Neutral Citation Number: [2021] EWCA Civ 243

Case No: A3/2020/1894

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (ChD)
Mr Tom Leech QC sitting as a Deputy Judge of the High Court
[2020] EWHC 2488 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26 February 2021

Before :

LORD JUSTICE PETER JACKSON
LORD JUSTICE BAKER
and
LORD JUSTICE NUGEE

- -

Between :

MEHBOOB BHAMANI and others	**Appellants**
- and –	
ABDUL SATTAR and others	**Respondents**

- -
- -

Gideon Roseman (instructed by **Russell Evans Rahaman**) for the **Appellants**
Alan Tunkel (instructed by **Aman Solicitors**) for the **Respondents**

Hearing date: 27 January 2021

- -

Approved Judgment

Lord Justice Nugee: .

Introduction

1. This is an appeal by the Claimants from an Order dated 6 October 2020 of Mr Tom Leech QC sitting as a Deputy Judge of the High Court (**"the Judge"**), in which he dismissed their application for summary judgment.

2. The appeal is concerned with a charity known as Wembley Central Masjid which operates religious activities for Muslims in the London Borough of Brent. It provides a place of worship and a community centre at premises at 35 to 37 Ealing Road, Wembley, also known as the Wembley Central Masjid. In this judgment I will generally use **"the Masjid"** to mean both the charity and its premises but where it is helpful to refer specifically to the land I will refer to **"the Premises"**.

3. The Claimants are either members of the Management Committee, or trustees, of the Masjid. The Defendants are worshippers at the Masjid, some of them at any rate of long standing. In this action the Claimants claim an injunction to restrain the Defendants from entering the Premises. They applied for summary judgment to that effect. They relied on the simple proposition that they are entitled, on behalf of the Masjid, to possession of the Premises and as such entitled to refuse access to the Defendants.

4. Before the Judge the Defendants sought to defend the claim on the grounds that the Claimants were not exercising their powers as charity trustees for the purposes for which they were given and so as to further the purposes of the Masjid, but seeking to silence opposition to themselves, and that in attempting to exclude the Defendants from access to the Premises they were acting in breach of duty.

5. The Judge, in a thorough and commendably clear judgment dated 17 September 2020 at [2020] EWHC 2488 (Ch) (**"the Judgment**" or **"Jmt"**) accepted that if this were so, it would amount to a defence to the claim for an injunction; and held that since this raised issues of fact which he could not resolve on the application for summary judgment, the application should be dismissed.

6. The Claimants now appeal, with permission granted by the Judge himself.

The Masjid

7. The Masjid is registered as a charity with the Charity Commission. It is unincorporated. We were not told when it was established but it is apparent that it dates back to at least 1980 as there is reference in its current constitution to an earlier version of the constitution adopted in July 1980. The version of the current constitution in evidence is a draft dated only 2015 but it is common ground that it was adopted in this form in 2015.

8. Details of the provisions of the 2015 constitution (**"the Constitution"**) can be found in the Judgment at [6]-[10]. For present purposes the most relevant are the following. Article 3 provides:

"Aims and objects:

The objects for which the Masjid is established are to promote for Muslims residing in the London Borough of Brent and surrounding areas as defined herein ("**the Community**"):

(a) The advancement of the religion of Islam in accordance to the Qur'an and Sunnah and the belief in the finality of the prophethood of Muhammad (May the peace and blessings of Allah be upon him)

(b) The advancement of education including instruction in the Islamic faith;

(c) The relief of poverty;

(d) To provide facilities for daily prayers, the Friday prayer, Eid prayers and other religious activities on special Islamic days, including teaching classes in Arabic and Urdu languages including Qur'anic studies;

(e) To provide facilities for the advancement of and to promote the social welfare of the Community and to provide recreation and leisure with the object of upliftment and improving the conditions of the Community."

That is followed by a list of certain specific powers.

9. Article 4 provides for membership. Articles 4(a) and (d) are as follows:

"(a) Any Muslim, whatever the Country of his/her origin with a belief in accordance to the Qur'an and the belief in the finality of the prophethood of Muhammad (May the peace and blessings of Allah be upon him) shall be entitled to be a member of the Masjid if he/she agrees to subscribe to the aims and objects of the Masjid and abide by the rules and regulations and contribute a subscription to the Masjid's fund. The Management Committee shall have the right to accept or refuse a membership application without assigning reasons.

…

(d) Membership shall be open to all Muslims regardless or race, colour or gender as stipulated in clause (a) above."

Article 4(e) provides that members must be resident within a 3 mile radius of the Masjid (with the Management Committee having power to make an exception in special circumstances). It is not necessary to be a member to attend the Masjid, but membership confers, after 3 months, the right to vote in elections. By Article 7 the annual membership subscription is £20.

