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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF
MAETREUM OF CYBELE, MAGNA MATER, INC.,

Respondent,

-against-

No. 202

MCCOY, et al.,

Appellants.

20 Eagle Street
Albany, New York 12207
October 21, 2014

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE VICTORIA A. GRAFFEO
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE ROBERT S. SMITH
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM

Appearances:

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Karen Schiffmiller
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: Number 202.

2 Counselor, would you like any rebuttal
3 time?

4 MR. VINCELETTE: Yes, Your Honor, I'd like
5 to reserve one minute.

6 CHIEF JUDGE LIPPMAN: One minute, sure, go
7 ahead.

8 MR. VINCELETTE: Thank you. May it please
9 the court, counsel, as with the preceding appeal,
10 this appeal concerns the use component of real
11 property tax - - -

12 CHIEF JUDGE LIPPMAN: What's the purpose -
13 - - what goes on on this - - - this property?

14 MR. VINCELETTE: That's - - - that is what
15 this is all about, Your Honor.

16 CHIEF JUDGE LIPPMAN: Okay, tell us.

17 MR. VINCELETTE: Yes.

18 CHIEF JUDGE LIPPMAN: What - - - what is
19 it?

20 MR. VINCELETTE: The trial court - - -

21 CHIEF JUDGE LIPPMAN: It's a religious
22 purpose?

23 MR. VINCELETTE: That is - - - it's a
24 religious corporation that owns it, but as the trial
25 court found, the evidence - - - the record supports a

1 finding that the primary purpose of the property was
2 for residential living for two individuals - - -

3 JUDGE SMITH: Why - - - why - - - how does
4 that differ from a convent? Isn't a convent
5 primarily for residential living?

6 MR. VINCELETTE: You - - - you - - - it's
7 communal living, Your Honor, or - - - or residential
8 living, but usually it's for a - - - to further a
9 purpose, a religious purpose. To - - -

10 JUDGE SMITH: Well, they say - - - they say
11 they're using their house - - - I mean, they have
12 this sign on the door. They have the alters. They
13 have - - - they pray every night. What's - - - what
14 - - - what do nuns do that they don't do?

15 MR. VINCELETTE: What do nuns do that they
16 don't do? Usually there's a - - - a component that's
17 either service to the community, teaching, nursing -
18 - -

19 JUDGE RIVERA: But they - - - they claim
20 they do that.

21 JUDGE GRAFFEO: They're claim they're - - -

22 JUDGE RIVERA: Yeah.

23 JUDGE GRAFFEO: - - - involved in a, you
24 know, laudable activity. They're - - - they're
25 housing individuals - - -

1 MR. VINCELETTE: Right.

2 JUDGE GRAFFEO: - - - giving them refuge.

3 MR. VINCELETTE: Yes, Justice - - -

4 JUDGE RIVERA: And they say they counsel
5 and they say they have open sessions. They have - -
6 - all of their rit - - - or many of these rituals are
7 - - - that they have, they say, are public. People
8 might be able to walk on the grounds. They've got
9 the cafe. They've got the - - - I think it's the
10 bisexual brunch. It sounds like there's a lot of
11 activity going on.

12 MR. VINCELETTE: There's activity, Your
13 Honor, but the thing is that the activity inures to
14 the benefit of a small, select, contained group of
15 individuals.

16 JUDGE READ: What about the fact - - -

17 JUDGE RIVERA: So - - -

18 JUDGE READ: - - - that one of them is a
19 full-time state worker? Does that help you, hurt
20 you? Is that any - - -

21 MR. VINCELETTE: The fact that one is - - -
22 oh, I believe it helps us, Your Honor, because the -
23 - - the fact is, there's only two people living there
24 full time, one of whom is a state employee, who works
25 9-to-5 here at the - - - in Albany, at the State

1 Department of Taxation and Finance. In the record,
2 she stated she has to commute one hour every day to
3 and from - - -

4 CHIEF JUDGE LIPPMAN: But why does that
5 help you?

6 MR. VINCELETTE: Because the primary - - -
7 the property is primarily used for her for the
8 incidence of daily residential living.

9 JUDGE RIVERA: Counsel, what's - - -

10 CHIEF JUDGE LIPPMAN: Well, wait a second.
11 As I understood this, this is the worldwide
12 headquarters of this particular religion or sect, or
13 whatever you want to call it. Why - - - why isn't
14 everything that happens, including the residence of
15 these two or three people and the - - - the other
16 residences where they - - - they don't live there all
17 the time, why aren't they all in furtherance of - - -
18 of this religion or - - - or part of a religion that
19 - - - that - - - that has a purpose?

