



Case No: J02MA822

IN THE COUNTY COURT AT MANCHESTER

The Civil Justice Centre Manchester

Date: 16 October 2023

Before :

HIS HONOUR JUDGE BIRD

Between :

ASHURST and others

Claimants

- and -

JACKSON and others

Defendants

Hugh Rowan (instructed by **Keystone Law Limited**) for the **Claimants**
Adam Smith-Roberts (instructed by **Russell-Cooke LLP**) for the **Defendants**

Hearing dates: 6 September 2023

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HIS HONOUR JUDGE BIRD SITTING AS A JUDGE OF THIS COURT

His Honour Judge Bird :

A. The Proceedings

1. These proceedings were commenced under CPR 55. The Claimants seek possession of property at 14, 16 and 18 New Road, Dearnley (“the Property”) against 3 named Defendants. No 18 is a dwelling house (“the House”) and numbers 14 and 16 house the Dearnley Spiritual Society (“the Society”) and comprise what the Society’s constitution describes as the “Dearnley Spiritual Temple” (“the Temple”).
2. In accordance with CPR 55(1) a hearing was fixed for 3 August 2022. The purpose of the first hearing in possession claims is for the court to decide if case management directions are needed (see CPR 55.8(1)). Where the claim is disputed on grounds that appear to be substantial, the claim will be allocated to a track.
3. The parties agreed to adjourn the first hearing. On 17 May 2023 the court approved a consent order listing the matter for the trial of a preliminary issue namely “whether the proceedings require the permission of the Charity Commission in accordance with section 115(2) of the Charities Act 2011 as charity proceedings”.
4. There is a substantial Defence and a substantial Reply. It is clear that the claim is disputed on substantial grounds. It is also clear that the claim is not a possession claim. CPR PD 55.4 requires that the Part 55 Particulars of Claim “state the ground on which possession is claimed”. The Particulars of Claim in fact set out no grounds for possession but rather plead that the Defendants have failed to transfer the property when (in effect) lawfully directed to do so.
5. The standing of the Claimants is unclear. They appear to bring the claim as members of the Society, an unincorporated association. It is not clear if they represent the entire membership or if they are authorised by the Society to bring the proceedings. There has been no order made under CPR 19.8.
6. The registered proprietors of the Property are the three named Defendants and Denise Butterworth. It is unclear why, given the relief sought, Mrs Butterworth is not a party.
7. The preliminary issue came on for determination before me on 6 September 2023.

B. The Constitution

8. The Society was founded on 16 November 1900. It has a constitution (described as its “rubrics and guidelines”) which was adopted on that day. It is divided into three parts: an introduction, a section setting out 7 “aims and objectives” of the Society and a final section setting out 13 numbered rubrics “to be observed for the government and guidance of officers and members of The Society”.

9. The copy of the constitution I have seen is clearly not the original. The copy has 13 footnotes. They appear to show that rubrics number 9 to 12 have been recently added and that rubrics 4, 5, 7 and 8 have been amended.
10. The introductory section makes plain that the constitution forms “*the base for the development of a charitable organisation with its primary objective being for spiritual religious worship*” and governs “members”. It makes clear that a person may only become a member of the Society by invitation and only if that person is listed on the “roll”.
11. The aims and objectives include developing a society which “*supports the spiritual needs of the community by means of mission and outreach*” and to offer a “*service of worship which promulgates spiritual truths and values*”. The Society is to “*encourage the use of the building for society and social events and not for personal gain*” and to adhere to certain principles laid down by the founders of the Spiritualist movement including the seven principles of spiritualism and wider guidance set out in the Lyceum Manual.
12. The rubrics are expressed to be for the “*government and guidance*” of members and officers. In the main they deal with the constitution of the Society’s “*committee*” (or committee of management) and the standards of behaviour expected of its members. The committee is to have 9 members, 5 of whom are “officers”.
13. Both the introductory section and the rubrics refer to “Trustees”.

C. The Trustees and the Trust

14. On the day the Society was founded, four local men (Isaac Bamford, John Kershaw, Jospeh Butterworth, James Holt and James Wallace) declared that the Property (which they had purchased) had been purchased by them

IN TRUST only and for the sole use and benefit of and out of the moneys belonging to the Members of [the Society]....

