

31 A.D.3d 480, 820 N.Y.S.2d 69, 2006 N.Y. Slip Op. 05580
(Cite as: 31 A.D.3d 480, 820 N.Y.S.2d 69)

H
Supreme Court, Appellate Division, Second Department,
New York.
CONGREGATION YETEV LEV D'SATMAR OF
KIRYAS JOEL, INC., et al., plaintiffs-respondents,
v.
CONGREGATION YETEV LEV D'SATMAR,
INC., et al., appellants,
U.T.A. Mesivta of KJ, et al., defendants-respondents,
et al., defendants.
July 11, 2006.

Background: Action was brought to quiet title to cemetery. The Supreme Court, Orange County, Rosenwasser, J., awarded plaintiff congregation summary judgment, and conferred nunc pro tunc approval of a deed purporting to transfer one-half of ownership interest of defendant congregation to plaintiff.

Holdings: The Supreme Court, Appellate Division, held that:


(1) courts lacked competence to address ecclesiastical issues arising from circumstances surrounding the authorization of transfer of a co-ownership interest in cemetery and execution of deed, and

(2) transfer of one-half interest in cemetery for a nominal consideration was not in best interest of congregation, as grantor, as was required for retroactive judicial approval of transfer.

Reversed.

Spolzino, J., filed a concurring opinion.

West Headnotes

[1] Religious Societies 332  **24**

332 Religious Societies

332k15 Property and Funds

332k24 k. Jurisdiction of Courts to Determine Rights of Property. Most Cited Cases

Courts lacked competence, in quiet title action, to address ecclesiastical issues arising from the circumstances surrounding the authorization of transfer of a co-ownership interest in cemetery and execution of

deed by president of board of trustees of congregation, following his alleged expulsion.

[2] Cemeteries 71  **13**

71 Cemeteries

71k10 Acquisition of and Title to Lands

71k13 k. Power to Sell or Mortgage or Lease.

Most Cited Cases

Religious Societies 332  **20**

332 Religious Societies

332k15 Property and Funds

332k20 k. Sale and Conveyance. Most Cited

Cases

Transfer of one-half interest in cemetery for a nominal consideration was made to advance the interests of one of the competing factions of religious community and not to advance religious or charitable objects generally and, thus, was not in best interest of congregation, as grantor, as was required for retroactive judicial approval of transfer. McKinney's Religious Corporations Law § 12(8, 9).

****70** Herrick, Feinstein, LLP, New York, N.Y. (Scott E. Mollen and Paul Rubin of counsel), for appellants Congregation Yetev Lev D'Satmar, Inc., Sol Perlestein, Jacob Schoenfeld, and Solomon Sander.

Herzfeld & Rubin, P.C., New York, N.Y. (David B. Hamm and Linda M. Brown of counsel), for appellant Jeno Kahan.

John Z. Marangos, Staten Island, N.Y., and Tarshis, Catania, Liberth Mahon & Milligram, PLLC, Newburgh, N.Y. (Richard M. Mahon II of counsel), for plaintiff-respondent Congregation Yetev Lev D'Satmar of Kiryas Joel, Inc. (one brief filed).

Chittur & Associates, P.C., New York, N.Y. (Krishnan S. Chittur of counsel), for plaintiff-respondent Moshe Scher.

Thacher, Profitt & Wood, LLP, White Plains, N.Y. (Kevin J. Plunkett of counsel), Smith, Buss & Jacobs, LLP, Yonkers, N.Y. (Jeffrey D. Buss of counsel), and Mischel Neuman & Horn, P.C., New York, N.Y.

31 A.D.3d 480, 820 N.Y.S.2d 69, 2006 N.Y. Slip Op. 05580
(Cite as: 31 A.D.3d 480, 820 N.Y.S.2d 69)

(Scott T. Horn of counsel), for defendant-respondent Congregation Yetev Lev D'Satmar, Inc., by Berl Friedman (one brief filed).

ROBERT W. SCHMIDT, J.P., ROBERT A. SPOLZINO, ROBERT J. LUNN, and JOSEPH COVELLO, JJ.