20 And then it seems like a lot of things that
21 go on there all seem to be related to the - - - the
22 thinking, the premise of this religious - - -

23 MR. VINCELETTE: But again, Justice
24 Lippman, the - - - the purpose of the statute is, and
25 the test has been for the second prong, if - - - if

1 this is the primary use.

2 CHIEF JUDGE LIPPMAN: What - - - what else
3 is it used for?

4 MR. VINCELETTE: It's used for daily
5 living, for residential living for - - -

6 JUDGE RIVERA: But - - - but again, that
7 sounds like - - - that sounds as - - - as other
8 members of the bench have already said, like many
9 other groups, so I'm a little confused. Are you
10 arguing that it's the - - - the quantity of
11 participants? It's the numbers? Let's say I go into
12 the Catholic Church and there's only three people at
13 mass. Is that not a mass?

14 MR. VINCELETTE: No, that's - - - that is a
15 mass.

16 JUDGE SMITH: And the whole church is
17 exempt even if there are 997 empty pews?

18 MR. VINCELETTE: I'm sorry, Justice - - -
19 in the whole chur - - - that was a rhetorical - - -

20 JUDGE SMITH: Yeah, yeah. There - - - I
21 mean, on Judge Rivera's - - -

22 MR. VINCELETTE: Yes.

23 JUDGE SMITH: - - - Judge Rivera's - - -

24 MR. VINCELETTE: Yes.

25 JUDGE SMITH: - - - this huge cavernous

1 church with - - -

2 MR. VINCELETTE: Yes.

3 JUDGE SMITH: - - - three people sitting up
4 at the front - - -

5 MR. VINCELETTE: Yes.

6 JUDGE SMITH: - - - the whole church is tax
7 exempt?

8 MR. VINCELETTE: Yes, that's correct.

9 JUDGE SMITH: So what's wrong with that - -
10 -

11 MR. VINCELETTE: But there's - - -

12 JUDGE SMITH: So what's wrong with a
13 twelve-room inn with only two priestesses?

14 MR. VINCELETTE: Right. There's a
15 residential component to this that makes it different
16 than a church.

17 JUDGE SMITH: Well, you keep saying - - -
18 what - - - what do they - - - the Chief asked you
19 what they do, what else happens there, and you say
20 residential living. Any - - - obviously any
21 religious - - -

22 MR. VINCELETTE: Right. But - - -

23 JUDGE SMITH: - - - building where the
24 people live is used for residences, eating, sleeping,
25 breathing, but does anything other than basic

1 existence go on there that isn't religious?

2 MR. VINCELETTE: Yes, there is, Your Honor.
3 And what happens is that the main leader of the group
4 testified that it's basically her job there or her
5 existence there is two-fold. One is as leader of the
6 religious group; the other is as caretaker of the
7 property. It's a twelve-room, large, old - - -

8 CHIEF JUDGE LIPPMAN: Yeah, but someone's
9 got to take care of the property, don't they?

10 MR. VINCELETTE: Exactly, and she is doing
11 it at her own - - -

12 JUDGE RIVERA: So - - - so in a rectory you
13 have a caretaker?

14 MR. VINCELETTE: Yes, you may have.

15 JUDGE RIVERA: So if the priest did that,
16 you'd say you don't get tax exemption?

17 MR. VINCELETTE: No, the benefit of - - -
18 she's performing that task as - - - as caretaker of
19 the property. There's a second person there who
20 lives there who - - - the incidence - - - basically
21 it's being used to eat, sleep and then go to work.

22 JUDGE RIVERA: And maybe she'd like to hire
23 a caretaker. As I - - - as I understood it, they
24 give - - - they don't have a lot of money to work
25 with.

1 MR. VINCELETTE: Okay.

2 JUDGE RIVERA: They live off these
3 donations, and perhaps what one of them makes off
4 their job for the state.

5 MR. VINCELETTE: Right. And part of it is,
6 there is testimony in the record that states that the
7 group is supported by the donations of the select
8 group of priestesses. And that was one of Justice
9 Platkin's findings in the trial - - - trial decision.

10 CHIEF JUDGE LIPPMAN: Counsel, say - - -
11 say they had - - - say this was a religion that had
12 many more adherents. Say they had a million
13 adherents around the country, and that this was the
14 center of faith of that religion. And the same three
15 people live there, and you had others who practice it
16 and they had alters in - - - you know, in these other
17 rooms. Would that make a difference?

18 MR. VINCELETTE: No.

19 CHIEF JUDGE LIPPMAN: Is the - - - I guess
20 what I'm driving at is - - - is the reason why you're
21 opposing an exemption here because it's not a popular
22 religion?