10. Article 5.1 provides for annual and extraordinary general meetings of the members. The members elect the Management Committee for a term of 3 years and may deal with other business. Article 5.2 provides for the Management Committee, consisting of between 5 and 11 members, including 5 Office Bearers (Chairman, Vice-Chairman, General Secretary, Treasurer and Education Secretary); it is responsible for the administration of the Masjid.

11. Article 8 is concerned with the fund and assets of the Masjid. Article 8(b) provides:

> "The real property and all assets of the Masjid shall be vested in the name of "Wembley Central Masjid" and not in the name of any Trustee, Trustees, an individual or individuals."

That is echoed in Article 13(c); Article 13 is concerned with the Trustees, of whom there are to be between 3 and 5, elected by the members for a 5 year term, and Article 13(c) provides:

> "The Trustees shall not be proprietors of the real property or any other assets of the Masjid."

Title to sue

12. Despite the provisions of Articles 8(b) and 13(c), it was pleaded in the Particulars of Claim, and admitted in the Defence, that the title to the Premises was in fact registered at HM Land Registry in the names of four individuals on trust for the Masjid, no doubt, as the Judge said, because it could not be registered in the name of the Masjid as an unincorporated association.

13. The claim was not however brought by the four registered proprietors (who were not named in the pleadings and whose registered title was not in fact in evidence). Instead the five Claimants were three of the Office Bearers and members of the Management Committee (the 1st to 3rd Claimants who are Chairman, Vice-Chairman and General Secretary respectively), and two of the Trustees (the 4th and 5th Claimants).

14. Before the Judge that gave rise to a number of questions in relation to their title to sue, their claim being for an injunction to restrain the Defendants from entering the Premises. These included (i) whether their title had been admitted on the pleadings; (ii) if so, whether that admission could be withdrawn; (iii) whether the members of the Management Committee had power to bring proceedings to restrain a trespass; (iv) and whether it mattered that not all members of the Management Committee were joined. The Judge dealt with these points in detail at Jmt [51]-[61], concluding that the Management Committee, being responsible for the administration of the Masjid, were "charity trustees" and had sufficient standing to bring the proceedings on behalf of the Masjid (following *Muman v Nagasena* [2000] 1 WLR 299), and that in circumstances where it appeared that all members of the Management Committee supported the proceedings, the failure to join them all did not matter as it was a question of form not substance. None of these conclusions was challenged on this appeal.

Background to the proceedings

15. There is a lengthy background to the proceedings. The account that follows is largely taken from the Defendants' version of events; we have not seen all of the evidence that was before the Judge and he did not need to, and did not, reach any conclusions on any of this, and I should make it clear therefore that none of these matters have been established, and many of them may be disputed.

16. It is evident that the affairs of the Masjid have not run smoothly for some years. The

Charity Commission have had a lengthy engagement with the Masjid, and had occasion to write to the trustees in January 2015, December 2015 and February 2017, and to carry out a visit in October 2018. A follow-up letter in March 2019 referred to it being clear to the Commission that the charity was suffering from an internal dispute between the trustees and some of its members; and to the Commission having received a large number of complaints from members of the Masjid.

17. Mr Habib Qamar, the 2nd Defendant, dates the origins of the tensions to the election of the Management Committee (including the 1st Claimant, Mr Mehboob Bhamani) in 2014. Mr Qamar's account is that the Masjid serves a very diverse community made up of a number of different cultural backgrounds and Islamic traditions, and that the 1st Defendant, Mr Abdul Sattar, who had been the Imam for many years, had actively promoted diversity and welcomed everyone in the community from different backgrounds and traditions; he says that the 2014 Management Committee however consisted of followers of a particular group called Tablighi Jamaat which did not embrace diversity and sought to shape the Masjid in their own image.

18. An election was due in 2017 but the 2014 Management Committee failed to call it. Following intervention by the Charity Commission, the election was held belatedly in March 2018. There were two groups standing for election: the candidates supported by the 2014 Management Committee (all of whom were followers of Tablighi Jamaat) and the candidates who favoured a more inclusive approach. In the event however the latter withdrew from the election amidst allegations that the 2014 Management Committee had manipulated the electorate by excluding many existing and prospective members from membership – it appears that the Management Committee may have taken the view that, membership being annual, they could decline to renew a member's membership without assigning any reason. That to my mind is not an obvious reading of the Constitution but we have heard no argument on it and it does not affect this appeal. In any event the result was that the 2014 Management Committee's candidates were returned unopposed. They co-opted members of the 2014 Management Committee back onto the Committee, including Mr Bhamani, and appointed him Chairman. The Judge recorded that although the election of the 2018 Management Committee was heavily disputed when it took place, it was not suggested by Mr Smith (who appeared before him for the Defendants) that it did not have authority to act on behalf of the Masjid (Jmt at [18]).

