JOHN MCINERNEY AND PHILLIP CAMPBELL-WILSON IN THEIR CAPACITY AS LIQUIDATORS OF ST GREGORY'S ARMENIAN SCHOOL INC V MICHAEL GHOUGASSIAN & ANOR [2020] NSWSC 197

NSW Supreme Court, Gleeson J, 9 March 2020

Setting costs in the winding up of an incorporated association

Key words: Incorporated Association, New South Wales, Winding Up, Surplus, Costs

1. In 2010, the court ordered that St Gregory's Armenian School Inc (the Association) be wound up under section 51(1) *Associations Incorporation Act 1984* (NSW) (the *1984 Act*) and appointed liquidators. At the time of the winding-up, the Association was insolvent and unable to pay its debts as and when they fell due. There were only six pupils, most of whom were relatives of the Ghougassians. The Ghougassians have had acrimonious dealings with the successive liquidators of the Association through several court proceedings. In one case, they received a partial costs order which they did not pursue.

2. In 2015, they brought an application for an order under section 482 of the *Corporations Act 2001* (Cth) that the winding up of the Association be terminated and that five named persons including the Ghougassians be appointed as directors of the Association. This was not successful, and they were ordered to pay costs. They did not pay the costs and the liquidators applied by notice of motion for the issue of a writ for the levy of property of each of the Ghougassians. The writs were granted.

3. The Ghougassians sought a stay of enforcement of the writs until the surplus in the liquidation of St Gregory's Armenian School Inc (in liq) was distributed in accordance with section 53 of the 1984 Act. The Ghougassians claimed that they would be able to pay the judgment once the surplus in the Association was distributed. There was also evidence that the school owed them money.

4. The Court found that there is no arguable claim to set aside the costs order in the 2015 proceedings either on the ground that the order was made irregularly or against good faith. However, in the interests of justice a partial stay of the judgment debt was ordered, subject to a condition that the Ghougassians undertake to take all necessary steps to commence and pursue with due expedition the assessment of the costs order in their favour in past proceedings.

IMPLICATIONS

The award of costs plays a large part in the decision to litigate a matter and can be a substantial impediment to proceeding. In some cases, involving voluntary associations, emotional reasons will override rational ones.

VIEW THE CASE

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