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*ACPNS Legal Case Notes Series: 2021-26 Bhamani & ors v Sattar & ors.*  
[Working Paper]

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# 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.



## BHAMANI & ORS V SATTAR & ORS [2021] EWCA Civ 243

England and Wales Court of Appeal, P Jackson LJ, Baker LJ & Nugee LJ, 26 February 2021

An appeal from dismissal of a summary judgment to injunct certain worshipping members from attending a muslim place of worship and community centre.

**Key words:** Charity, England and Wales, Summary Judgment, Power for a Proper Purpose, Right to Defend

1. Nugee LJ gave the judgment (P Jackson and Baker LLJ concurring).
2. Wembley Central Masjid (the Masjid) is a charity that operated religious activities for muslims in the London Borough of Brent. There were four trustees registered on the title of the land and an unincorporated association with a management committee.
3. It appeared, but was not proved to the Court, that the Masjid had not run smoothly since 2014. In 2014 the election of the current management committee gave control to followers of a particular group called Tablighi Jamaat which did not embrace diversity and sought to shape the Masjid in their own image. The Imam who had promoted diversity of worshippers for 22 years was dismissed in 2019. The Charity Commission received a large number of complaints and had written to the Masjid about the internal disputes.
4. The dismissal of the Iman caused a disturbance at the Masjid during prayers over the period of a week. The management committee posted a notice on the gate stating that those involved in the disorder would not be allowed to enter the Masjid until further notice. It did not identify any individuals specifically.
5. An ex parte application was then made to the Court by two trustees and some management committee members for an interlocutory injunction restraining specific persons from entering the Masjid property. In response, those named gave undertakings, that the Court accepted, to abide by a code of conduct whilst attending worship. The practical effect was that, pending trial, the defendants could continue to attend the Masjid for worship, but could not use this as a means of protesting against the current management committee, and would be at risk of being barred from worshipping there if they did not adhere to the undertakings they had given.
6. The claimants later sought summary judgment. The primary judge did not accept that the management committee had an absolute or unfettered right to exclude members of the community without regard to their duties as charitable trustees. Nor did he accept that the defendants could not raise as a defence to a claim for an injunction

that the members of the committee had exceeded their powers, or acted in breach of their duties as charity trustees. The claim was dismissed.

7. There were four grounds of appeal (at [32]):

- (1) That the Judge was wrong to dismiss the application for summary judgment based on a defence that had not been pleaded;
- (2) That the Judge was wrong to find that the defendants could in principle defend a claim in trespass on the grounds that the claimants were in breach of their duties as charity trustees;
- (3) That the Judge failed to find that the defendants' proposed defence amounted to charity proceedings within the meaning of s.115(8) of the Charities Act 2011 for which the defendants neither had authorisation from the Charity Commission nor permission from the Court;
- (4) That the Judge was wrong to find that the defendants' proposed defence had real prospects of success.

### **Ground 1**

8. The primary Judge was entitled to conclude that the fact that the defendants had neither pleaded their proposed defence, nor yet applied to amend it, did not prevent him from assessing that they had a real prospect of success in such a defence. An appellate court would be slow to interfere with discretionary case management decisions. The ground was dismissed.

### **Ground 2**

9. As a matter of general principle, the power of the management committee to control access to the premises must be exercised for the purpose for which it had been given, which was to further the purposes of the Masjid. The Court noted that (at [43]):

If the Management Committee are using their powers for a collateral or ulterior purpose, that is a misuse of their powers. I do not see that the Court has any business granting an injunction barring the Defendants from the Premises if that is shown to be something that is being sought as a result of the Management Committee misusing their powers in this way.

10. It was argued that the defendants had no private law right to insist on access to the Masjid. They were seeking to rely on the right of the public to see that a charity was properly administered. The Court found that (at [46]):

...the Defendants have a direct and personal interest in seeing that the charity which was established for, among others, their benefit is being properly administered. They are not strangers to the charity with no more interest in it than any member of the public.

11. As the defendants were persons interested in the charity by the terms of the Charities Act 2011, the issue was dismissed.

### Ground 3

12. The Court found that there was no authority for the proposition that pleading a defence could amount to the bringing of charity proceedings, thus requiring either the authorisation of the Charity Commissioners or the leave of the Court.

### Ground 4

13. The Court was not willing to disturb the decision of the primary judge who did not think that the matter could be resolved on the basis of the witness statements and his evaluation that this was a case which required a fuller investigation into the facts.

14. The case was dismissed.

## IMPLICATIONS



Lord Justice Nugee commented as an aside that (at [72]-[73]):

It seems to me that the case will need careful case management to ensure that it does not get out of control. The resolution of the issues in the present case should not require a lengthy investigation into the rights and wrongs of the history of difficulties at the Masjid, far less an exploration of the doctrinal differences between the parties, something which the Court, as both parties recognise, is ill-equipped to carry out and unable to adjudicate on. As Mr Tunkel said, religious differences can often generate great passions; but these should not be allowed to obscure the issues: see *Shergill v Khaira* [2015] AC 359 per Lord Neuberger at [46].

## VIEW THE CASE



This case may be viewed at <http://www.bailii.org/ew/cases/EWCA/Civ/2021/243.html>

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