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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

AGNES ANDERSON et al., Plaintiffs and Appellants, v. LORETTO HIGH SCHOOL et al., Defendants and Respondents.	C062514 (Super. Ct. No. 34-2009-00046596)

Plaintiffs, the Roman Catholic Bishop of Sacramento and seven individuals, donated altogether several hundred thousand dollars to Loretto High School, a Catholic high school for girls run by the Institute of the Blessed Virgin Mary (Loretto Sisters) (IBVM), in response to a capital campaign to fund expansion of the school. A few years after the expansion was complete, IBVM announced the school would close at the end of the academic year. IBVM contracted to sell the school to a private company and announced that the proceeds of the sale, after repayment of the construction loan and payment of sale

expenses, would be used to pay IBVM's debts and provide for retired members in Illinois.

Plaintiffs unsuccessfully sought first a temporary restraining order and then a preliminary injunction to dedicate a portion of the proceeds of sale of the school "to the education of high school age women attending Catholic high school in the Sacramento region in order to prepare them for the challenges of college and the competitive job market." Plaintiffs appeal from denial of their motion for a preliminary injunction. They contend the trial court erred in concluding they would not prevail on the merits. They assert they demonstrated a likelihood of success under Corporations Code section 9142, which provides for imposition of a trust on assets of a religious corporation under certain conditions, and under Corporations Code section 9143, which permits an action for improper diversion of contributions given for a specific purpose.[1] We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

IBVM and Loretto High School

IBVM is an institute of pontifical right within the Catholic Church. As such, it is subject to the authority and supervision of the Congregation of Institutes for Consecrated Life and Societies of Apostolic Life (CICLSAL) rather than the authority and supervision of the local diocesan bishop.

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[1] Unless otherwise specified, all further statutory references are to the Corporations Code.

IBVM owned and operated Loretto High School (the school); the school's mission was "to provide an outstanding college preparatory education for young women in a supportive and challenging learning environment." The original campus was on five acres of land donated by the Bishop in 1955.

The Campaign for Loretto

In 1999, the school launched a capital campaign, "Campaign for Loretto." The school's enrollment had increased 45 percent in the last seven years and IBVM believed a continued quality education required modernization of the aging facilities and additional classroom space. The plans included doubling the size of the campus and building new science and performing arts centers, visual arts studios, a swimming complex, athletic field, additional parking and renovation of some current buildings. IBVM made a lead gift of $800,000. The campaign's goal was to raise $5 million over a three- to five-year pledge fulfillment phase. Donations were solicited to "ensure that the Loretto legacy continues."

Campaign literature told potential donors: "Think of it as an investment. It won't make you money, but it will help fulfill something far more important in the community, and in the lives of the young women who experience a Loretto education. We think you'll agree that the returns on such an investment in the future are excellent." "With their gifts, all donors to the campaign acknowledge the institution's enduring value. They endorse the mission of the school, and invest in the need for expansion of the campus in order to continue to provide the

quality educational experience at Loretto." A fundraising pamphlet from 2001-2002 indicated the campaign had been successful, raising $4.1 million, and sought additional donations. "A capital gift is an investment in the Loretto educational experience, now and for the future."

The campaign was suspended after it raised about $4.5 million. In addition to the donations, IBVM obtained a construction loan of $5.5 million, which IBVM guaranteed. The expansion was completed in 2003.

Loretto High School Closes

Beginning in 2007, the school had declining enrollment and faced financial hardship. IBVM loaned the school $1.5 million to complete the 2008-2009 academic year. In early 2009, IBVM announced the school would close at the end of the academic year. IBVM contracted to sell the school to a private company that operates charter schools.

In February 2009, the Bishop and other representatives of the Diocese of Sacramento met with representatives of IBVM to discuss how the assets of the school would be distributed after the school closed. The Bishop expressed concern that the intentions of the school's donors must be respected and a portion of the assets must be dedicated to that purpose. IBVM disagreed that a portion of the assets had to be dedicated to the education of women of high school age attending Catholic school in Sacramento. IBVM took the position it was entitled to the assets, which would be used to address its serious financial problems and to provide for retired members.

The Lawsuit

Plaintiffs filed suit against IBVM, seeking declaratory relief that the funds donated to the capital campaign could not be used for any purpose not related to the education of high school aged women attending Catholic high school in the Sacramento region and a permanent injunction enjoining IBVM from using the funds for any other purpose. Plaintiffs contended that using funds contributed to the capital campaign for the general use of IBVM constituted an improper diversion of donor-restricted charitable funds under section 9143, subdivision (a). They further contended canon law impressed these funds with a constructive trust for purposes of section 9142.

