

=====
This opinion is uncorrected and subject to revision before
publication in the New York Reports.

2 No. 143
Congregation Yetev Lev D'Satmar
of Kiryas Joel, Inc., et al.,
 Respondents-Appellants,
 v.
Congregation Yetev Lev D'Satmar,
Inc., &c,
 Appellant-Respondent,
Congregation Yetev Lev D'Satmar,
Inc., et al.,
 Respondents,
et al., Defendants.

Gerald A. Novack, for appellant-respondent.
Submitted by Richard M. Mahon, for
 respondents-appellants.
Scott E. Mollen, for respondents Congregation Yetev Lev
 D'Satmar, Inc. and Perlstein.
David B. Hamm, for respondent Kahan.

PIGOTT, J.:

This action involves a dispute over the ownership of a
cemetery located in the Town of Monroe, New York, for members of
the Satmar community, a distinct sect of Orthodox Judaism. The
cemetery was originally acquired by plaintiff Congregation Yetev

Lev D'Satmar of Kiryas Joel, Inc. ("Monroe Congregation") in 1981. It contains the grave of the Grand Rabbi Joel Teitelbaum, founder of the Satmar movement. As such, the property holds significant religious import for all Satmar followers. The cemetery was conveyed to defendant Congregation Yetev Lev D'Satmar, Inc. ("Brooklyn Congregation") in 1988, and thereafter jointly operated by the two congregations.

Some time thereafter, the Brooklyn Congregation split into two rival factions over matters concerning leadership of the Satmar community. The feud resulted in each faction conducting separate elections of the board of directors and officers for the Brooklyn Congregation. On January 14, 2001, Berl Friedman, purporting to act as President of the Brooklyn Congregation, convened a board meeting at which he authorized the transfer of an undivided one-half interest in the cemetery property to the Monroe Congregation. A deed, executed by Berl Friedman on January 19, 2001 and conveying the one-half interest in the cemetery property for nominal consideration, was later recorded in the Orange County Clerk's Office.

At approximately the same time, Jacob Kahan and other members of the rival faction held a meeting at which they designated themselves the true officers of the Brooklyn Congregation. They sought to restrict the use of the cemetery property by filing a so-called "declaration" with the Orange County Clerk providing that only those designated officers could

mortgage, sell or otherwise encumber the property.

In 2005, plaintiffs commenced this action against defendants seeking, among other things, a declaration that the transfer of the one-half interest in the property was lawful under the Real Property Law or, in the alternative, to obtain nunc pro tunc approval of that transfer pursuant to Religious Corporations Law § 12. Defendants answered and asserted counterclaims against plaintiffs alleging, among other things, that Berl Friedman was not authorized to execute the 2001 deed because he had been expelled from the Brooklyn Congregation.

Supreme Court awarded summary judgment to plaintiffs, upholding the validity of the transfer executed by Berl Friedman and vacating the declaration. The Appellate Division reversed, in part, finding that questions of fact existed concerning the conveyance, and that those questions "involve ecclesiastical issues that are beyond the competence of the courts" (31 AD3d 480, 482 [2d Dept 2006]). Upon searching the record, the court voided the conveyance pursuant to the Religious Corporations Law, finding that plaintiffs failed to establish that the transfer promoted the interests of the grantor by furthering a religious or charitable object generally (*id.* at 483). The Appellate Division subsequently granted leave and certified the following question to us: "Was the decision and order of this Court dated July 11, 2006 properly made?" We now affirm.

We conclude that support in the record exists for the

Appellate Division's finding that the transfer was not in the best interests of the Brooklyn Congregation. Thus, plaintiffs were not entitled to retroactive judicial approval of the transfer. A religious corporation may "not sell . . . its real property without applying for and obtaining leave of the court" (Religious Corporations Law § 12 [1]). When a religious corporation fails to obtain the necessary judicial approval before transferring the real property, the corporation may seek retroactive judicial approval in order to validate the transaction (see Religious Corporations Law § 12 [9]). Where, as here, a religious corporation seeks to "convey the whole or any part of its real property to another religious corporation" for nominal consideration, the corporation must show that "religious and charitable objects generally" would be conserved by the conveyance of the property (Religious Corporations Law § 12 [8]). Here, where the transfer was at least in part plainly designed to advance one side of the factional dispute, the Appellate Division justifiably found that no such showing was made. We need reach no other issue.

Accordingly, the Appellate Division order should be affirmed with costs and the certified question not answered upon the ground that it is unnecessary.

* * * * *

Order affirmed, with costs, and certified question not answered upon the ground that it is unnecessary. Opinion by Judge Pigott. Chief Judge Kaye and Judges Ciparick, Graffeo, Read and Smith concur. Judge Jones took no part.

Decided November 20, 2007