23 MR. VINCELETTE: No.

24 CHIEF JUDGE LIPPMAN: It's a - - - it's a
25 much smaller number of people - - -

1 MR. VINCELETTE: No.

2 CHIEF JUDGE LIPPMAN: - - - who have a set
3 of beliefs?

4 MR. VINCELETTE: No, and - - -

5 CHIEF JUDGE LIPPMAN: Is that the
6 difference?

7 MR. VINCELETTE: No, and going back to
8 Justice Rivera's observation, even if there are just
9 two people there or three people there, it's the use
10 of the property. And the primary use - - -

11 CHIEF JUDGE LIPPMAN: Well, what if the use
12 was the main place of faith in this religion - - - or
13 however you want to describe it - - - that has two
14 million adherents around the country and this is the
15 main place. They have - - - they have an alter and
16 alters in all the rooms, and places to pray, and they
17 celebrate holidays every weekend, every week. What -
18 - - why is this different?

19 MR. VINCELETTE: Justice Lippman, even if
20 there were two million adherents, it doesn't matter.
21 It's - - - the focus of the trial court was, what is
22 the actual activity that occurs there at that
23 property and how does it further the recognized
24 exemption?

25 JUDGE GRAFFEO: I think what we're trying

1 to - - - to put - - - to put our finger on is, what's
2 the deficiency in the primarily used test? What - -
3 - what is it that your claim is - - -

4 MR. VINCELETTE: Okay.

5 JUDGE GRAFFEO: - - - is missing here?

6 MR. VINCELETTE: Our - - - our claim is,
7 that as Justice Platkin found, the primary use of the
8 property was residential with only incidence of
9 religion. It's - - -

10 JUDGE GRAFFEO: But we know there's lots of
11 religious organizations - - -

12 MR. VINCELETTE: Right.

13 JUDGE GRAFFEO: - - - that have residential
14 properties, so - - -

15 MR. VINCELETTE: Right, and Justice - - -

16 JUDGE GRAFFEO: - - - so what - - - what
17 else is it that's - - -

18 MR. VINCELETTE: Justice Graffeo, it's no -
19 - -

20 JUDGE GRAFFEO: - - - that's missing?

21 MR. VINCELETTE: Right. It's no more
22 different than my residence, if I put a crucifix up,
23 if I do Bible study with my children, if I - - -

24 JUDGE RIVERA: No, it is different, because
25 they say they're a - - - that's - - - in your private

1 home, you're not declaring you're the site of - - -

2 MR. VINCELETTE: Right.

3 JUDGE RIVERA: - - - of the religion.

4 MR. VINCELETTE: Right.

5 JUDGE RIVERA: They say it's their
6 religious site. It's open to the public. They have
7 rituals. It is different.

8 MR. VINCELETTE: It is different, and if I
9 were to incorporate, as a religious corporation - - -

10 JUDGE SMITH: But you - - - but you admit
11 that these two women are real priestesses? I mean,
12 you're not - - - they're not - - - they're not people
13 pretending to be priestesses to get a tax exemption.
14 They really believe this stuff, and they really
15 practice these rites.

16 MR. VINCELETTE: I - - - I believe - - -
17 well, I mean - - -

18 JUDGE SMITH: On - - - on this record,
19 there's no way - - -

20 MR. VINCELETTE: On this record, we're not
21 making inquiry into the ownership or the sincerity of
22 the belief or anything like that. What we are
23 challenging is the Appellate Division's substitution
24 of its own findings of credibility that basically
25 replace the trial justice.

1 JUDGE SMITH: Are they - - - well, the only
2 credibility finding I saw in - - - in Justice
3 Platkin's decision was that he thought she
4 exaggerated the am - - - the number of hours of
5 counseling she did per week.

6 MR. VINCELETTE: That was one of the
7 things, Justice Smith. He also said for - - - for
8 reasons that will be explained later - - - and
9 generally he mentioned problems with credibility.
10 Those are set forth at page 28 of our brief. There
11 were a number of things, testimony. The intent of
12 the acquisition of the property is something that the
13 Appellate Division - - -

14 JUDGE SMITH: Well, even if - - - I mean,
15 if you intend to set up - - - I mean, it's not
16 against the law to buy property intending to set up a
17 religious use and get a tax exemption.

18 MR. VINCELETTE: Right, but the intention
19 from the beginning, Justice Smith, was to set up
20 affordable housing for a small select group.

21 JUDGE SMITH: Is that - - - is that not an
22 appropriate religious mission?

23 MR. VINCELETTE: No, not when there's not a
24 religious component to it.

25 JUDGE SMITH: Well, when you say a small

1 select group, it's a small select group that they
2 thought was a community in need of service. It
3 happened to be transsexuals, not the world's most
4 popular group.

