exception. Nor, for that matter, have we." *Moon III*, 281 A.3d at 70 n.29 (internal citations omitted).

and fraudulent or collusive misconduct by non-ministerial directors of a charitable corporation that is not itself a church," *id.* at 11-12; and (3) UCI "makes no attempt whatsoever to show that there are no material issues of fact in dispute concerning" the fraud or collusion exception, thus failing to meet its burden as the party moving for summary judgment, *id.* at 13-14.

In opposition, UCI notes the following: (1) "no court has ever actually applied" the fraud or collusion exception, Def.'s Reply 1, 8; (2) UCJ's invocation of the fraud or collusion exception ignores the contractual nature of its claims against UCI, *id.* at 6-7; and (3) UCJ is "continuing to claim, if anything, that the donations (as long known to it) inherently betrayed UCI's corporate and religious mission—which is precisely the sort of complaint that [*Moon III*] foreclosed." *Id.* at 8.

The Court must quarrel with UCJ's characterization that there has been "robust recognition" of the fraud and collusion exception to the First Amendment's religious abstention doctrine, suggesting that many trial courts have applied the exception. Not so. Most courts have approached the subject with much circumspection and caution, and rightfully so. Important here is that the Court of Appeals noted that the exception *may* exist, but significantly noted it has never applied the exception, and that "[t]he Supreme Court has never endorsed the exception." *Moon III*, 281 A.3d at 70 n.29. Indeed, as to the possible existence of the exception, this Court is impressed by the Court of Appeals' more guarded phraseology—such as a "potential exception" and "strongly suggested" *but "never definitively endorsed"*—when referring to its position and that of the Supreme Court. *Moon III*, 281 A.3d at 70; *id.* at 70 n.29 (emphasis added) (citing *Hutchison v. Thomas*, 789 F.2d 392, 395 (6th Cir. 1986) (discussing suggestion of fraud or collusion exception in *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 712-13 (1976), before declining to intervene in the religious dispute and emphasizing that "we do not

hold that such great fraud would be a basis for court interference"), *cert. denied*, 479 U.S. 885 (1986); *Moon v. Moon*, 833 F. App'x 876, 880 (2d Cir. 2020) (observing "purported exception to the ecclesiastical abstention doctrine" and declining to apply the fraud and collusion exception, "if the exception exists"), *cert. denied*, 141 S. Ct. 2757 (2021); and *Heard v. Johnson*, 810 A.2d 871, 881 (D.C. 2002) (noting the Supreme Court "later characterized the entire phrase" "fraud, collusion, or arbitrariness" as "dictum only" and declining to apply any purported exception)). The federal appellate cases UCJ cites, *see* Pl.'s Opp'n 12, similarly do not apply the fraud or collusion exception, at best merely noting that whether a fraud or collusion exception exists is an open question requiring further clarification from the Supreme Court. *See Askew v. Trs. of the Gen. Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc.*, 684 F.3d 413, 418-21 (3d Cir. 2012) (holding First Amendment barred inquiry into whether appellant was a member of church in light of appellant's allegations of the church's failure to follow church bylaws in excommunicating member); *Young v. N. Ill. Conference of United Methodist Church*, 21 F.3d 184, 187 (7th Cir. 1994) (noting *Milivojevich* "'left open the issue' of whether a church decision may be reviewed in the case of 'fraud or collusion'" but noting the "unlikely significance" of the "'open issue' . . . in some hypothetical case"); *Jeong v. Cal. Pac. Annual Conf.*, No. 92-55370, 1992 U.S. App. LEXIS 30366,[7] at *5-8 (9th Cir. Nov. 12, 1992) (affirming dismissal of complaint that failed to state a claim for fraud or intentional infliction of emotional distress); *Crowder v. S. Baptist Convention*, 828 F.2d 718, 726-27 (11th Cir. 1987) (affirming dismissal of complaint "one step removed from a major doctrinal conflict between two factions" in church after considering balance of interests, including a grievant's "strong interest in

[7] The Ninth Circuit's written opinion in *Jeong* was not published; instead, only the single-word disposition ("AFFIRMED") was reported at 979 F.2d 855.

obtaining a civil forum where the religious tribunal's decision is tainted by fraud or collusion"); *Hutchison*, 789 F.2d at 395 ("We merely state that possibility has been left open by the Supreme Court . . . ."); *Kaufmann v. Sheehan*, 707 F.2d 355, 358-59 (8th Cir. 1983) (noting "*Milivojevich* did not foreclose 'marginal civil court review' under the narrow rubrics of 'fraud' or 'collusion' when church tribunals act in bad faith for secular purposes" but declining to apply exception).