15. It follows that the four men are clearly the trustees referred to in the constitution. They further declared that they would hold the Property

IN TRUST only and for the use and benefit of the Members for the time being of [the Society]...

16. The trustees also “promise[d] and agree[d]” that they and subsequent trustees would

At the request and cost of the said Members for the time being of [the Society] or the majority thereof sign and assure the [Property] to any person or persons

as the said Members....or the majority thereof shall direct...”

D. The Preliminary Issue

17. Section 115(2) of the Charities Act 2011 sets out the following:

Subject to the following provisions of this section, no charity proceedings relating to a charity are to be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of the Commission.

18. By section 115(8) the term “charity proceedings” is defined as follows:

In this section “charity proceedings” means proceedings in any court in England or Wales brought under—

(a) the court's jurisdiction with respect to charities, or

(b) the court's jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes.

19. Part 1 of the Act deals with the definition of “charity” and “charitable purpose”.

Section 1 (insofar as relevant) defines charity as “*an institution*” which “*is established for charitable purposes only*”

20. By section 2(1) a charitable purpose is a purpose which falls within section 3(1) of the Act and is “*for the public benefit*”. Section 3(1)(c) refers to “*the advancement of religion*”. Section 4(2) provides that:

In determining whether the public benefit requirement is satisfied in relation to any purpose falling within section 3(1), it is not to be presumed that a purpose of a particular description is for the public benefit.

E. Evidence

21. I heard evidence from Miss Susan Butterworth. She gave her evidence clearly. She was content to say if she was unsure about a matter and the answers she gave were provided after sensible reflection. Whilst her credibility was not put in issue, I record that I found her to be a truthful and helpful witness whose only reason to come to Court was to help me to come to the correct decision.

22. Miss Butterworth explained to me that the Society (or church, as she was happy to describe it) holds regular services in the Temple (or church) which are open to members of the public. The times of the service are advertised, and all are welcome. Services usually involve the presence of a medium, prayers are said and there are moments of meditation and reflection. She told me that as far as she is aware the House has always been tenanted, the only period she could recall (after a long association with the Society which started in 1982) when the house was not occupied, was during refurbishment works.

F. Submissions

23. In determining if these proceedings are “*charity proceedings relating to a charity*” 2 questions arise:
- a. Is the Property held on trust for “charitable purposes”? (see section 115(8)(b). By section 2 to resolve the question, I need to consider if the purpose falls within section 3(1) and if the purpose is for the public benefit)
 - b. Is it held on trust for charitable purposes only? (see section 1)
24. The Claimants’ main argument in respect of the first question requires me to ignore the terms of the constitution when determining the true meaning of the declaration of trust. In short, the Claimants submit that the declaration of trust simply defines a class of persons (the members for the time being of the Society) for whom the Property is to be held without any attempt to specify the purposes for which the Property is to be held. If that argument were to be accepted, it was submitted that the Property cannot be held for “charitable purposes”. The terms of the declaration, it is said, are too vague.
25. The Defendants, in short, submit that the declaration of trust should not be read in a vacuum. They submit that it is clearly part of the foundational documents of the Society and that in order to understand the declaration the foundational documents must be read as a whole. The Defendants’ position may be put in another way. Although not cited, the law on the correct approach to the interpretation of contracts is clear. As Lord Neuberger put it in *Arnold v Brittan* [2015] 2 WLR 1593 (adopting the words of Lord Hoffmann in *Chartbrook v Persimmon* [2009] AC 1101):
- “When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean”.*
26. A reasonable person having all the relevant background knowledge (including knowledge that the declaration of trust was a fundamental part of the Society’s foundational documents) looking at the words of the declaration would, on the Claimants’ submission, have understood it to require the Property to be used to further the purposes and aims of the Society.