5 MR. VINCELETTE: And there was no religious
6 component to it.

7 JUDGE RIVERA: But - - - but did they seek
8 an exemption at that time?

9 MR. VINCELETTE: They did not seek an
10 exemption - - -

11 JUDGE RIVERA: So then why are we concerned
12 about what happened before they seek the exemption?

13 MR. VINCELETTE: Because the intent was
14 there as far as the use of the property. There were
15 at least ten years of writings by the leader stating
16 that, if I acquire this property, I can save taxes
17 and - - - and additional expenses by incorporating as
18 a not-for-profit. It's at paragraph - - -

19 JUDGE RIVERA: Again, it sounds like you're
20 challenging whether or not this is a - - - a true
21 authentic exercise of a religious belief, rather than
22 someone trying to avoid paying taxes.

23 MR. VINCELETTE: Not the belief, but the
24 use of the property. And the use - - -

25 JUDGE SMITH: Well, I mean, I - - - I - - -

1 I mean, I can see the problem you would have if
2 somebody said, hey, I've got a nice house; I enjoy
3 living in it, and I'd enjoy it even more with a tax
4 exemption, so I'm going to - - - I'm - - - I'm going
5 to create a - - - but here - - - the - - - the
6 writings that you're referring to sound to me like
7 people very committed to what they think is - - - is
8 a good cause, and which their religion drives them
9 to. And they say - - - and in order to serve this
10 cause, we're going to set up this institution, and
11 get a tax exemption. What's wrong with that?

12 MR. VINCELETTE: Right. The problem is
13 that the property - - - the primary use is still
14 residential. The - - - the number of rituals or
15 whatever occur infrequently at the property.

16 JUDGE SMITH: Is there a minimum number of
17 rituals you have to have?

18 MR. VINCELETTE: No, there's not. I think
19 that, like Justice Platkin, you have to look at the
20 totality of the record. He cited eight factors on
21 the penultimate page of his decision as to why he
22 found that the petitioner's testimony was incredible.

23 JUDGE RIVERA: So - - - so if they didn't
24 live there, if they lived somewhere else, would you
25 disagree that it's being - - - the property - - - and

1 everything else stayed the same, property was being
2 used for religious purposes - - -

3 MR. VINCELETTE: Again, you'd have to look
4 at what the use of the property is. And how - - -

5 JUDGE RIVERA: No, no, I'm just saying, you
6 don't change anything else other than the two of them
7 - - -

8 MR. VINCELETTE: Right.

9 JUDGE RIVERA: - - - move out.

10 MR. VINCELETTE: Okay. Then - - - then if
11 the property is still being used - - - there's two
12 components to this, the religious component and the
13 charitable component. We would take issue both with
14 the religious and - - - and the charitable.

15 JUDGE SMITH: But to refine - - -

16 JUDGE GRAFFEO: What's - - - what - - -

17 JUDGE SMITH: - - - Judge Rivera's
18 hypothetical for a minute. Suppose they - - - they
19 just move across the street.

20 MR. VINCELETTE: Right.

21 JUDGE SMITH: They do everything that
22 they're doing now. Then - - - then - - - then it's
23 exempt?

24 MR. VINCELETTE: Then it's a different
25 property, Your Honor, because then there's no

1 residential component to it.

2 JUDGE GRAFFEO: So what precedent supports
3 your view of this situation?

4 MR. VINCELETTE: I - - - I believe the
5 analysis in Sephardic Congregation v. Ramapo, which
6 is what Judge - - - Justice Platkin looked at, and
7 both parties relied upon in our initial submissions,
8 and his analysis of it. Whether the primary use of
9 the property and - - - both the Appellate Division
10 and the trial court declined to put a - - - a bright-
11 line test, that fifty-one percent of the property has
12 to be used most of the time for that test.

13 I believe that a test for the use of the
14 property for a religious component should be an
15 enumeration of factors like Justice Platkin did in
16 his original decision, and like what the IRS does
17 when it analyzes whether a taxpayer qualifies - - -

18 CHIEF JUDGE LIPPMAN: Counselor, could I
19 come back to what I was asking before? To some
20 degree, it just seems that - - - that - - - the fact
21 that this is not a mainstream religious thought would
22 seem to be - - - I think if you could take the same
23 set of facts and put them in what might be - - - this
24 guy has a more popular religious faith, maybe there
25 would be a different view of this by the - - - by the