As to UCJ's reliance on *Ambellu v. Re'Ese Adbarat Debre Selam Kidist Mariam*, 387 F. Supp. 3d 71 (D.D.C. 2019), the Court observes that, there, the court was deciding a motion to dismiss a complaint alleging, *inter alia*, that a faction of a church had "illegally t[aken] control of the [c]hurch and its assets" through "false or fraudulent pretenses" and sought money damages under the Racketeer Influenced and Corrupt Organizations Act, as codified at 18 U.S.C. §§ 1961 *et seq.* 387 F. Supp. 3d at 76, 79. The plaintiff asserted that the faction had "falsely 'promis[ed] that a vote to dismiss the [church's board of trustees] would be held' . . . [but n]o vote occurred, and the [faction] instead dismissed the [b]oard through 'unilateral action.'" *Id.* at 79. The court noted that determining whether such a promise was fraudulent "d[id] not 'turn on the resolution by civil courts of controversies over religious doctrine and practice[,]'" instead permitting "marginal civil court review[.]" *Id.* Accordingly, the court held that, "[*a*]*t this stage of the litigation*, proceeding to the merits of these claims would not improperly entangle the Court in an essentially religious controversy." *Id.* (emphasis added) (observing "[t]hese claims could, in theory, be resolved through application of neutral principles of corporate law").[8]

[8] The district court nonetheless dismissed the complaint for failure to satisfy the pleading standards set forth in Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure and declined to exercise supplemental jurisdiction over the state law claims. *Ambellu*, 387 F. Supp. 3d at 85-87.

UCJ's reliance upon *Ambellu* is misplaced, however. UCJ's claims against UCI plainly rest upon the "resolution [by this Court] of controversies over religious doctrine and practice" of the Unification Church. *Id.*; *see supra* Part III-A. Therefore, "[e]ven if [the Court were] inclined to rush in where the Supreme Court has refused to tread, [UCJ] has made no showing that the [fraud or collusion exception] should be applied here." *Heard*, 810 A.3d at 881.

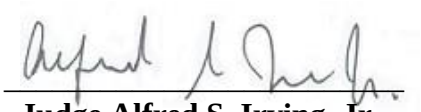
The Court further observes that UCJ's invocation of the fraud or collusion exception as to its claims against UCI appears, as UCI noted, to conflate the contractual nature of its three counts with the *Complaint*'s other counts, alleging breaches of fiduciary duty and self-dealing, that are immaterial to deciding the instant *Motion*. While the Court need not accept UCI's suggestion that UCJ must plead a plausible fraud claim to invoke any purported fraud or collusion exception, *see* Def.'s Reply 6-7, the Court reiterates that the First Amendment precludes adjudication of UCJ's three counts because they are expressly premised on a determination of whether UCI's acts were in accord with a religious mission or purpose—a determination requiring a constitutionally impermissible extensive inquiry into "matters of ecclesiastical cognizance," including "contested matters of church doctrine, polity, or practice." *Moon III*, 281 A.3d at 61; *see supra* Part III-A-2. Again, UCJ's focus on the presence or absence of self-dealing among UCI's directors misses the decisive basis precluding its claims: the Court cannot ascertain if UCI's donations are within the scope of "assisting, advising, coordinating, and guiding the activities of Unification Churches organized and operated throughout the world." *See supra* Part III-A-1, III-A-2.

Therefore, as the First Amendment precludes UCJ from advancing a valid legal theory in support of its claims against UCI, the Court will grant UCI's *Motion for Summary Judgment* and enter summary judgment in favor of UCI as to Counts IV, V, and VI of the *Complaint*.[9]

ACCORDINGLY, it is by the Court this 15th day of June 2023, hereby

ORDERED that *Defendant UCI's Motion for Summary Judgment on Counts IV, V, and VI*, filed on January 20, 2023, is **GRANTED**; and it is further

ORDERED that summary judgment is **GRANTED** in favor of Defendant Unification Church International as to Counts VI ("Breach of Contract"), V ("Promissory Estoppel"), and VI ("Unjust Enrichment") of the *Complaint*.



Judge Alfred S. Irving, Jr.

[9] The Court does not address the Parties' arguments about whether UCJ is judicially estopped from litigating the applicability of the fraud or collusion exception. *See* Pl.'s Opp'n 16-18; Def.'s Reply 9. UCI's suggestion—that "the Court consider sanctioning UCJ, pursuant to the Court's inherent authority, for UCJ's bad faith in continuing to pursue doomed claims against UCI"—is well taken. *See* Def.'s Mem. 9; Def.'s Reply 9-10. The Court, however, declines to issue sanctions because UCJ's assessment of the jurisprudence that (1) application of the fraud and collusion exception remains (at best) an open legal question and (2) *Moon III* did not definitively foreclose its arguments here, is accurate, even though to this Court its effort is futile. *See* Pl.'s Opp'n 19-20.

Copies to:

Cathy A. Hinger
Victoria A. Bruno
Lela M. Ames
Benjamin P. De Sena
Counsel for Plaintiffs The Family Federation for World Peace and Unification International, The Universal Peace Foundation, and The Holy Spirit Association for the Unification of World Christianity (Japan) n/k/a Family Federation for World Peace and Unification Japan

William G. Laxton, Jr.
Jacob M. Roth
Henry W. Asbill
Counsel for Defendant Hyun Jin Moon

Christopher B. Mead
Counsel for Defendant Michael Sommer

Francis D. Carter
Counsel for Defendants Richard Perea, JinMan Kwak, and Youngjun Kim

Derek L. Shaffer
William A. Burck
JP Kernisan
Counsel for Unification Church International n/k/a UCI