

Islamic Mission of Am., Inc. v Ali
2016 NY Slip Op 32787(U)
June 14, 2016
Supreme Court, Kings County
Docket Number: 5953/2015
Judge: Bernard J. Graham
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: Part 36**

Index No. 5953/2015
Motion Calendar No.
Motion Sequence No.

ISLAMIC MISSION OF AMERICA, INC.,
AHMED MOGALLI ALHADAAE,

Plaintiff(s),

-against-

MUKBIL OMAR ALI, NAGIB OMAR ALI,
NASSER QATABI, M & NN, INC.,

Defendant(s).

DECISION / ORDER

Present:

Hon. Judge Bernard J. Graham
Supreme Court Justice

**Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Motion:
Plaintiff's Order to Show Cause for Various Relief:**

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____
Order to Show cause and Affidavits Annexed.....	1-2
Answering Affidavits....(Opposition of Defendant).....	3
Replying Affidavits.....	_____
Exhibits.....	_____
Other: <u>Post Hearing Memorandum (Plaintiff and Defendant)</u>	4, 5

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Upon the foregoing cited papers, the Decision/Order on this application is as follows:

Decision:

Plaintiffs, Islamic Mission of America, Inc. ("Islamic Mission") and Ahmed Mogalli Alhadaee ("Mr. Alhadaee") submitted an order to show cause seeking, inter alia, a temporary restraining order in this referenced matter. Hon. Justice Kathy King signed the order and granted

a temporary restraining order against the defendants, Mukbil Omar Ali (“Mr. Mukbil Ali”), Nagib Omar Ali (“Mr. Nagib Ali”), Nasser Qatabi (“Mr. Qatabi”) and M&NN, Inc. (“M&NN”) on or about May 12, 2015.

A separate order to show cause was filed on behalf of defendants on or about September 28, 2015, for the purpose of proposing a joint escrow account that would administer funds for the purpose of purchase and sale of the contested internment spaces. The order to show cause was withdrawn by defendants’ counsel.

The defendants were stayed and enjoined by the TRO from engaging in the sale of internment spaces or dealing with Forest Green Park Cemetery for the purpose of selling said internment spaces (see Order to Show Cause dated May 12, 2015).

A hearing was conducted by the undersigned on October 14, 2015 and continued on December 22, 2015, in Part 36 of this Court to determine the appropriate relief in this matter.

Plaintiffs were represented by Mustapha Ndanusa, Esq., and defendants were represented by Robert J. Gumenick, Esq., and the Court heard witness testimony on behalf of each party.

For the reasons set forth below, the Court has determined that plaintiffs have established a superior claim to ownership and control of the subject internment spaces located at Forest Green Park Cemetery and should be permitted exclusive control and authority over the subject spaces. Accordingly, the application for a declaratory judgment determining plaintiff Islamic Mission to be the rightful owner of the disputed internment spaces is granted. A permanent injunction is granted to the plaintiffs to prohibit defendants from interfering with the ownership, sale and management of the disputed internment spaces.

Background:

The testimony at the hearing was undisputed that three (3) separate purchases of internment spaces were made. The first purchase was made in 1993, for 500 spaces, and the purchaser was listed as “Islamic Center of East New York”; a second purchase in 1999 was made for 500 spaces

and the purchaser was listed as "Islamic Mission"; and a third purchase of 200 spaces in 2003 was made and the purchaser was listed as "Islamic Mission" (see Exhibits 1 and 2 admitted into evidence).

According to the plaintiff, Mr. Alhadaee, a "burial association" was formed to purchase graves for Muslim members of the community. The money for the purchase was raised by collecting donations from various mosques, and the Dawood Mosque in particular (Trial Transcript, 10/14/15, p. 20-21). Mr. Alhadaee testified that the initial burial association consisted of himself, the defendants, Mukbil Omar Ali and Mr. Fakir (now deceased).

The first purchase of graves in 1993 listed the purchaser as Islamic Center of East New York. Mr. Alhadee signed as "President" and Mr. Alhadee testified that this entity was formed by himself with Mr. Fakir and defendant Mukbil Ali. The Islamic Center of East New York is an unincorporated entity. It appears from the testimony that the burial association sought to form an entity which was separate from a particular mosque "to avoid issues" (TT, 10/14/15 p. 47, ln. 6-8). All the money raised was from the Muslim community. (See TT, 10/14/15, p.24, ln. 18-23).

The testimony of Mr. Alhadee was credible that the donors to the burial association were primarily from the Dawood Mosque and that the Dawood Mosque was essentially the same as Islamic Mission of America, Inc.