1 - - -

2 MR. VINCELETTE: Absolutely not, Justice
3 Lippman. Absolutely not.

4 CHIEF JUDGE LIPPMAN: - - - taxing
5 authority?

6 MR. VINCELETTE: Has - - - has nothing to
7 do with it. Justice Platkin - - - you've seen a
8 whole bunch of cases come up through the Third
9 Department from that region, from Ulster County,
10 Sullivan County, involving Buddhists and non-
11 traditional faiths - - -

12 CHIEF JUDGE LIPPMAN: But all these - - -
13 all these indicia that seem to be on the property,
14 the alters. They do have regular celebrations there.
15 The facts that we know that are uncontested, I wonder
16 whether it's just that - - - that, gee, but are these
17 people for real? Or is it that just - - - which I
18 understand you're trying to do - - - limit it to,
19 it's the actual use. But I wonder, it's the actual
20 use in furtherance of this particular faith - - -

21 MR. VINCELETTE: And - - -

22 CHIEF JUDGE LIPPMAN: - - - that may be the
23 problem.

24 MR. VINCELETTE: And that's what it is,
25 Your Honor.

1 CHIEF JUDGE LIPPMAN: That's what it is?

2 No.

3 MR. VINCELETTE: That actual use of the
4 property. I mean, that - - - that is what it is.
5 Justice Platkin listened to the witnesses. There
6 were four witnesses.

7 CHIEF JUDGE LIPPMAN: It's not actual use
8 of the property in furtherance of this particular
9 faith that's the problem?

10 MR. VINCELETTE: Of a religious use; not
11 this particular faith, but of a religious use. And
12 what - - - what we heard at the - - - at the trial,
13 two days of testimony, was primarily that this was
14 used for - - - basically for shelter, for a place to
15 live, for basically for a group. There's two people
16 living there full time. The priestesses - - - there
17 was testimony that one comes there - - -

18 JUDGE ABDUS-SALAAM: Counsel, could I - - -

19 MR. VINCELETTE: - - - one weekend - - -

20 JUDGE ABDUS-SALAAM: - - - could I slightly
21 change Judge Rivera's hypothetical? What if the
22 group was still housing transsexuals who needed
23 housing, but the two women didn't live there? They
24 were fulfilling their charitable purpose and those
25 people were there on - - - on a transitory basis.

1 Would that be a different proffer?

2 MR. VINCELETTE: I think you would have to
3 look at the governance of the property and how it was
4 operated, as to whether it's a not-for-profit
5 providing affordable housing for a group, but there
6 are so many exemptions under Article 4, the Real
7 Property Tax Law, for low-income housing, or for
8 affordable housing, or for private housing for groups
9 like that.

10 The - - - the question here before this
11 court is the interpretation of Real Property Tax Law
12 Section 420-a. And you know, there are tons of
13 exemptions available under the Article of the Real
14 Property Tax Law for groups like that to obtain
15 exemptions or relief from taxes.

16 CHIEF JUDGE LIPPMAN: Okay, counsel,
17 thanks.

18 MR. VINCELETTE: Thank you.

19 CHIEF JUDGE LIPPMAN: Let's hear from your
20 adversary.

21 MS. SCHNEER: May it please the court,
22 Deborah Schneer for respondent, Maetreum of Cybele,
23 Magna Mater, Inc.

24 CHIEF JUDGE LIPPMAN: Counsel, what goes on
25 at this property? What - - - what do you see as the

1 primary purpose - - -

2 MS. SCHNEER: Your Honor - - -

3 CHIEF JUDGE LIPPMAN: - - - and - - - and
4 what furthers that purpose by the use of the
5 property?

6 MS. SCHNEER: Yes, Your Honor. I - - - I
7 think as some of the questions to opposing counsel
8 pointed out, the use of this property is primarily
9 religious. And I think that the uncontested facts in
10 the trial record demonstrate that. There are regular
11 religious - - -

12 JUDGE GRAFFEO: How much - - - how much is
13 religious, and how much is, what I'm going to call,
14 good works? Because a lot of people do a lot of
15 charitable things on their property, but it doesn't
16 rise to the level of tax exemption.

17 MS. SCHNEER: Yes, Your Honor, but here, we
18 have uncontested facts that there are regular ongoing
19 religious ceremonies on the property. They have a
20 short ceremony, the evening praise ceremony, every
21 night. They have their regular ceremony
22 approximately every two weeks on the lunar calendar.
23 Four major holidays which are weekends of - - -
24 weekends of celebrations and - - - and religious
25 services.

1 JUDGE SMITH: What - - - what if - - - what
2 if a devout couple - - - a devout Catholic, Jewish,
3 Buddhist, whatever - - - couple take a - - - buy a
4 twelve-room inn like this and do their normal
5 religious observances every day. Is that enough to
6 make the property tax exempt?