Motion for TRO and Preliminary Injunction

Plaintiffs applied for a temporary restraining order and a preliminary injunction to require the net proceeds from the sale of the school be held in escrow pending further order of the court.[2]

In support of this application, plaintiffs provided the declarations of the individual plaintiffs stating they contributed to the capital campaign "so that Loretto High School could, in the decades ahead, better serve our students and provide a quality Catholic education." They believed their

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[2] The suit also sought declaratory relief and an injunction as to funds in the school's endowment fund and other gifts to the school from the Bishop. Plaintiffs later withdrew, without prejudice, the motion for a preliminary injunction as to the endowment fund and limited the motion for a preliminary injunction to only capital campaign funds.

contributions would help the school better serve its students, and continue the school's legacy and service to young women in Sacramento. These plaintiffs had also contributed to the school's endowment fund and some had made separate contributions to IBVM.

IBVM opposed the temporary restraining order. The opposition recited that the purchase price for the sale of the school was $7.75 million, to be paid in two installments: $5.75 million at closing and the remaining $2 million three years later. At the close of escrow there would be insufficient funds to pay all the debts, which included $4.3 million due to Allied Irish Banks on the construction loan, a prepayment penalty, $600,000 in broker and legal fees and closing costs, and a $1.5 million loan from IBVM.

The application for a temporary restraining order was denied and a hearing was set on the motion for a preliminary injunction.

IBVM argued a preliminary injunction would cause it irreparable harm as it would prevent the sale of the school. The bank had consented to the sale only on the condition that it would receive all it was owed at the close of escrow.

Competing Canon Law Experts and the Rome Letter

In support of their motion for a preliminary injunction to hold the net proceeds of the sale in escrow pending court order, plaintiffs provided the declaration of Nicholas Cafardi, a Roman Catholic canon law expert. He stated that under the 1983 Code of Canon Law, specifically Canon 1267, section 3 (hereafter,

1267.3), property given to a public juridic person, such as IBVM, for a particular purpose must be used for that purpose. Although the canon does not use the term "trust," Cafardi concluded "this limitation is in fact a constructive trust, and the functional equivalent of the constructive trust concept in the civil law context." Funds raised by or given to the school for the capital campaign have a particular purpose attached to them, "namely the education of young women in the Sacramento region in the Catholic tradition." Under canon law, these funds were "impressed with a constructive trust that restricts their use from any purpose other than that for which the funds were contributed."

In opposition, IBVM provided a letter from Archbishop Gianfranco Gardin in Rome, second in command of CICLSAL (the Rome letter). The Rome letter responded to the Bishop's concerns about the sale of the school "and, in particular, the use of the profit which would result from the sale." The letter indicated Gardin was aware he did not have full information. As to the Bishop's concern about the equitable distribution of the proceeds of the sale, Gardin wrote: "[W]e have tried to explain that the intention of [the] donors in contributing to the building and on-going activity of a school or other institution does not establish a right to a part of the proceeds if, eventually, it is necessary to close and sell the institution." It was different in the case of an endowment fund. "If, in fact, the Institution of the Blessed Virgin Mary is the owner of

the school and the property in question, then the proceeds belong to the Congregation."

IBVM also provided the declaration of their Roman Catholic canon law expert, Daniel Ward. He stated that IBVM was under the authority of the CICLSAL, of which Gardin was second in command. Ward provided copies of the relevant canons, in both English and Latin, which was the definitive text. Canon 1267.3 provided: "Offerings given by the faithful for a certain purpose can be applied only for that same purpose." Ward declared that Canon 1267.3 was a general statement of principle and did not by itself create a constructive trust; the norms of Canons 1299 through 1307 would have to be followed to create a trust. He further stated that plaintiffs had hierarchical recourse first to the CICLSAL and then in accord with the norms of a papal decree.

The Ruling

The trial court denied the motion for a preliminary injunction, finding plaintiffs had not proved the likelihood they would prevail on the merits.

Plaintiffs appealed.[3] (Code Civ. Proc., § 904.1, subd. (a)(6).)

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[3] The parties stipulated to stay the balance of the case pending the outcome of this appeal.

DISCUSSION

I.

Standard of Review

In deciding whether to issue a preliminary injunction, a trial court weighs two interrelated factors: the likelihood the moving party ultimately will prevail on the merits, and the relative interim harm to the parties from the issuance or nonissuance of the injunction. (*Butt v. State of California* (1992) 4 Cal.4th 668, 677-678.)