19. On 1 February 2019 the Management Committee dismissed Mr Sattar from his employment as Imam, a position he had held for nearly 22 years. Mr Sattar has brought a claim for unfair dismissal to the Employment Tribunal. The Claimants' case is that he had (a) failed to submit copies of marriage certificates; (b) repeatedly ignored the Masjid's instructions to provide information about speaker's names or topics for their talks; and (c) fraudulently misused the Masjid's letterhead. The Defendants' case is that the dismissal was part of the Management Committee's "anti-inclusive" policy, and that they appointed a replacement Imam who supports Tablighi Jamaat, to the disquiet of many worshippers.

20. That forms the background to the proceedings.

Events of 2 to 9 February 2019

21. In the immediate aftermath of the dismissal of Mr Sattar it is clear that there were, to use a neutral term, disturbances at the Masjid. These are pleaded in some detail and the evidence was considered by the Judge at Jmt [22] to [36]. It is unnecessary to set it all out. It is common ground that on Saturday 2 February Mr Sattar attended prayers at the Masjid shortly after 6 am, and again at 1 pm, and on each occasion led prayers. The Claimants' case is that on the earlier occasion he and Mr Qamar shouted at and pushed Mr Mohammed Arif Sheikh, the 3rd Claimant, when the latter tried to give Mr Sattar a copy of his dismissal letter; Mr Sattar and Mr Qamar admit having words with Mr Sheikh but deny shouting at or pushing him. Similarly the Claimants' case is that on the later occasion Mr Sattar and his supporters (including most of the other Defendants) pushed, punched and kicked Mr Sheikh; the Defendants admit that there was "some disquiet in the congregation" but deny any shouting, punching or kicking, or that any of the Defendants had behaved violently or abusively.

22. The Claimants rely on a Code of Conduct which was, and is, prominently displayed by the entrance. It provides that the code of conduct "is to be practised as approved by the Management Committee to facilitate worship in peace and harmony". There follows a list of activities that are not permitted within the Premises without the consent of the Management Committee, such as the distribution of literature, the distribution of food or merchandise, public speaking or use of PA systems, and so on. The last item in the list is:

> "Zero Tolerance: Violent, aggressive or abusive behaviour towards any committee member or employee will not be tolerated."

The code provides that violation of it will not be tolerated, and that

> "Legal action may be taken and the violator will be expelled from the Masjid without any notice."

23. The reaction of the Management Committee to the events of 2 February was to close the Masjid until 4 February and to resolve that members of the congregation involved in the incident would be denied entry to the Premises until further notice (**"the Prohibition"**). A notice was posted on the gate stating that those "involved in the disorder will not be allowed to enter the Masjid until further notice." It is not suggested that it identified any individual by name. The Defendants' case is that they were not specifically notified of the Prohibition, and they do not accept that they understood it was intended to apply to them.

24. Further incidents over the next week or so are alleged by the Claimants, including allegations that the Defendants forced their way into the Premises on 5 and 9 February; the Defendants either deny the allegations, or seek to explain them. It is not necessary to give the details, which can all be found in the Judgment. Before us, Mr Alan Tunkel, who appeared for the Defendants, made it clear that although feelings had understandably run high and the Defendants had not been shy of making their views known, they denied being violent or aggressive.

The proceedings

25. On 14 February 2019 the Claimants applied *ex parte* (but on informal notice) for an interlocutory injunction restraining the Defendants from entering the Premises. The application came before Zacaroli J who accepted undertakings from the Defendants (other than the 12th and 15th, against whom injunctions were granted, but who are no longer being proceeded against in any event) to abide by the Code of Conduct; the undertakings were initially given until the return date, but on 25 April 2019 the parties consented to an order under which the undertakings were continued until trial or further order, and the claim was stayed to enable the parties to seek to resolve the issues.

26. By application notice dated 12 December 2019 the Defendants applied to discharge their undertakings on various grounds. By application notice dated 10 March 2020 the Claimants applied for summary judgment for a final injunction preventing the Defendants from entering the Premises, or in the alternative for an interlocutory injunction. The applications were listed together before the Judge on 2 September 2020, but at the hearing the Defendants withdrew their application for discharge. The Judge therefore only had to consider the Claimants' applications for summary judgment, and for an interlocutory injunction in the alternative.

27. One of the grounds on which the Defendants had applied to discharge their undertakings was that there had been no breach of them. The Claimants countered by alleging a number of breaches between 1 March 2019 and 26 February 2020, set out in the Judgment at [40]. The Judge recorded that it was common ground that the allegations could not be finally determined without hearing oral evidence (Jmt at [41]), but proceeded to address a submission by the Claimants that there were breaches which the Defendants had admitted. Of 11 suggested admissions, the Judge found that he could not be satisfied that there was a clear admission of breach in 8 cases, but accepted that there were admitted breaches in three cases (Jmt at [43]). These were statements made respectively by Mr Talat Riaz, the 3rd Defendant, to Mr Bhamani in February 2020 that he was disliked, hated and despised, and by Mr Mohammed Sarwar, the 5th Defendant, to Mr Bhamani and Mr Sheikh in December 2019 that they were incapable of serving the community and should resign (each of which the Judge accepted to be a form of abuse that amounted to a breach of the code); and the act of Mr Khalid Kadiri, the 9th Defendant, in January 2020 in handing a T-shirt, printed with slogans, to an individual as part of a peaceful protest (which the Judge accepted to be a distribution of clothing). Mr Tunkel submitted that all the Judge had found was three one-off breaches, none particularly serious, one by each of three defendants; that seems to me a reasonable summary.

