

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.



IN THE MATTER OF THE SALVATION ARMY (VICTORIA) PROPERTY TRUST [2017] VSC 553

Supreme Court of Victoria, Sifris J, 18 September 2017

Salvation Army seeks judicial advice on transferring property trust land into a housing company.

Key words: Charitable Trust, Victoria, Judicial Advice, Housing, Religious, Disposal of Property

1. The plaintiff in this case, The Salvation Army (Victoria) Property Trust (Property Trust), is a corporate entity incorporated in Victoria pursuant to section 3 of the *Salvation Army (Victoria) Property Trust Act 1930* (Vic) (*Property Trust Act*), and is registered as an Australian Registered Body under the *Corporations Act 2001* (Cth). The defendant, the Attorney General of Victoria, did not oppose the application.
2. The Salvation Army's two major activities in Victoria are governed by separate trusts. These are:
 - a. the General Trust - a trust established to further the general religious activities of The Salvation Army. The General Trust's activities are governed by the terms of two Deed Polls:
 - the first dated 7 August 1878 called the Deed of Constitution (Deed of Constitution); and
 - the second dated 26 July 1904 (1904 Deed).
 - b. the Social Work Trust - a trust established to further The Salvation Army's social work, namely the use and application of its trust property for 'the social, moral and temporal welfare and improvement of the poorer and more needy classes of society and of persons who are destitute or vicious or feeble-minded or suffering from injury or sickness or ill health or orphans or other children needing care in orphanages or reformatories'. The Social Work Trust's activities are governed by the terms of a Deed Poll dated 1 June 1920 (1920 Deed).
3. By section 7 of the *Property Trust Act*, title to all The Salvation Army's assets in Victoria, including those assets forming the General Trust's trust property and the Social Work Trust's trust property, vested in the Property Trust subject to the operation of sections 19 and 22 of the *Property Trust Act* (which were not relevant to this case).

4. The proposal before the court concerned the voluntary transfer of 34 properties in Victoria from the Property Trust to Salvation Army Housing (Victoria) (the Housing Company) without consideration, other than the forgiveness of loans. The Property Trust is the sole member of the Housing Company, a company limited by guarantee. The properties proposed to be transferred to the Housing Company formed part of the trust property of the Social Work Trust.
5. The application to the court asked:
 - (a) for judicial advice from the Court as to whether the Property Trust had the power to effect the proposed transactions under r 54.02(2)(a)(i) of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic); or
 - (b) If the Court found that the Property Trust did not have power to effect the proposed transactions, for an order conferring upon the Property Trust the power to enter into the proposed transactions pursuant to section 63 of the *Trustee Act 1958* (Vic) and/or section 7L of the *Charities Act 1978* (Vic); and
 - (c) In either case, for an order approving the Proposed Transactions pursuant to r 54.02(2)(c)(i) of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic).
6. The Social Work Trust used the properties to provide housing for the disadvantaged. To facilitate joint housing projects with the Victorian government, the plaintiff sought to set up a stand-alone housing company, as required by new government policy. The Housing Company that was set up in response to this government policy has been accepted by the Australian Charities and Not-for-Profits Commission as a public benevolent institution, and endorsed as a deductible gift recipient under Subdivision 30-BA of the *Income Tax Assessment Act 1997* (Cth), thereby accessing the same tax exemptions and deductible gift recipient status as the Social Work Trust of The Salvation Army pursuant to which the Property Trust currently holds the Properties. All mortgages owed to the Housing Department were to be forgiven under the proposal.
7. Was there sufficient power in the *Property Trust Act* to effect the transfer proposal? The court held that there was. The powers granted by sections 3, 8, 11 and 21 of the *Property Trust Act* were very broad. They allowed the trustees of the Property Trust to sell the properties, and they had an unfettered discretion as to the price and payment terms. In addition to these powers, clause 3(d) of the 1920 Deed included a broad catch-all power to 'otherwise dispose of' real property. Here 'dispose of' took its ordinary dictionary meaning. The transfer to the Housing Company by way of gift constituted a 'disposal of' the properties and therefore was clearly supported by clause 3(d) of the 1920 Deed (at [40]).
8. The court therefore approved the proposal, especially in light of the forgiveness of the substantial loans owed on the properties held to date.

IMPLICATIONS



Trustees are able to seek the advice of the court for matters that are unclear in the trust deed and if they follow that advice will not face further litigation on the issue.

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC//2017/553.html>

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