

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



HIS EMINENCE PETAR THE DIOCESAN BISHOP OF THE MACEDONIAN ORTHODOX DIOCESE OF AUSTRALIA AND NEW ZEALAND V LAMBE MITRESKI [2018] NSWSC 13

Supreme Court of New South Wales, Slattery J, 29 January 2018

Costs order in a contest for control of the affairs of the parish by a bishop, priest and parishioners.

Key words: Lift Stay Order, Supreme Court of New South Wales, Religion, Practice and Procedures, Judgments and Orders, Stay

1. This was part of continuing litigation which has now been on foot since 1997. There have been judgements given at the Supreme Court level, in the NSW Court of Appeal, and the High Court. The point at issue in this case was whether or not a stay on a costs order benefitting the plaintiff should be lifted. The plaintiff said that it should, but the defendants said that it should not since they intended to bring further proceedings on the previously litigated issues in the future. These proceedings were designed to overturn the previous decisions on the grounds that they had been obtained by fraud.
2. The court held that the costs stay should not be lifted on the proviso that the relevant defendant/s proceed expeditiously to obtain judicial advice on the proceedings, and if that advice should be favourable, proceed expeditiously with the main hearing.
3. The first plaintiff, His Eminence Metropolitan Petar, was appointed as the Diocesan Bishop of the Macedonian Orthodox Diocese of Australia and New Zealand in 1995. The second plaintiff, Father Mitro Mitrev, was appointed by the first plaintiff in 1996 as the parish priest of the parish of St Petka in the Sydney suburb of Rockdale.
4. The first five defendants were in April 1997 the members of the executive council of the sixth defendant, which is an incorporated association known as the Macedonian Orthodox Community Church of St Petka Incorporated (the Association). The Association is the legal owner of the land on which the church of St Petka stands and holds other real and personal property associated with the Rockdale parish (the parish). The seventh defendant was dismissed from the proceedings. The eighth defendant is another priest who was for a temporary period appointed (not by the first plaintiff) to perform priestly ministry at the parish. The ninth defendant, the Attorney General of New South Wales, was joined as a party because these proceedings concern a charitable trust.

5. Brereton J summarised the underlying issues in *Metropolitan Petar v Mitreski* [2012] NSWSC 16 at [1], where his Honour said, despite the proceedings being charitable trust proceedings:

...at their core is a contest for control of the affairs of the parish of St Petka between the Church hierarchy represented by the Bishop and his appointed priest on the one hand, and on the other the Association which claims to represent the parishioners. At the heart of the dispute is a dichotomy between adherence to church law, and adherence to the constitution of the Association: those in control of the Association maintain that ownership and disposition of Association property reside with it, and are not amenable to control by the Bishop - in short that, except perhaps in relation to spiritual matters, they are legally bound by the constitution of the Association and not by the laws of the Church; whereas the Bishop contends that the Association is no more than a manifestation of the parish assembly, and that its affairs must be conducted not only in accordance with its constitution but also in accordance with church law.

6. After reviewing the long history of the proceedings, the court held that the Association should be successful in obtaining a continuing stay on the costs order against it, but could not delay its further action (at [53]):

If the stay is not to be lifted, as these reasons have found it should not, it is imperative that proceedings as long-standing as these, be concluded with due expedition. There is every reason therefore why the stay should now only be continued on terms that the Association proceed with due expedition to pursue any application for judicial advice and to pursue any proceedings to set aside the judgments on which the costs orders are founded...If it remains an issue, the Association should also pursue with due expedition the original question of whether the Association can indemnify itself out of trust assets in respect of costs orders against it and in respect of defence costs.

IMPLICATIONS



Another case in continuing litigation which has now been on foot since 1997. The high cost of an internal dispute.

VIEW THE CASE



This case may be viewed at: <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC//2018/13.html>

Previous proceedings reviewed in this hearing may be viewed at:

Metropolitan Petar v Mitreski [\[2003\] NSWSC 262](#)

Metropolitan Petar v Mitreski [\[2007\] NSWSC 70](#)

Macedonian Orthodox Community Church St Petka Incorporated v His Eminence Petar, Diocesan Bishop of Macedonian Orthodox Diocese of Australia and New Zealand [\[2008\] HCA 42](#); [\(2008\) 237 CLR 66](#)

Metropolitan Petar v Mitreski [\[2012\] NSWSC 16](#)

Metropolitan Petar v Mitreski [\[2012\] NSWSC 1610](#)

Metropolitan Petar v Mitreski [\[2012\] NSWSC 167](#)

Macedonian Orthodox Community Church St Petka Incorporated v Metropolitan Petar [\[2013\] NSWCA 223](#)

Macedonian Orthodox Community Church St Petka Incorporated v Metropolitan Petar (No 2) [\[2013\] NSWCA 385](#)

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Date of creation: August 2019

Number of case: 2018-27

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