*481 In an action, inter alia, to quiet title to real property, the defendants Congregation Yetev Lev D'Satmar, Inc., Jeno Kahan, Sol Perlstein, Jacob Schoenfeld, and Solomon Sander appeal, as limited by their respective briefs, from stated portions of an order of the Supreme Court, Orange County (Rosenwasser, J.), dated February 9, 2006, which, inter alia, awarded the plaintiffs summary judgment, and conferred nunc pro tunc approval of a deed dated January 19, 2001, purporting to **71 transfer one-half of the ownership interest of the defendant Congregation Yetev Lev D'Satmar, Inc., in real property used as a cemetery and located within the Town of Monroe, Orange County, to the plaintiff Congregation Yetev Lev D'Satmar of Kiryas Joel, Inc.

ORDERED that the order is reversed insofar as appealed from, on the law and as a matter of discretion, without costs or disbursements, the plaintiffs are denied summary judgment, and upon searching the record, summary judgment is awarded to the defendants Congregation Yetev Lev D'Satmar, Inc., Jeno Kahan, Sol Perlstein, Jacob Schoenfeld, and Solomon Sander dismissing the complaint insofar as asserted against them, the counterclaims asserted by those defendants are dismissed as academic, and the Clerk of Orange County shall, upon service of a copy of this decision and order, cancel of record the deed from the Congregation Yetev Lev D'Satmar, Inc., to the Congregation Yetev Lev D'Satmar of Kiryas Joel, Inc., dated January 19, 2001, purporting to convey a one-half interest in the subject real property, recorded at Liber 5525 of deeds, pages 245 to 255.

On January 14, 2001, Berl Friedman, as President of the Board of Trustees of the defendant Congregation Yetev Lev *482 D'Satmar, Inc. (hereinafter the Brooklyn Congregation), convened a Board meeting, during which a resolution was passed approving the transfer of one-half of the Brooklyn Congregation's ownership interest in a cemetery located in the Town of Monroe, Orange County, to the plaintiff Congregation Yetev Lev D'Satmar of Kiryas Joel, Inc. (herein-

after the KJ Congregation). On January 19, 2001, after he allegedly was expelled from the Brooklyn Congregation, Friedman executed a deed purporting to transfer one-half of its sole ownership interest in the cemetery to the KJ Congregation for nominal consideration (hereinafter the 2001 deed). The cemetery is important to both congregations because the founder of the modern Satmar Hasidim movement, Grand Rebbe Joel Teitelbaum, and his successor, Grand Rebbe Moses Teitelbaum, are buried there, and because historically, members of both congregations have been buried there.

[1] The Supreme Court awarded summary judgment to the plaintiffs, finding the 2001 deed valid and approving it nunc pro tunc. We reverse. The record reveals the existence of numerous questions of fact regarding the circumstances surrounding the authorization of the transfer of an interest in the property and the execution of the 2001 deed that preclude summary judgment on the issue of its validity, which questions cannot be answered because they involve ecclesiastical issues that are beyond the competence of the courts (*see Matter of Congregation Yetev Lev D'Satmar, Inc. v. Kahana*, 31 A.D.3d 541, 820 N.Y.S.2d 62, decided herewith [*hereinafter Congregation I*]).

[2] However, we search the record and award summary judgment to the appellants on the issue of whether to accord retroactive judicial approval pursuant to Religious Corporation Law § 12(9) to the transfer of a one-half interest in the cemetery property from the Brooklyn Congregation to the KJ Congregation. The Supreme Court approved the transfer because it determined that it was of mutual benefit to the two congregations. As the proponents of the deed, it was incumbent upon the plaintiffs to establish that the transfer of an interest in the cemetery for a nominal consideration was intended to promote the interests of the grantor by furthering a religious or charitable object generally (*see Religious Corporation Law § 12[8]*). Although questions of fact abound in this case on other issues, certain **72 essential facts that are relevant to the issue of the propriety of granting retroactive judicial approval of the transfer to the KJ Congregation are uncontested.