28. The hearing took place on 2 September 2020. After the hearing the Defendants through Mr Smith sent the Judge a revised set of undertakings which they were prepared to give. These were based on the Code of Conduct but designed to clarify certain aspects, and also included an express undertaking not to protest against the Management Committee or its members on the Premises. The Judge regarded these as striking a fair balance between the Claimants' rights and powers as members of the Management Committee and Trustees, and the Defendants' rights as worshippers and objects of the charity, and having already dismissed the claim for summary judgment, accepted the revised undertakings and declined to grant an interlocutory injunction (Jmt at [83]) The Judge did not however dismiss the application for an interlocutory

injunction; he adjourned it, with liberty to the Claimants to restore it in the event of breach of the revised undertakings. The practical effect is that pending trial the Defendants can continue to attend the Masjid for worship, but not to use this as a means of protesting against the current Management Committee, and are at risk of being barred from worshipping there if they do not adhere to the undertakings they have given. There has been no appeal against this aspect of the Judgment and it is not necessary to consider it further. We are only concerned with the application for summary judgment.

The Judgment

29. I have already referred to various aspects of the Judgment. After an introduction, and other background matters (the Constitution, the Code of Conduct, and the parties) at [1]-[19], he then considered the events of 2 to 9 February 2019 in some detail at [20]-[36]. He then dealt with the undertakings and the suggested breaches of them at [37]-[43]. He then considered the application for summary judgment, dealing first, and at some length, with the issues arising on the question of title to sue which I have already referred to ([51]-[61]).

30. At [62] he turned to what he described as the central issue on the application, namely whether the Management Committee had a unilateral or absolute and unfettered right to exclude the Defendants from the Premises, the submission of Mr Smith for the Defendants, as summarised at [50], being that the Claimants were not entitled to exclude anyone from the Premises as of right and had no absolute right to bar the Defendants: as charity trustees they were bound to permit the Masjid to be used as a place of public worship and otherwise in accordance with Article 3 of the Constitution. (Before us Mr Roseman said that he had never maintained that the Management Committee had an absolute and unfettered right to exclude people, but there was a suggestion to that effect in the witness statement of Mr Bhamani in support of the application for summary judgment who at paragraph 12 said "the Management Committee and Trustees, being those people in charge of the Property, can unilaterally decide to deny entry to anyone.") After reviewing certain authorities at [63ff], the Judge expressed his conclusions on this point at [69]-[70] as follows:

> "69. Moreover, Article 3 expressly states that those objects are established to promote the interests of the Community. Whilst members of the local community are not beneficiaries in the strict sense, they are beneficiaries or objects of the charity in a loose sense. In *Bisrat v Kebede* [2015] EWHC 840 (Ch) His Honour Judge Purle QC stated at [22]:
>
> > "I think one has to be careful of the use of the word "beneficiary" in this context. A charitable trust, as such, does not have beneficiaries in the same sense as beneficiaries under a private trust. No individual has any proprietary interest in the charity's assets and funds as such, but a person may become a beneficiary in a loose sense as an object of the charitable trust. The advancing of the Ethiopian Orthodox faith would, in one sense, embrace all those of that faith. That would not, I think, be sufficient to make all members of the Ethiopian Orthodox Church, anywhere in the world, who are very considerable in number, persons interested in this charity, but I do think that regular worshippers, who have contributed as such to the acquisition of the assets of the charity, as well as worshipping

> at the church in its various forms over many years, are undoubtedly interested persons for this purpose."
>
> 70. I accept that the Management Committee may exclude members of the public and, indeed, individual members of the Community where this action promotes the objects of the charity and the interests of the Community as a whole: see *Mohammed v Mohammed* (above) at [12]. But I do not accept that the committee has an absolute or unfettered right to exclude members of the Community without regard to their duties as charitable trustees. Nor do I accept that the Defendants cannot raise a defence to a claim for an injunction that the members of the committee have exceeded their powers or acted in breach of their duties as charity trustees."