Generally, a superior court's ruling on an application for a preliminary injunction is reviewed for an abuse of discretion. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286.) The party challenging the superior court's order has the burden of making a clear showing of an abuse of discretion. (*Biosense Webster, Inc. v. Superior Court* (2006) 135 Cal.App.4th 827, 834.) An abuse of discretion occurs when the lower court exceeds the bounds of reason or contravenes the uncontradicted evidence. (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 527.) The court also abuses its discretion when it acts contrary to law. (*City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297.)

"Of course, questions underlying the preliminary injunction are reviewed under the appropriate standard of review. Thus, for example, issues of fact are subject to review under the substantial evidence standard; issues of pure law are subject to independent review. [Citation.]" (*People ex rel. Gallo v.*

Acuna (1997) 14 Cal.4th 1090, 1136-1137 (dis. opn. of Mosk, J.).)

Plaintiffs contend here the underlying questions are issues of law, so our review is de novo. IBVM contends there are factual disputes subject to the substantial evidence standard of review. We find the questions underlying the preliminary injunction are the interpretation of sections 9142 and 9143 and whether the governing instruments of the Roman Catholic Church "expressly" provide for imposition of a trust. These questions of statutory interpretation are questions of law. (*Robin J. v. Superior* Court (2004) 124 Cal.App.4th 414, 420.) Accordingly, our review is de novo.

II.

Plaintiffs Failed to Show a Likelihood of Prevailing Under Corporations Code Section 9142

At common law, "all the assets of a corporation organized solely for charitable purposes must be deemed to be impressed with a charitable trust by virtue of the express declaration of the corporation's purposes." (*Pacific Home v. County of Los Angeles* (1953) 41 Cal.2d 844, 852.) The rule, however, is different for a religious corporation.

Section 9142, subdivision (c) provides: "(c) No assets of a religious corporation are or shall be deemed to be impressed with any trust, express or implied, statutory or at common law unless one of the following applies:

"(1) Unless, and only to the extent that, the assets were received by the corporation with an express commitment by

resolution of its board of directors to so hold those assets in trust.

"(2) Unless, and only to the extent that, the articles or bylaws of the corporation, or the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide.

"(3) Unless, and only to the extent that, the donor expressly imposed a trust, in writing, at the time of the gift or donation."

Plaintiffs contend the trial court erred in finding plaintiffs were not likely to prevail on the merits under section 9142, subdivision (c)(2). They contend the governing instruments of the Roman Catholic Church impose a trust on donations given for a specific purpose.

The parties agree that IBVM is a member of the Roman Catholic Church and that the canons are governing instruments of the church. (See *Episcopal Church Cases* (2009) 45 Cal.4th 467, 487-492 [canons of the Episcopal Church are governing instruments].) Under section 9142, subdivision (c)(2), the governing instruments must not simply impose a trust, but must "so expressly provide." The question, therefore, is whether Canon 1267.3 "expressly" provides for imposition of a trust on contributions given for a specific purpose.

"'"[E]xpressly" means "in an express manner; in direct or unmistakable terms; explicitly; definitely; directly."' [Citations.]" (*Sofias v. Bank of America* (1985) 172 Cal.App.3d 583, 587.) Thus, the language of the governing documents

imposing a trust cannot be ambiguous. Language is ambiguous where it is capable of being understood by reasonably well-informed persons in two or more different senses. (2A Singer & Singer, *Statutes & Statutory Construction* (7th ed. 2007) § 46:4, P. 179.)

Canon 1267.3 provides: "Offerings given by the faithful for a certain purpose can be applied only for that same purpose." This language does not expressly create a trust. It speaks only to the initial "offerings" and the initial application of those offerings. It does not expressly restrict the use of proceeds of the property acquired with the initial offerings.

Cases interpreting section 9142, subdivision (c)(2) often arise where a local church ends its affiliation with a national or worldwide church. Where the local church has been found to hold its property in trust for the hierarchical church, the language of the governing documents imposing a trust was considerably more direct than that of Canon 1267.3. Indeed, in many cases, the governing documents expressly use the term "trust." (See *Episcopal Church Cases, supra*, 45 Cal.4th 467, 475, ["'All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located'"]; see *Korean United Presbyterian Church v. Presbytery of the Pacific* (1991) 230 Cal.App.3d 480, 489, overruled on another point in *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743, fn. 11 ["'All

property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, . . . is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)'"]; *California-Nevada Annual Conf. of the United Methodist Church v. St. Luke's United Methodist Church* (2004) 121 Cal.App.4th 754, 758, disapproved in *Episcopal Church cases, supra*, 45 Cal.4th at pp. 491-492 ["'titles to all properties held . . . by a local church . . . shall be held in trust for the United Methodist Church and subject to the provisions of its *Discipline*,'" but court found settlor revoked trust].)