There is presently an ongoing struggle for succession to the overall leadership of the Satmar community. The meeting of *483 trustees at which the transfer

31 A.D.3d 480, 820 N.Y.S.2d 69, 2006 N.Y. Slip Op. 05580
(Cite as: 31 A.D.3d 480, 820 N.Y.S.2d 69)

was approved and the alleged expulsion from membership in the Brooklyn Congregation of the person who executed the deed were early events in the course of that struggle. They form centerpieces of the civil actions between the competing factions and, as we have held in *Congregation I, supra*, the resolution of the issues that cloud the validity of the meeting and the alleged expulsion involve ecclesiastical questions that the courts are not competent to answer. The transfer of an interest in the cemetery property is therefore inextricably bound with this leadership dispute and it is clear that, at least in part, it was made to advance the interests of one of the competing Satmar factions and not to advance religious or charitable objects generally. Under these circumstances it cannot be said that the transfer was in the best interests of the Brooklyn Congregation and accordingly we decline to exercise our discretion to approve it, thereby restoring the status quo ante.

Accordingly, the transfer should have been vetoed (see *Church of God of Prospect Plaza v. Fourth Church of Christ, Scientist, of Brooklyn*, 76 A.D.2d 712, 717, 431 N.Y.S.2d 834, *aff'd*, 54 N.Y.2d 742, 442 N.Y.S.2d 986, 426 N.E.2d 480), and summary judgment is awarded to the appellants dismissing the complaint insofar as asserted against them. In light of this determination, the appellants' counterclaims should have been dismissed as academic and we need not reach the parties' remaining contentions. In so holding, we express no opinion as to whether a transfer of an interest in the cemetery to the KJ Congregation may, in the future, benefit the grantor by promoting the religious interests of the Satmar Hasidim sect generally as part of a settlement of the existing ecclesiastical disputes.

SCHMIDT, J.P., LUNN and COVELLO, JJ., concur. SPOLZINO, J., concurs with the following memorandum:

The validity of the deed at issue in this proceeding turns, at least initially, upon the same issues that are addressed in the companion case (see *Matter of Congregation Yetev Lev D'Satmar v. Kahana*, 31 A.D.3d 541, 820 N.Y.S.2d 62 [decided herewith]). For the reasons set forth in my dissent in that case, I conclude that the issues presented here are justiciable as well since, in my view, they may also be decided on the basis of neutral principles of law (see *Park Slope Jewish Ctr. v. Congregation B'nai Jacob*, 90 N.Y.2d 517, 664 N.Y.S.2d 236, 686 N.E.2d 1330; *Morris v.*

Scribner, 69 N.Y.2d 418, 422-423, 515 N.Y.S.2d 424, 508 N.E.2d 136; *First Presbyt. Church v. United Presbyt. Church*, 62 N.Y.2d 110, 476 N.Y.S.2d 86, 464 N.E.2d 454, *cert. denied sub nom United Presbyt. Church in the U.S. of Am. v. First Presbyt. Church of Schenectady*, 469 U.S. 1037, 105 S.Ct. 514, 83 L.Ed.2d 404; *Avitzur v. Avitzur*, 58 N.Y.2d 108, 115, 459 N.Y.S.2d 572, 446 N.E.2d 136, *cert. denied* 464 U.S. 817, 104 S.Ct. 76, 78 L.Ed.2d 88). If anything, this matter presents a more compelling case for justiciability, since the issue here is simply *484 the authority of a corporate officer to enter into a corporate real estate transaction (see *Rende and Esposito Consultants v. St. Augustine's R.C. Church*, 131 A.D.2d 740, 516 N.Y.S.2d 959). I nevertheless concur in the result because I agree with my colleagues that the record here provides no basis upon which it can **73 reasonably be concluded that the transfer was intended to promote the interests of the grantor corporation, as it must in order for the court to approve the conveyance (see Religious Corporation Law § 12[8]).

N.Y.A.D. 2 Dept., 2006.

Congregation Yetev Lev D'Satmar of Kiryas Joel, Inc. v. Congregation Yetev Lev D'Satmar, Inc.
31 A.D.3d 480, 820 N.Y.S.2d 69, 2006 N.Y. Slip Op. 05580

END OF DOCUMENT