7 MS. SCHNEER: Well, Your Honor, I don't - -
8 - I'm not sure about the answer to that question, but
9 I think that this is distinct from the use of a
10 private home. This isn't just me taking in my friend
11 and having a - - - a service at my meal. This is - -
12 - you know, the - - - the Appellate Division found in
13 its unanimous decision that the religious services
14 were regular and frequent and ongoing. There is a
15 body of literature that supports them.

16 JUDGE SMITH: And Justice Platkin didn't
17 say - - - Justice Platkin didn't find otherwise, did
18 he? I mean, he - - -

19 MS. SCHNEER: Well, he described the
20 factual record quite differently. He said that
21 religious services occur for - - - at various times,
22 but that's just not consistent with what the proof
23 was.

24 JUDGE PIGOTT: There's no mention of
25 communal living in your articles of the corporation,

1 is there?

2 MS. SCHNEER: No, the purpose - - - the
3 corporate purpose is to create a body of believers
4 and - - -

5 JUDGE PIGOTT: Well, what I wanted - - - I
6 was just going back and piggy-backing on Judge
7 Smith's question - - -

8 MS. SCHNEER: Yes.

9 JUDGE PIGOTT: - - - when he said, you
10 know, a religious couple of any stripe can do
11 essentially all of this in their private home, and
12 would be entitled to a tax exemption under a
13 rationale that maybe - - - maybe matches this. The
14 difference, I would think, would be there'd be
15 communal living. But there is no communal living
16 here.

17 MS. SCHNEER: But this is part of how this
18 faith - - - this uncommon faith, with its unusual
19 practices - - - creates a body of believers. That's
20 the first line in their - - -

21 JUDGE PIGOTT: But you would agree, there's
22 - - -

23 MS. SCHNEER: - - - incorporate - - - their
24 certificate of incorporation.

25 JUDGE PIGOTT: - - - there's a lot of worry

1 here, and I understand it, that we don't want to - -
2 - we don't want to oppress anyone. But at the same
3 time, we wouldn't want to grant someone a tax
4 exemption to which they are not entitled to,
5 regardless of whether it's religious or eleemosynary
6 in any other form, right?

7 So the question comes down to, as - - - as
8 your opponent's arguing, what's it used for? And
9 it's not used for communal living. And there are two
10 people there. And the one person there works in the
11 state.

12 MS. SCHNEER: Well, right. But the - - - I
13 mean, the tenets of the religion, there is lot of
14 testimony and documentation that one of the tenets of
15 this faith is to live together in a religious
16 household in a communal setting.

17 JUDGE PIGOTT: Two people and you don't
18 have comm - - - I asked you that. And - - - and your
19 articles of - - - of incorporation do not provide for
20 communal living.

21 MS. SCHNEER: They don't use that term,
22 Your Honor, but I believe that part of the creation
23 of a body is a believers is creating a space. There
24 was testimony in the record about the importance of
25 having a physical space for this faith.

1 There is an article written by one of the
2 adherents in the draft of their book that's in the
3 record, *The Search for My Sisters*, about the
4 historical search for the location of the Temple of
5 Cybele in the Vatican. There is lots of testimony in
6 the record about the importance of having both the
7 physical center and a place where they can come to
8 reside in religious life. They believe - - -

9 JUDGE PIGOTT: But if you move - - - if you
10 move these two people to another house - - -

11 MS. SCHNEER: Yes.

12 JUDGE PIGOTT: - - - does that then become
13 tax exempt?

14 MS. SCHNEER: The other house?

15 JUDGE PIGOTT: You're going to sell this
16 and buy a new one?

17 MS. SCHNEER: Again, Your Honor, I think
18 that that depends on what's happening here. But
19 what's happening here is that they are living out
20 their faith. They are - - - this is the center of
21 their religion. They believe that the entire space
22 is sacred.

23 JUDGE PIGOTT: I know - - - I know I'm
24 getting pedantic about this, but if two people are
25 living together, living out their religion, is that

1 enough?

2 MS. SCHNEER: Well, Your Honor, I mean,
3 first of all, here, there are two full-time
4 residents, but at the time of trial, there were five
5 people living there, one novitiate - - - someone who
6 was training to become a priestess, two people who
7 were being housed on a charitable basis, including
8 someone who was fleeing persecution from Nepal - - -
9 she was the fourth witness - - -

10 JUDGE PIGOTT: Is that - - -

11 MS. SCHNEER: - - - as an open transsexual
12 - - -

13 JUDGE PIGOTT: So is that enough? If - - -
14 if I - - - if I - - - well, if two people are
15 practicing their faith, have an adopted child, and
16 have a student from someplace who's oppressed, is
17 that - - - is that - - - where - - - where does - - -
18 Judge Platkin didn't seem to think there was enough
19 here.