Plaintiffs argue the governing documents of the church need not use the term "trust," citing *Guardian Angel Polish Nat. Catholic Church of L.A., Inc. v. Gronik* (2004) 118 Cal.App.4th 919. In *Guardian Angel*, a dispute arose over ownership of a local church's property after an unapproved board of the local church voted to sever ties to the national church. The court found the governing constitution of the national church, as well as the articles and bylaws of the local church provided for a trust. (*Id.* at p. 931.) These documents provided that in the event of liquidation of a parish, all of the parish's property "'becomes the property of the Polish National Catholic Church.'" (*Id.* at pp. 923, 924.) While this language does not use the term "trust," it expressly provides for the transfer of the

property to the national church in the event of liquidation and thus is much more explicit than Canon 1267.3.

Moreover, the parties' canon law experts, certainly "reasonably well-informed persons," understood the language of Canon 1267.3 "in two or more different senses." Their difference of opinion as to the effect of Canon 1267.3 indicates it did not "expressly" impose a trust on contributions given for a specific purpose. Cafardi declared the limitation of Canon 1267.3, that property given for a particular purpose must be used only for that purpose, was "in fact a constructive trust, and the functional equivalent of the constructive trust concept in the civil law context."[4] Tellingly, although Cafardi's declaration stated the canon imposed a trust, it did not declare that the canon "expressly" did so; being "the functional equivalent" of a constructive trust is not the same as "expressly" providing for a trust. Ward, however, declared the canon was only a general statement of principle and did not by itself create a constructive trust.[5] The Rome letter indicated

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[4] A constructive trust is a remedy to compel a person who holds property to which he is not justly entitled to transfer the property to another. It is an equitable remedy where the property was obtained by fraud, accident, mistake, undue influence, violation of trust, or other wrongful act, which may include unjust enrichment. (13 Witkin, Summary of Cal. Law (10th 3d. 2005) Trusts, § 319, pp. 892-893.) Like a resulting trust, a constructive trust is a creature of equity and need not be evidenced by an express declaration. (*Calistoga Civic Club v. City of Calistoga* (1983) 143 Cal.App.3d 111, 118-119.)

[5] Plaintiffs argue it is undisputed that Canon 1267.3 imposes a trust on contributions given for a specific purpose. They

the proceeds of the sale of the school belonged to the Congregation (IBVM) and made no mention of any restriction or trust.

Had plaintiffs intended their gifts to the capital campaign be restricted beyond the initial application, they could have created a trust for their gift. (§ 9142, subd. (c)(3).)

The trial court did not err in concluding that plaintiffs failed to show a likelihood they would prevail under section 9142, subdivision (c)(2).

III.

Plaintiffs Failed to Show a Likelihood of Prevailing Under Corporations Code Section 9143

Plaintiffs contend the trial court erred in concluding they were not likely to prevail under section 9143. They contend the funds were improperly diverted from their original use because the contributions were solicited to be used to educate young women in Sacramento in Catholic school and IBVM now proposed to

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contend that Ward's declaration is unsupported because "[e]ven a cursory parsing of the text of the canons relied upon by Ward," would reveal his cited canons do not contain additional requirements for imposition of a trust, and thus there is no conflict in the record. Plaintiffs thus invite this court to interpret the canons of the Roman Catholic Church to determine if they impose a trust upon contributions given for a specific purpose. In resolving church property disputes, we are to use neutral principles of law and not decide questions of church doctrine. (*Episcopal Church cases, supra,* 45 Cal.4th at p. 485.) Accordingly, we decline to interpret canon law. Moreover, the relevant inquiry here is not whether Canon 1267.3 provides for imposition of a trust, but whether it does so "expressly." Based on its language, we have concluded it does not.

use the proceeds from sale of the school for other purposes. They assert they have a viable action under section 9143.

Section 9143 provides: "(a) Notwithstanding any other provision of this part to the contrary, when property, received by a corporation, covered by this part from a person directly affiliated with that corporation has been contributed based upon an affirmative representation that it would be used for a specific purpose other than the general support of the corporation's activities and has been used in a manner contrary to the specific purpose for which the property was contributed, an action may be brought by the contributor or by any person listed in paragraph (1), (2), or (3) of subdivision (a) of Section 9142, if that person, before bringing an action, notifies the corporation, in writing, that an action will be brought unless the corporation takes immediate steps to correct any improper diversion of funds.