31. At [71]-[72] he referred in more detail to the Defendants' case, summarising it at [72] as being that the members of the Management Committee imposed the Prohibition in breach of their duties as charity trustees. He expressed his conclusions as follows:

> "73. These submissions are supported by the Defendants' witness statements. In particular, the Second Defendant has set out a number of ways in which he believes that members of the Management Committee had failed to comply with the Constitution and committed breaches of their duties as charity trustees. Mr Smith submits that these are not issues which the Court can decide on an application for summary judgment and I agree. I cannot decide that this defence has no real prospect of success and in my judgment this is a case which falls within the sixth proposition in *EasyAir* [ie *EasyAir Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15]]. It requires a fuller investigation into the facts of the case which is bound to add to or alter the evidence available to the trial judge and so affect the outcome of the case.
>
> 74. Mr Roseman objects that there is no pleaded defence that the members of the Management Committee have exceeded their powers or committed breaches of their duties. I accept that the Defendants have not pleaded in terms the defence set out in Mr Smith's Skeleton Argument. But it seems to me that the basic facts upon which Mr Smith relies are set out in the Defence and also that I cannot deny the Defendants an opportunity to amend the Defence. I bear in mind that applications for summary judgment are often made before a defence has been served at all and it is usually enough for a defendant to establish on the evidence that their defence has a real prospect of success. I therefore dismiss the application for summary judgment."

The remainder of the Judgment concerned the alternative application for a interlocutory injunction, which I have already summarised above.

Grounds of Appeal

32. There are 4 grounds of appeal. They can be summarised as follows:

(1) Ground 1 is that the Judge was wrong to dismiss the application for summary judgment on the basis of a defence that had not been pleaded.

(2) Ground 2 is that the Judge was wrong to find that the Defendants could in principle defend a claim in trespass on the grounds that the Claimants were in breach of their duties as charity trustees.

(3) Ground 3 is that the Judge failed to find that the Defendants' proposed defence amounted to charity proceedings within the meaning of s.115(8) of the Charities Act 2011 for which the Defendants neither had authorisation from the Charity Commission nor permission from the Court.

(4) Ground 4 was that the Judge was wrong to find that the Defendants' proposed defence had real prospects of success.

Ground 2 – the proposed defence as a matter of principle

33. Although Mr Gideon Roseman, who appeared for the Claimants, addressed Ground 1 first, I prefer to start with Ground 2 which raises the question whether the Defendants' proposed defence is in principle available to them. If it is not, it does not matter that it had not been pleaded at the time of the hearing.

34. It has now been put into the form of a proposed Amended Defence. The original Defence dated 3 April 2019, which was before the Judge, contained a section headed "Previous History". This pleaded as follows:

(1) Paragraph 12 referred to there being tensions in the community at the Masjid since 2014, to the diverse community served by the Masjid, and to the Claimants, all members of Tablighi Jamaat, being unwilling to accept the place of other cultures and traditions.

(2) Paragraph 13 referred to Mr Sattar having welcomed everyone in the community and having actively promoted diversity, and pleaded that the Claimants had sought to remove him because they "do not embrace diversity and seek to shape the Masjid in their own image which includes discouraging women from attending the Masjid"; it did however recognise and accept that the circumstances of Mr Sattar's dismissal were properly questions for the Employment Tribunal.

(3) Paragraph 14 accepted that the other Defendants had supported Mr Sattar against the attempt to remove him as Imam, and pleaded that they had the support of a significant majority of the members of the Masjid across the breadth of cultures and traditions represented in the Masjid, as opposed to the Claimants who represented only one narrow group within the community.

(4) Paragraph 15 pleaded that in addition to these theological differences the Masjid had been poorly managed by the Management Committee, referring to the Charity Commission's involvement.

(5) The original Paragraph 16 (Paragraph 18 in the proposed Amended Defence) pleaded that these long-standing concerns about the way in which the Management Committee had managed the Masjid were the ultimate cause of recent events, and that the proximate cause was the attempt by the Management Committee to impose upon the community an Imam who was not accepted by the community.

35. The proposed Amended Defence is dated 28 October 2020.[1] It retains all these paragraphs unaltered but inserts two new paragraphs after Paragraph 15 as follows:

> "16. The Defendants aver that the Claimants seek to prevent them access to the Property to reinforce the Tablighi Jamaat faction in support of a deliberate strategy to transform the Masjid from being inclusive, into a narrow, sectarian and fundamentalist place of worship. The Defendants say that they have been singled out because they have been vocal in their complaints about poor governance and would stand in opposition to the Claimants in any future election. The Claimants' actions are not to further the purposes of the Masjid but rather prevent open discussion about the future direction of the Masjid and to silence legitimate questions and scrutiny.
>
> 17. The Claimants are charity trustees and are bound to permit the Property to be used as a place for, inter alia, public worship and prayers, for the teaching and preaching of the Muslim faith, and as a community centre (Article 3 of the Constitution). It must therefore be open to the public who wish to enter for the purpose of enjoying the benefits of the Masjid. Further, Article 3 expressly states that the Masjid's objects are established to promote the interests of the Community. Whilst members of the Community are not beneficiaries in the strict sense, they are beneficiaries or objects of the Masjid in a loose sense. The Defendants aver that the Claimants do not have an absolute or unfettered right to exclude any member of the public without regard to their fiduciary duties as charitable trustees to the beneficiaries which include:
>
> a. ensuring the charity is carrying out its purposes for the public benefit
>
> b. complying with the charity's governing document and the law
>
> c. acting in the charity's best interests
>
> d. managing the charity's resources responsibly
>
> e. acting with reasonable care and skill
>
> f. ensuring the charity is accountable."