20 MS. SCHNEER: Yes, but the Appellate
21 Division did. And I - - - you know, the case law is
22 fairly clear that part-time or partial use of a
23 property doesn't defeat the claim to an exemption - -
24 -

25 JUDGE ABDUS-SALAAM: What's the best case

1 for your - - -

2 MS. SCHNEER: - - - that's - - - that's the
3 Yeshivath case - - - I'm sorry, Your Honor.

4 JUDGE ABDUS-SALAAM: I was just going to
5 ask you what's the best case for your - - -

6 MS. SCHNEER: Well, I think that Yeshivath
7 is the best case for us. That's a - - - they use the
8 property clearly three months of the year only. It's
9 residential.

10 JUDGE PIGOTT: Is there a difference - - -

11 MS. SCHNEER: And I don't believe it was
12 absolutely necessary to the - - - to the faith.
13 That's - - - that's - - - that's what make - - - also
14 makes this case stronger - - -

15 JUDGE PIGOTT: Is there - - -

16 MS. SCHNEER: - - - than Sephardic
17 Congregation.

18 JUDGE PIGOTT: Is there a difference
19 between the articles of incorporation now and for the
20 Gallae Central House?

21 MS. SCHNEER: Gallae Central House was a -
22 - - is a completely distinct organization - - -

23 JUDGE PIGOTT: Is there a difference in the
24 articles of incorporation?

25 MS. SCHNEER: Yes.

1 JUDGE PIGOTT: What was the difference?

2 MS. SCHNEER: Gallae Central House was
3 incorporated to assist transsexuals in their
4 transition and to provide supportive housing for them
5 and assist them in other ways.

6 JUDGE PIGOTT: Was that found tax exempt?

7 MS. SCHNEER: I don't know the answer to
8 that, but what I can tell you, Your Honor, is that
9 organization never owned the property and they never
10 sought a tax exemption on that basis. And of course,
11 in our papers we also further argue the tax years at
12 issue here are 2009, 2010 and 2011. And the - - -
13 the standard in the statute is actual use. So
14 really, everything else should be irrelevant here.

15 JUDGE GRAFFEO: Is there - - - counsel,
16 assume that we agree with you and affirm, is there
17 anything that we could say in this decision that
18 would help towns and assessors in differentiating
19 between eligible religious properties and tax
20 avoidance schemes, which I - - - you know, is kind of
21 an undercurrent here? I mean - - -

22 MS. SCHNEER: Well, Your Honor - - -

23 JUDGE GRAFFEO: - - - you don't want
24 someone to read - - - if we were to affirm, we don't
25 want someone to read this decision and then have all

1 new in - - - in your view, there's nothing new in
2 terms of the law on this. You fit comfortably within
3 our - - -

4 MS. SCHNEER: Yes, I believe - - -

5 CHIEF JUDGE LIPPMAN: - - - precedent?

6 MS. SCHNEER: - - - I believe that this
7 comes within - - - well within the statute in the
8 case law.

9 JUDGE GRAFFEO: We don't have to articulate
10 any new ancillary rule, other than the two-prong
11 test.

12 MS. SCHNEER: Other than it - - - it's - -
13 - well, it's a four-prong test as I read it, Your
14 Honor, but, no, primary use is the standard. It
15 served the people of New York State well for many
16 years. And I think it should be affirmed.

17 JUDGE RIVERA: What - - - what - - - what
18 part of what goes on the property is closed to the
19 public?

20 MS. SCHNEER: Very little. I believe that
21 the testimony was actually only that there was one
22 service - - - I think it's the - - - it's the all-
23 women festival - - - that there was a question, and
24 the answer was that it was closed, and the - - -
25 further explanation was that you had to make a

1 reservation.

2 They have taken in men. Their services are
3 open to the public. They provide counseling to, you
4 know, all types of people. Anyone is welcomed to
5 come, stay on the property, walk the grounds, meet
6 with the priestesses. That's why they have open - -
7 - open cafe hours.

8 JUDGE GRAFFEO: Would - - - would this be a
9 different case if they owned 300 acres versus 3
10 acres?

11 MS. SCHNEER: Well, given how hard the Town
12 of Catskill is fighting this, perhaps not. But 300
13 acres, you know - - - Yeshivath is 10 acres. There
14 are other cases involving Boy Scouts or other
15 religious corporations with larger amounts of
16 property.