Evidence was submitted that Mr. Alhadee was the signor of the second contract for purchase of 500 graves together with a promissory note in the amount of \$75,000. The second purchase was made in the name of Islamic Mission of America, Inc. (See Exhibit "2"). Mr. Alhadaee testified that a third purchase of 200 graves was made in 2003 and that the defendant, Mukbil Ali, signed the agreement with Forest Green Park Cemetery due to the fact that Mr. Alhadee was traveling for an extended period. (TT, 10/14/15, p. 47 ln. 18-25).

The cooperation of the initial burial association members ended in 2014, due to a falling out between them, and as evidenced by a letter sent to Forest Green Park Cemetery by Mr. Alhadee on or about September 8, 2014 in which Mr..Alhadee wrote that Mukbil Ali is no longer authorized to act on behalf of the plaintiff, Islamic Mission (see Ex. "3").

Mr. Mukbil Ali testified that his involvement has been solely for the benefit of the Muslim community and he simply was buying graves to be used by the community members. Mr. Ali expressed a concern that the Islamic Mission was a “gang” and expressed concern that they had suspicious motives. Mr. Ali acknowledged forming M&NN, Inc. (a defendant herein) for the purpose of transferring the internment spaces to the control of himself, his son Nagib Ali and Mr. Nasser Qatabi (defendants herein). This proposed transfer triggered the letters sent to Forest Green Park Cemetery and then the commencement of the instant litigation.

Discussion:

The Court has evaluated the chronology of the purchase of the internment spaces made by the unincorporated “Islamic Center of East New York” and the purchase by plaintiff “Islamic Mission”.

It is fairly evident that in 1993 and for some time thereafter, a spirit of cooperation existed between the now feuding parties and the purchase of grave sites was accomplished amicably. Throughout the series of purchases, the purchaser was always an entity that was closely associated with the Dawood Mosque and the principals of the Mosque were involved with the decisions of the burial association.

The actions of the burial association were conducted without much regard for proper legal documentation, as often happens when lay persons engaged in technical legal matters. Most of the difficulty of this matter stems from the unorganized method of acquiring the internment spaces in different, quasi-corporate names. The motives of the principals in acquiring the internment spaces were honorable and well intentioned, yet sorting out the true owner of the graves involves a broad review of the facts.

To begin with, the Court must consider that New Jersey Law requires that bulk purchases of graves be done in the name of a corporate entity. It is for this reason that the purchases are in the names of Islamic Mission and Islamic Center of East New York. The record indicates that Islamic Mission is a corporate entity which was formed in 1944 and Islamic Center of East New York is an unincorporated entity. The purchases were made with the full participation of the

burial associations members who were all connected to the Dawood Mosque at the time. Mr. Elhadee was the president of the burial association and was clearly acting on behalf of the larger Muslim community operating through the Dawood Mosque.

The Court finds that, based on the evidence and testimony, the defendant, Mr. Ali, and the plaintiff, Mr. Elhadee, were acting as defacto agents of the Dawood Mosque which appears to be affiliated closely with the plaintiff Islamic Mission.

While there is no direct case law on point to determine the owner of graves when there is an absence of proper documentation, it is useful to apply the concepts of agency law to the facts of this case. In doing so, the Court finds that the members of an organization may act on behalf of the organization and bind that organization in a contractual agreement. It is for the Court to determine whether the persons were acting as agents and with apparent authority which would bind a principal (see *Morales v Cozy Brokerge, Inc.*, 170 AD2d 201 [1st Dept. 1991]; see also *Heine v Papp*, 97 AD2d 929 [3rd Dept. 1983]).

In the context of a religious corporation there is some precedent to find that the authorization to bind a religious corporation may be implied from the nature of the office of the person who seeks to make an agreement or from previous similar dealings recognized by the corporation. (See *People's Bank v St. Anthony's Roman Catholic Church*, 109 NY 512 (1888); see also *Malerba v Friars Minor, Order of St. Francis*, 180 AD 441 [1st Dept. 1917]).

The case law using agency principles may not be exactly analogous to the instant dispute between these parties, yet the dispute here is whether the actions of Mr. Ali could be construed as being in furtherance of the Dawood Mosque (and by extension the Islamic Mission). This Court finds that Mr. Ali's actions were taken with the apparent authority of the larger religious organization (ie. the plaintiff Islamic Mission) and that Mr. Ali should now be precluded from claiming that he should have sole control of the disposition of the internment spaces. This conclusion is supported by the fact that Mr. Ali could not purchase the internment spaces in his individual name, therefore, he was acting on behalf of the established religious organization (Islamic Mission).

Furthermore, the Court notes that Mr. Ali had sought to transfer the graves to defendant M&NN, Inc., which was an entity that he formed with defendants Nagib Ali and Nasser Qatabi.