36. It can be seen that Paragraph 17 is largely concerned with questions of law. The list of duties at the end is taken from a Charity Commission publication on trustee duties and is unexceptionable as a statement of the general law, and the rest of that paragraph is based on the views expressed in the Judgment. The essential factual allegation is that in Paragraph 16, namely that the Claimants' actions are not to further the purposes of the Masjid, but to silence opposition.

37. Is this in principle a good defence to a claim in trespass? Mr Roseman submits that it is not, or that at any rate it is not a defence which the Defendants can raise without the authority of the Charity Commission. As this illustrates, his submissions had a tendency to run together the substantive question under Ground 2 with the procedural question under Ground 3, namely whether running such a defence converted the proceedings into charity proceedings which required, but did not have, authorisation.

---

[1] This is the version in the electronic bundles supplied to us. Rather unhelpfully, the paper bundles contained a slightly different version dated 20 October 2020, but I assume this has been superseded by the later version.

38. I think however it is preferable to keep the two distinct. I will address the procedural question under Ground 3 separately but on the substantive question I will say at once that I do not see why it should not in principle be a good defence to the claim in trespass, at any rate by individuals who are objects of the charity, that the Claimants who are bringing the claim are charity trustees and that they are not acting so as to further the purposes of the charity but for some collateral purpose.

39. The Management Committee are admitted to be in the position of charity trustees for the purposes of the Charities Act 2011, s. 177 of which defines "charity trustees" as meaning "the persons having the general control and management of the administration of a charity". They have a number of powers vested in them. In the present case this includes the power to control access to the Premises, as although they are not the legal owners of the Premises, the Premises are held by the registered proprietors for the benefit of the Masjid, and under the Constitution it is the Management Committee that is responsible for administering the affairs of the Masjid. As already explained, none of this is now disputed.

40. Like all trustees however the powers given to them are not given to them for their own benefit, or to be used for whatever purpose they like; they are given to them in their capacity as trustees to be used for furthering the purposes of the trust. There is nothing new in this, and it is well established – indeed it is perhaps the foundational principle of all trust law. Two examples by eminent Chancery judges will suffice. In *Re Courage Group's Pension Schemes* [1987] 1 WLR 495 Millett J had to consider the proposed exercise by trustees of pension schemes of their powers to amend the schemes. In a much-cited passage he said at 505E:

> "It is trite law that a power can be exercised only for the purpose for which it is conferred, and not for any extraneous or ulterior purpose. The rule-amending power is given for the purpose of promoting the purposes of the scheme, not altering them."

To similar effect, in *Harries v Church Commissioners* [1992] 1 WLR 1241 Sir Donald Nicholls V-C had to consider the exercise by the Church Commissioners (a charitable body) of their powers of investment. He said at 1246A-B:

> "Before going further into the criticism made of the commissioners I will consider the general principles applicable to the exercise of powers of investment by charity trustees. It is axiomatic that charity trustees, in common with all other trustees, are concerned to further the purposes of the trust of which they have accepted the office of trustee. That is their duty. To enable them the better to discharge that duty, trustees have powers vested in them. Those powers must be exercised for the purpose for which they have been given: to further the purposes of the trust. That is the guiding principle applicable to the issues in these proceedings. Everything which follows is no more than the reasoned application of that principle in particular contexts."

In precisely the same way the power of the Management Committee to control access to the Premises must be exercised for the purpose for which it has been given, namely to further the purposes of the Masjid. That seems to me to be incontrovertible: it is no more than the application of the general principle in the context of this particular case. Nor indeed did I understand Mr Roseman to take issue with it in principle.

41. What then are the purposes of the Masjid? The answer to that is found in the Constitution, and specifically in Article 3, which sets out the objects for which the Masjid is established. Like all documents the Constitution has to be read as a whole and the effect of Article 3 is informed by other provisions, in particular Article 4. Articles 3 and 4 are set out above (paragraphs 8 and 9). These provisions have the following features. First, Article 3 is carefully drafted to reflect the well-known main heads of charity in English law (the advancement of religion, the advancement of education and the relief of poverty) in a specifically Islamic context. Second, it also identifies the main means by which such religion is to be advanced, namely by providing facilities for prayers. Third, all of these objects are prefaced with the words:

> "to promote for Muslims residing in the London Borough of Brent and surrounding areas as defined herein ("**the Community**")…"

On its face that includes all Muslims in the relevant area, and this is supported by Article 4 under which membership is open to "all Muslims regardless of race, colour or gender" and "whatever the Country of his/her origin". As Norris J put it in *Mohammed v Mohammed* [2018] EWHC 805 (Ch) at [13], a not dissimilar case concerned with another mosque, the charity trustees did not hold the land for their own benefit and:

> "They are bound to permit the Mosque to be occupied and enjoyed as a place for the public worship of Allah and for preaching and teaching the precepts and teachings of the Muslim faith. It is, accordingly, to be open to the public who wish to enter for the purpose of enjoying the benefits of the charity."