27. On the second point, the Claimants submit that the inclusion within the “aims and objectives” of the Society to “*encourage the use of the building for society and social events and not for personal gain*” means that there is a broad range of purposes for which the Property is held. The words “society and social events” might encompass all manner of activities some of which could clearly fall well outside the scope of the advancement of religion.
28. The Claimants drew my attention to *Re Stratton* [1931] 1 Ch 197. That case concerned the construction of a specific bequest to the vicar for the time being of a given Parish “*to be by him distributed at his discretion amongst such parochial institutions or purposes as he shall select*”. The Court of Appeal determined that the only limit on the vicar’s discretion was that the beneficiary of the gift was to have a connection with the parish – as Lord Hanworth MR said (Lawrence and Romer LJ agreed) “*that might be something to do with the church, it might not....it is not every parochial purpose which is a charity*”. The same point arose and was decided the same way in *Farley v Westminster Bank* [1939] AC 430 a decision of the House of Lords. The gift there was to the vicar and churchwardens of a given church with a stipulation that it was to be used for “*parish work*”.
29. In *Chichester Diocesan Fund v Simpson* [1944] AC 341, the House of Lords held that a residual bequest for “*charitable or other benevolent objects*” was too wide to be a charitable bequest because it was capable of covering benevolent but non-charitable objects.
30. I was referred to *Neville Estates v Madden* [1962] 1 Ch. 832. Land owned by a synagogue was offered for sale and an offer made by Neville Estates to purchase for £10,000 was accepted. The Charity Commission intervened. Higher offers were received from new interested parties and as a result the Charity Commission refused to sanction a sale for anything less than £14,300 which was the highest offer. Neville Estates brought an action for specific performance of the original contract on the ground that the property was not held on a charitable trust.
31. The land was to be held subject to express trusts “*to permit ...members [of the synagogue] to use the same free of rent for all purposes of the synagogue and for such other purposes as the board of management shall from time to time resolve....*”. Cross J held that the property was to be held “*for the purposes of the synagogue*” and that those purposes were charitable, namely for the advancement of religion. Whilst the land might be used for social purposes (sanctioned by the board of management), those purposes were “*merely ancillary*” to the primary, charitable, purpose.
32. Whether non-charitable purposes are “ancillary” to a charitable purpose is a question of construction and also of degree (see *Inland Revenue Commissioners v Baddeley* [1955] AC 572 at page 602 per Lord Reid).

G. Determination

33. In my judgment the terms of the settlement cannot be read in isolation and must be read with the rubrics and guidelines. The Claimants accept (see their skeleton argument at paragraph 17) that the court can “*look to all the circumstances surrounding the making of a deed or contract that is available to the parties, which*

would assist in determining how the language of the document would have been understood by a reasonable person in their position”.

34. I am satisfied that the land and property is held for the purposes of the advancement of religion. It was not suggested that spiritualism should not be considered a religion and I note (from the Charity Commission’s decision on the “Sacred Hands Spiritual Centre”) that there is a settled view on the point. In my judgment the rubrics and guidelines make the position clear. The “aims and objectives” make it plain that the purpose of the Society is, through “*mission and outreach*” to spread the religious principles of spiritualism.
35. I am also satisfied that the public benefit requirement is satisfied. The Society and participation in its services, is plainly open to all and not in any sense closed. Whilst membership and election to named positions is only open to those who have shown a commitment to the Society, services are open to all, and any member of the public may use the Temple as a space for quiet reflection and contemplation.
36. In my judgment encouragement of the use of the building “*for society and social events*” does nothing to detract from this clear and obvious purpose. The use of the land and buildings for purposes other than direct worship should be seen as means of “*mission and outreach*”. It seems to me that the word “society” should be read as referring to the Society and “social events” should be understood to refer to social events for the Society. I am satisfied that the informed bystander would not understand that the land and property could be used for any purpose not directly connected to the advancement of religion. Insofar as it is possible to read these words as permitting activities beyond the advancement of religion, in my judgment such other activities are no more than ancillary to that primary purpose.
37. The fact that the House is tenanted does not in my judgment detract from the conclusions I have reached. There was no suggestion that rent received from the House was used for anything other than to promote the purposes and aims of the Society.
38. It seems to me that the original settlers always intended to create a charitable settlement. Because the question of whether there is a charitable purpose is a matter of law, the intention of the settlers is clearly not determinative (and is almost certainly not relevant). In my view it is however a background matter which corroborates the conclusions I have reached.
39. The consequences of my conclusion is that the claim should now be stayed and referred to the Charity Commissioners. The parties should, if possible, agree the terms of an order.

**HIS HONOUR JUDGE BIRD SITTING AS A JUDGE OF THIS
COURT**
Approved Judgment

Ashurst v Jackson