17 JUDGE SMITH: Well, I guess, would - - -
18 would it - - - would the question then be did they
19 really use all that property?

20 JUDGE GRAFFEO: Would it be a proportional-
21 type review?

22 MS. SCHNEER: Well, the - - - the case law
23 doesn't support that. I mean, the - - - the - - -

24 JUDGE SMITH: You - - - you could buy the
25 King Ranch, and put one alter in the backyard, and

1 the whole place is tax exempt?

2 MS. SCHNEER: I think - - - I think it
3 depends on how you are really using it. But these
4 clients are really using this property for their
5 religious purposes, which includes their charitable
6 housing as well.

7 CHIEF JUDGE LIPPMAN: Okay, counsel.

8 Thanks.

9 MS. SCHNEER: Thank you.

10 CHIEF JUDGE LIPPMAN: Counselor, rebuttal?

11 MR. VINCELETTE: Yes. Consistent with
12 Justice Graffeo and Justice Smith's observations
13 regarding the size of the property and the amount of
14 activity that goes on there, this - - - this is a
15 property that the testimony indicated very little
16 religious activity occurs throughout the entire
17 property.

18 The religious activities were confined to
19 the living room - - - the living room, the porch and
20 a 500-square-foot area in the back. There were paths
21 that were used to access the 500-square-foot area and
22 that was the extent of the act - - - the size of the
23 property that was devoted to this religious use.

24 Again, this goes to the size of the
25 property or to the Ramapo case, Sephardic

1 Congregation. In Sephardic Congregation, a Rabbi had
2 - - - I believe he used one-third of the property for
3 his residential use, but that was not found to defeat
4 the tax exemption, because the primary use was to - -
5 - basically to lead the congregation, to provide
6 counseling, et cetera.

7 Here, you don't have that outreach to the
8 public. It's - - - primarily the testimony
9 established, it was primarily for the benefit of two
10 or three people. The priestesses come on a - - - I
11 don't even know what the basis is - - - it's an
12 irregular basis that they come out there. Again, the
13 Town's position is consistent with the public policy
14 - - -

15 CHIEF JUDGE LIPPMAN: You're saying it's
16 open to the public but nobody comes? Is that what
17 you're saying?

18 MR. VINCELETTE: Yes, in instances there
19 were. There was testimony from Viktoria Whitaker,
20 the treasurer, who said that - - -

21 JUDGE RIVERA: But why is that different
22 from a church that three people are sitting there.
23 And everybody knows there's five services a day, and
24 three people come and that's it.

25 MR. VINCELETTE: It's - - - it's - - - it's

1 different in that there are the five services a day
2 here. Here there's property. The totality of it is
3 being held out as, you know, this is - - -

4 JUDGE SMITH: Is there - - - is there any -
5 - -

6 MR. VINCELETTE: - - - well, the argument
7 obvious - - -

8 JUDGE SMITH: Is there any evidence in the
9 record of any secular use of the property other than
10 what you say, daily living. Sure, they sleep, they
11 brush their teeth, they eat. But is there - - - do
12 they have friends over to watch football games? I
13 mean, is there - - - what - - - what do they do?

14 MR. VINCELETTE: There was testimony that
15 there's a home theater there. I mean, there's - - -
16 you know, supposedly to watch religious movies. But
17 how much - - -

18 JUDGE SMITH: You say supposedly, but
19 there's no contrary evidence?

20 MR. VINCELETTE: There's nothing in the
21 record, Your Honor, that's right, because most of the
22 testimony is from the two people who live there. I
23 mean, we didn't have anyone else - - -

24 JUDGE SMITH: Yeah, but - - - but Justice
25 Platkin didn't say I don't believe a word of it. It

1 would be a different case if he had said this is a
2 sham.

3 MR. VINCELETTE: Right. He did not say
4 that, nor did he go into the - - - the sincerity of
5 the belief. What he did question was the use of the
6 property. And he articulated eight factors that he
7 found gravitated against - - -

8 CHIEF JUDGE LIPPMAN: So counselor, your
9 basic argument is there's not enough going - - -
10 going on.

11 MR. VINCELETTE: Yes, yes, exactly - - -

12 CHIEF JUDGE LIPPMAN: Okay.

13 MR. VINCELETTE: - - - neither charitably,
14 nor religious.

15 CHIEF JUDGE LIPPMAN: Okay.

16 MR. VINCELETTE: Yup.

17 CHIEF JUDGE LIPPMAN: Thank you both,
18 appreciate it.

19 (Court is adjourned)

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C E R T I F I C A T I O N

I, Karen Schiffmiller, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Maetreum of Cybele, Magna Mater, Inc. v. McCoy, No. 202, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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