There would be no rational basis to allow the disputed internment spaces which were widely considered to be connected to the Dawood Mosque and Islamic Mission to be deemed the property of three individuals rather than an established Muslim religious organization.

Conclusion:

It is this Court's determination that the evidence in this case supports the claim by the plaintiffs that each of the three purchases of internment spaces from Forest Green Park Cemetery was done with the implicit understanding that the purchases were made under the authority and direction of Dawood Mosque and the Islamic Mission and not for the sole benefit of the defendants.

It is also a factor in this Court's decision that the interests of justice compel the decision to designate the plaintiff, Islamic Mission, as the owner of the disputed internment spaces. Mr. Mukbil Ali separated from the larger Muslim organization and sought to place ownership of the graves in M&NN Inc., which was completely unauthorized.

Furthermore, Mr. Ali, who is most likely truthful in his desire to operate a burial association for the benefit of members of the Muslim community, appears to be erratic and unpredictable in regard to this matter. Mr. Ali had repeated a claim that the plaintiff's attorney (Mr. Ndanusa) was a member of Boko Haram, the terrorist group. Mr. Ali also referred to the Islamic Mission as a "gang" and accused Islamic Mission of "destroying countries" which he specified to mean Yemen and Syria. (TT, 10/14/15, pg. 116 ln. 19-25).

On the other hand, plaintiffs are an established, reputable organization which would be expected to be able to administer the ownership and sales of the internment spaces in a professional manner. The testimony of Ahmed Jaber, a retired doctor, who is the chair of the Islamic Mission of America, detailed the formation of Islamic Mission of America as a not-for-profit corporation established in 1944 (TT, 12/21/15, pg. 32,) and has played an integral role in

fundraising for the purchase of grave sites for the benefit of the Muslim Community (TT, 12/21/15, pg. 37, ln. 24). Mr. Jaber was convincing that the burial association operated under the Islamic Mission through the Dawood Mosque and it was understood that the grave purchases were made under the authority of Islamic Mission. (TT pg. 36., ln. 6, 12/21/15).

That aspect of the Plaintiffs' motion which seeks a declaration that Islamic Mission be declared the owner of the disputed internment spaces is supported by admissible evidence that the purchases were made under the authority of Islamic Mission and there is a preponderance of evidence that the Islamic Mission was the entity which would own and manage the inventory of graves which were purchased from Forest Green Park Cemetery.¹

The injunctive relief sought by the plaintiffs pursuant to CPLR sec. 6301 is appropriate as the facts indicate that (1) plaintiffs stand to suffer an irreparable injury if control of the internment spaces is transferred by the defendants; (2) that injunctive relief is necessary to preserve the status quo in this matter; and (3) the plaintiffs are the appropriate persons to own, manage, convey and maintain the subject internment spaces. Accordingly injunctive relief is applicable to the facts herein (see *Nassau Roofing & Sheet Metal Co. v Facilities Dev. Corp.*, 70 AD2d 1021 [3rd Dept. 1979]; *Grant Co. v Srogi*, 52 NY2d 496 [1981]).

Accordingly, IT IS ORDERED that the application by plaintiffs for permanent injunctive relief against the defendants is granted and that defendants Mukbil Omar Ali, Nagib Omar Ali, Nasser Qutabi and MN&N, Inc., are enjoined from the unauthorized use of the name and likeness of plaintiff, Islamic Mission of America, Inc., and further enjoined from any activity related to the purchase, sale or management of the graves which are the subject of this dispute.

IT IS ORDERED that the 292 internment spaces (and any remaining plots which are the subject of this dispute) having been purchased by Islamic Center of East New York, Inc., and the


¹The Court notes that "plaintiffs" include Ahmed Mogalli Alhadee and a portion of the relief sought is a declaration that Mr..Alhadee should be considered the owner of the graves purchased under the name of Islamic Center of East New York. This Court's ruling is based on the belief that Islamic Mission of America is the appropriate entity to hold title to the internment spaces therefore title shall not vest with Mr. Alhadee.

remaining 572 internment spaces purchased by Islamic Mission of America, Inc., and any subsequent purchases (and all proceeds from the sale of such internment spaces) shall be deemed the property of Islamic Mission of America, Inc., which may designate its chairperson, Ahmad Jaber (or such other duly authorized person designated in writing by the Islamic Mission of America, Inc.) to hereafter communicate and arrange with Forest Green Park Cemetery for the purchase or sale of the subject internment spaces.

This shall constitute the decision and order of this Court.

Dated: June 14, 2016

ENTER:



Bernard J. Graham, JSC

Hon. Bernard Graham

Hon. Bernard Graham

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