42. In those circumstances the allegations put forward in paragraph 16 of the proposed Amended Defence (which are that the Claimants have singled out the Defendants in order to silence opposition to themselves as part of their strategy to transform the nature of the Masjid from being inclusive into a narrow, sectarian and fundamentalist place of worship) seem to me to be capable, if established at trial, of making good the allegation that the Management Committee has not exercised its powers for the only purposes for which they were given, namely to further the purposes of the Masjid, but for a collateral or ulterior purpose.

43. That then leaves the question, under this Ground, whether this is a point that can be deployed by the Defendants as a defence to the claim to bar them from the Premises. I see no reason why not. If the Management Committee are using their powers for a collateral or ulterior purpose, that is a misuse of their powers. I do not see that the Court has any business granting an injunction barring the Defendants from the Premises if that is shown to be something that is being sought as a result of the Management Committee misusing their powers in this way.

44. Mr Roseman as I understood him accepted in the course of argument that there could be cases where charity trustees were using their powers for improper purposes. But he said that the Defendants had no standing to raise the point. They had no private law right to insist on access to the Premises, and were seeking to rely on the right of the public to see that a charity was properly administered. But that was not a matter for them.

45. I do not accept this submission. I accept of course that the Defendants are not beneficiaries of the charitable trusts in the same way that beneficiaries of a private trust are; a charitable trust does not have beneficiaries in the strict sense at all, or as it is sometimes said, the beneficiary of a charitable trust is charity itself. And I accept that charitable trusts are trusts of a public nature: it has always been a requirement of a valid charitable trust that it is for the public benefit (see now ss. 2(1)(b) and 4 of the Charities Act 2011), and they are regulated by the Charity Commission, and enforced by the Commission and by the Attorney-General, in the public interest. But although charities do not have individual beneficiaries in the private trust sense, that does not mean they do not benefit individuals. Educational charities educate individuals, charities for the relief of poverty relieve the poverty of individuals, and religious charities such as the Masjid provide facilities for worship to individuals. In the present case the Masjid was established for the benefit of the Community as defined in Article 3, that is Muslims in the relevant area, and among other things to provide services for those in the Community who wish to attend prayers at the Masjid. All such persons (whether members of the Masjid or not) are objects of the charity in this looser sense: see the passage cited from the judgment of HHJ Purle QC in *Bisrat v Kebede* at [69] of the Judgment (paragraph 30 above) which seems to me an accurate statement of the law.

46. In those circumstances, the Defendants have a direct and personal interest in seeing that the charity which was established for, among others, their benefit is being properly administered. They are not strangers to the charity with no more interest in it than any member of the public. Indeed Mr Roseman accepted that they are persons "interested in the charity" (within the meaning of s. 115(1)(c) of the Charities Act 2011). Mr Qamar's evidence is that they are regular worshippers at the Masjid where they have attended for decades, and that he himself has attended since he moved to Wembley nearly 20 years ago, and has previously served on two Management Committees. Where it is sought to bar them from attending prayers at the Masjid and thereby deprive them of the benefits the Masjid was intended to provide, I see no reason why they should not be able to raise as a defence to the claim the allegation that in issuing the Prohibition and bringing the action the Management Committee is misusing its powers for an ulterior purpose. In my judgment the Judge was right in his conclusions at [69]-[70] of the Judgment (paragraph 30 above) that this is a defence which is potentially available to the Defendants. I would therefore dismiss Ground 2.

47. Before leaving it, I add two points. First, this conclusion does not mean that the Defendants, or any other objects of the Masjid, could initiate proceedings complaining of breaches of duty by the Management Committee. This trespasses onto Ground 3, but I do not mean to go any further than to say that, when sued, the Defendants as objects of the charity can raise this point as a defence to defend themselves.

48. Second, in his written submissions Mr Roseman said that such a conclusion would have startling consequences as it would mean, for example, that trespassers on National Trust land could seek to defend a claim to remove them on the basis of alleged breaches of trust. That to my mind does not follow. Trespassers with no interest in the charity at all would be in a very different position to the Defendants here, who are members of the very class the charity was established to benefit. All

that I mean to decide is that since the Masjid was established, among other things, to enable members of the Community to attend prayers, those Defendants who are members of the Community and wish to attend prayers are able to defend a claim for an injunction barring them from doing so by raising the defence that the Management Committee is not using its powers for the purposes of the Masjid but for some collateral and ulterior purpose of their own.

Ground 3 – charity proceedings?

49. I propose to address Ground 3 next. This is that the defence sought to be raised would have the effect of converting the proceedings into charity proceedings for which either the authorisation of the Charity Commissioners or the leave of the Court is required.

