

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.



Elzamtar v Bangladesh Islamic Centre of NSW Inc [2020] NSWSC 1161

Supreme Court of New South Wales, Parker J, 31 August 2020

An action against a mosque to recover various building loans and debts.

Key words: Incorporated Association, New South Wales, Limitation of Actions, Promissory Estoppel, Mosque

1. The Bangladesh Islamic Centre Inc (BIC) is a body incorporated under the Associations Incorporation Act 2009 (NSW). BIC was established by members of Sydney's Bangladeshi community at Sefton in western Sydney. It owns land and a mosque. The mosque was taken over by BIC in 2003 after having previously been controlled by another organisation.
2. Mohamad Elzamtar (Elzamtar) is a builder who has been a member of the congregation of the mosque since 1995. He lives close to the mosque and was its caretaker. The then president of BIC approached Elzamtar to be in charge of renovations to the mosque. There was no written agreement. Elzamar was to pay for the materials and labour and then be reimbursed after approval of the BIC board. Further, BIC approached Elzamtar for loans of money at various times that were documented. After a change of BIC office bearers, Elzamtar was not paid and was advised that BIC was not bound by agreements made by past presidents.
3. The Court did not hear evidence from anyone other than Elzamtar because BIC had defaulted on filing evidence by specified times and been barred by the Court from filing any further material. Further, Elzamtar could not speak or write fluent English and a translator was used by the Court. Despite these difficulties, the Court determined that \$216,090 of reimbursable work on the mosque was undertaken.
4. BIC defended the claim by arguing that some of the claims (both construction and loans) were statute- barred because they were made out of time. Elzamtar in response claimed: (i) a common intention constructive trust (ii) a proprietary estoppel (iii) a promissory estoppel. None of these claims were made out in law to the satisfaction of the Court.
5. The Court found that Elzamtar was entitled to some non-statute-barrred reimbursement of building costs (\$172,652 plus statutory interest) and loans (\$8,000 plus statutory interest).

IMPLICATIONS



This entity has been involved in several rounds of litigation in the recent past: see *Ahmed v Chowdhury* [2012] NSWSC 1452; *Ahmed v Chowdhury* [2011] NSWSC 893; *Ahmed v Chowdhury* [2011] NSWSC 954; *Ahmed v Chowdhury* [2012] NSWSC 348 noted in the 2012 [Almanac](#), and [Gofur v Bangladesh Islamic Centre of NSW \(BIC\)](#) [2020] NSWSC 652.

The case also points to the difficulties that can arise from verbal agreements to conduct extensive building works to association property. They should be properly documented in order to avoid disputes.

VIEW THE CASE



This case may be viewed at <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2020/1161.html>

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