Case No: C31BS010

Neutral Citation Number: [2017] EWHC 2519 (Ch)
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BRISTOL DISTRICT REGISTRY

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 10/10/2017

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

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Between :

(1) Goran Vucicevic	**Claimants**
(2) Stephen Anthony Richards Bond	
- and -	
(1) Stanko Aleksic	**Defendants**
(2) Vladika Amilofije	
(3) The Serbian Orthodox Church (Montenegro Branch)	
(4) The Serbian Orthodox Church (Head Office in Serbia)	
(5) The Serbian Orthodox Church Sveti Sava (London)	
(6) Vladan Aleksic	
(7) The Attorney General	
(8) Alex Dubljevic (No 2)	

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Robert Sheridan (instructed by **Alletsons**) for the **Claimants**
Julia Beer (instructed by **Direct Access**) for the **Fifth Defendant**
Dealt with on paper on 10 October 2017

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Judgment

HHJ Paul Matthews :

1. On 20 September 2017 I handed down judgment in this matter, concerned with the will of the late Mr Veljko Aleksic. I will not set out the background. This supplemental judgment must be read as an addendum to that first judgment. The will included a gift of three houses (one in London, one in Cardiff, and one in Montenegro) to "the Serbian Orthodox Church". At paragraph 22 of my judgment I said this:

> "There is an unfortunate ambiguity in the gift of the houses to the Serbian Orthodox Church. This is because there are several emanations of the church which the testator could have been referring to. These include the headquarters of the church itself in Serbia, an honorary metropolitanate eparchy in Montenegro, and also a church in London. Vladika Amfilohije Radovic is the metropolitan (senior bishop) for Montenegro. But the testator was known to the church in London. This is why the third, fourth and fifth defendants have been joined. In fact the problem of the potential uncertainty as to which branch of the church was meant was resolved by a deed of variation being entered into, dated 19 October 2016. This was entered into between the representative of the Serbian Orthodox Church in London, the headquarters of the Serbian Orthodox Church in Serbia, and the claimants. It agreed to substitute a new will for that of the testator. This made clear that the gift of the houses was to go to the Serbian Orthodox Church in London (which is a registered charity)."

2. Ultimately, in relation to this gift I decided that

> "35. … This is a gift by a testator without children or a wife or partner of his own, to an institution for charitable purposes. The gift is effectively of residue, the testator having made pecuniary legacies to those family and friends that he wished to benefit. The confidence which he expresses in his will is not placed in the legatee, but in someone who is in a position of authority in and connected to the legatee. This is someone that he trusts to make the right kind of decision in the administration of the gift. Moreover, the gift is long lasting, since part of the property is not to be sold until 2040. In my judgment, bearing in mind that context, and in particular the four elements to which I have already referred, it was clear to me that this will created a trust of the gift to the legatee, the Serbian Orthodox Church in London, on trust for people in need, especially children, in Kosovo."

3. I made an order intended to give effect to my judgment. Unfortunately, it did not do so. In part, this was because the words "in London" had been omitted after "the Serbian Orthodox Church" in the order. Had it not been for the matter which I am about to describe, that could have been corrected under CPR r 40.12 (the "slip" rule). But in fact that was not all. More importantly, it appears (contrary to my understanding at the time) that the various emanations of the Serbian Orthodox Church were only agreed as to "London" *in case the gift were held to be absolute*. But after considering the arguments, and, as stated above, I had held it *to be a trust gift*.

4. Hence in the circumstances there was and is therefore no agreement as to the identity of the devisee. That in turn means that *either* I have made no decision as to the devisee, *or* I have made a decision based on a fundamental mistake. Either way, in my

judgment I have power to vary the order under CPR r 3.1(7). In order to save costs, and indeed time, with the consent of the parties, I have dealt with an application under CPR r 3.1(7) on the basis of short written submissions. In fact, in the event, only the fifth defendant (the London emanation of the Church) has put in submissions. The claimants having considered those submissions have decided not to do so.

5. The fifth defendant submits that

> "based upon the findings of the court to date that the testator's intention was an intention to benefit the London branch of the Serbian church and for it to hold the properties and residuary estate on trust 'for people in need, especially children in Kosovo' as set out in the final sentence of paragraph 35 of the judgment".

6. The fifth defendant relies on a number of factors:

(1) the court has found as a fact that the testator intended to make a gift to an institution for charitable purposes;

(2) the court has found as a fact that the testator chose English law to govern his succession;

(3) the court has accepted the correct identification of the other charity in the will as being a "British charity";

(4) the testator's overwhelming connection of the time he executed his will was with England and Wales.

7. The fifth defendant also relies on the fact that, if the gift was to the fifth defendant to be held on the charitable trust set out in the judgment, then it would be a gift to a registered UK charity and thus an exempt transfer under the Inheritance Tax Act 1984. It also relies on the distinction drawn by the testator between the UK properties, which could be sold at any time, and the Montenegro property, which could only be sold from 2040 onwards. The disposal by the fifth defendant as a UK registered charity applying the proceeds of sale of the properties to charitable purposes would not incur a charge to CGT.

8. There can be no doubt that, as set out in the previous paragraph, construing the gift made to "the Serbian Orthodox Church" as one to "the Serbian Orthodox Church in London" would be at least as tax efficient as any other construction, and perhaps even more so. But this is not a case where the testator took tax advice before drafting his will. Indeed, it seems unlikely he took any advice at all. I do not think that the tax consequences can properly govern the construction of this gift. The same reasoning, in my judgment, applies to the notion that he would have been swayed by comparative charity law as such. He was not a lawyer, but (in making his will) a philanthropist. What English law, as opposed to any other law, said about charity would not have been apparent to him.

9. The function of the court is to make sense of the words which the testator has used, in the context in which he has used them. The testator clearly had a specific recipient in mind in making the gift which he did to the "Serbian Orthodox Church". Of the four factors relied on by the fifth defendant and set out above, in my judgment the most

important are the fourth and the third (in that order), with the second coming some way behind them. Although the testator had been born in Montenegro, and still had family and property there, nevertheless the testator's connections with England and Wales at the time of his death were far more important. And his other charitable gift was to a British charity. In addition, though as I say following on, he impliedly chose English law to govern his succession.

10. In considering what the testator's intention was in using the phrase "the Serbian Orthodox Church" I can properly take into account his strong connections to England and Wales and the fact that the testator had a particular affiliation with the Serbian Orthodox Church in London. In the other direction points the fact that Vladika Amfilohije Radovic, given an important role under the will, is a senior bishop of the church in Montenegro. But in my judgment the effect of this appointment is lessened by the fact that the focus of actual operations is not London but Kosovo. The Bishop will be "the man on the ground", so to speak. There is no need for the money to be in Montenegro as well.

11. On the whole, in my judgment and on the true construction of the will, the gift to "the Serbian Orthodox Church" is to the emanation of the Serbian Orthodox Church with which he was most closely connected, that is, the Serbian Orthodox Church in London. Accordingly, I will order a variation of my earlier order so as to add the words "in London" after the words "the Serbian Orthodox Church". I ask counsel to draft a short order to make the variation and submit it for my approval.