"(b) In the event that it becomes impractical or impossible for the corporation to devote the property to the specific purpose for which it was contributed, or that the directors or members of the corporation in good faith expressly conclude and record in writing that the stated purpose for which the property was contributed is no longer in accord with the policies or best interests of the corporation, the directors or members of the corporation may, in good faith, approve or ratify the use of the property for the general purposes of the corporation rather than for the specific purpose for which it was contributed.

"(c) A public officer may not bring an action in an official capacity under this section even on behalf of a private person."

IBVM contends this section does not apply because it does not address imposing a trust on contributions given for a specific purpose. Rather, IBVM contends, section 9143 concerns only the improper diversion of property contributed for a specific purpose based on affirmative representations. Here, IBVM asserts, there was no improper diversion; the funds contributed to the capital campaign were used for the purpose promised--to expand Loretto High School. We agree.

"The rules governing statutory construction are well settled. We begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent. [Citations.]" (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562.) We first look to the language of the statute, giving effect to its "plain meaning" according to its ordinary usage, with significance given to every word, phrase, and sentence, when possible. (*Ibid.*) We must attempt to harmonize all parts of the statute in the context of the statutory framework as a whole, and our interpretation should not render any part of the statute meaningless. (*Manufacturers Life Ins. Co. v. Superior Court* (1995) 10 Cal.4th 257, 274; *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230-231.)

Plaintiff's interpretation of section 9143 would require all contributions given pursuant to affirmative representations

that they would be used for a specific purpose, and all proceeds of property acquired with such contributions for all time, to be used for the same specified purpose. This interpretation is at odds with the statutory language.[6]

First, plaintiffs' interpretation would expand the terms used in the statute. Section 9143 speaks only of "property" that is "contributed"; it says nothing about the proceeds of such property. The narrower term "property" in section 9143 contrasts with the broader term, "assets," used in section 9142, which addresses imposing a trust on assets of a religious corporation. "'When the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that the Legislature intended a difference in meaning.' [Citations.]" (*People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2005) 37 Cal.4th 707, 717-718.)

Second, plaintiffs seek to impose restrictions beyond those made in the capital campaign literature. Section 9143 is concerned that property contributed to a religious corporation be used in conformity with the "affirmative representations" made in soliciting the contributions. Here IBVM made

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[6] Section 9143 permits an action where property "has been used in a manner contrary to the specific purpose for which the property was contributed." Here plaintiffs brought an action before the proceeds of the sale had been used (or even acquired). This provision further indicates the statute was intended to apply only to the initial use of the contribution, not to trace the use of its proceeds in perpetuity.

affirmative representations that contributions to the capital campaign would be used to expand the school and it is undisputed that the contributions were used for such purpose. Plaintiffs provided no evidence of an affirmative representation by IBVM that, in the event the school closed, proceeds from the sale of the school attributable to the contributions to the capital campaign would be used to fund Catholic education for young women in Sacramento.

Third, plaintiffs' interpretation is inconsistent with the statutory scheme. Section 9142, subdivision (c) permits assets of a religious corporation to be impressed with a trust only in three specific instances: (1) an express commitment by resolution of the board of directors; (2) an express provision in the articles, bylaws or governing instruments; or (3) an express imposition of trust in writing by the donor. All three instances require an express declaration of trust and a writing. By contrast, plaintiff's interpretation of section 9143 would impose a trust on contributions given for a specific purpose without either an express declaration of trust or a writing.

Plaintiffs contend section 9143 "provides a safety net for donors in any instances where they did not elect to impose a trust in writing precisely because express representations were made to them by the organization as to how the funds would be used." Given the stringent requirements of section 9142, subdivision (c) for imposing a trust on assets of a religious corporation, we find plaintiffs' interpretation of section 9143, which does not mention a trust, untenable. Rather, we conclude

section 9143 addresses improper diversion of contributions given for a specific purpose. As that did not occur here, the statute has no application.

The trial court did not err in concluding that plaintiffs failed to show a likelihood they would prevail under section 9143.

DISPOSITION

The judgment (denial of motion for preliminary injunction) is affirmed. Respondents are awarded their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (a)(2).)

CANTIL-SAKAUYE, J.

We concur:

BLEASE, Acting P. J.

SIMS, J.