50. The requirement for such authorisation or leave is now found in s. 115 of the Charities Act 2011. Under s. 114 of the Act (headed "Proceedings by the Commission") the Charity Commission may take the same proceedings in relation to charities as the Attorney-General. s. 115 then provides as follows:

> "**115 Proceedings by other persons**
>
> (1) Charity proceedings may be taken with reference to a charity by—
>
> (a) the charity,
>
> (b) any of the charity trustees,
>
> (c) any person interested in the charity, or
>
> (d) if it is a local charity, any two or more inhabitants of the area of the charity,
>
> but not by any other person.
>
> (2) Subject to the following provisions of this section, no charity proceedings relating to a charity are to be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of the Commission.
>
> (3) The Commission must not, without special reasons, authorise the taking of charity proceedings where in its opinion the case can be dealt with by the Commission under the powers of this Act other than those conferred by section 114.
>
> (4) This section does not require an order for the taking of proceedings—
>
> (a) in a pending cause or matter, or
>
> (b) for the bringing of any appeal.
>
> (5) Where subsections (1) to (4) require the taking of charity proceedings to be authorised by an order of the Commission, the proceedings may nevertheless be entertained or proceeded with if, after the order had been applied for and refused, leave to take the proceedings was obtained from one of the judges of the High Court attached to the Chancery Division.

> (6) Nothing in subsections (1) to (5) applies—
>
> (a) to the taking of proceedings by the Attorney General, with or without a relator, or
>
> (b) to the taking of proceedings by the Commission in accordance with section 114.
>
> (7) If it appears to the Commission, on an application for an order under this section or otherwise, that it is desirable—
>
> (a) for legal proceedings to be taken with reference to any charity or its property or affairs, and
>
> (b) for the proceedings to be taken by the Attorney General,
>
> the Commission must so inform the Attorney General and send the Attorney General such statements and particulars as the Commission thinks necessary to explain the matter.
>
> (8) In this section "charity proceedings" means proceedings in any court in England or Wales brought under—
>
> (a) the court's jurisdiction with respect to charities, or
>
> (b) the court's jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes."

51. I can deal with this point quite shortly. When the Claimants issued their claim the proceedings were not charity proceedings. That was common ground, and I agree. In *Rendall v Blair* (1890) 45 Ch D 139, a decision of this Court on the predecessor section to s. 115, namely s. 17 of the Charitable Trusts Amendment Act 1853, Bowen LJ said at 152:

> "Speaking broadly, I think the section does not deal with or touch actions which are brought to enforce common law rights, whether such rights arise out of contract or tort."

The same applies to s. 115: *Stewart v Watts* [2016] EWCA Civ 1247 at [51]-[54]. The proceedings in the present case as issued were essentially based on the tort of trespass, and did not raise any issues about the internal administration of the charity.

52. Mr Roseman's point is that if the Defendants are allowed to raise their proposed defence that would then raise questions in relation to "the administration of a trust for charitable purposes" within the meaning of s. 115(8)(b) and hence be "charity proceedings".

53. I do not doubt that if the Defendants had sought to issue a claim against the Claimants alleging that they were mismanaging the affairs of the Masjid, and seeking relief on that basis, such proceedings would indeed be charity proceedings and require the authorisation of the Charity Commission or the leave of a High Court judge. But pleading a defence to a claim is not in my judgment the "bringing" of proceedings, nor is it the "taking" of proceedings. It follows that if the proposed defence is pleaded, there will be no "proceedings … brought under … the court's jurisdiction

with respect to trusts" and hence no charity proceedings within s. 115(8)(b); nor could it be said that the authorisation of the Charity Commission would be required for "the taking of the proceedings" within s. 115(2). The proceedings would remain proceedings brought by the Claimants to enforce their common law rights; and the pleading by the Defendants of the defence would not change the nature of the Claimants' claim, nor would it itself be the bringing of proceedings by the Defendants.

54. The point is a simple one and not capable of much elaboration. Mr Roseman said that it was possible for the nature of a claim to change from not being charity proceedings to being charity proceedings, referring to what Bowen LJ said in *Rendall v Blair* (1890) 45 Ch D 139 at 155:

> "I do not say it is probable—I do not think it is—but it is possible that a suit which at one stage appears to ask for relief, that falls solely within the category of that relief which I have said is not intended to be affected by the statute, may, nevertheless, at the hearing turn out to be a suit which involves something further, that might bring it within the scope of the section. I do not think it is likely; but still it is possible."

We were also referred to the views of the Charity Commission in relation to these proceedings as expressed in an e-mail dated 15 April 2020 which included the following:

> "The Commission's view, in summary, is that:
>
> - The proposed proceedings are borderline 'charity proceedings' but probably fall on the side of them not being charity proceedings *at present*;
>
> - There is a possibility of these proceedings becoming charity proceedings so the claimants will need to be aware of this;
>
> - If there is a counter-claim by the defendants which constitutes charity proceedings then the Commission will need to consent under section 115 of the Charities Act 2011."

(Although this refers to "proposed" proceedings, it is clear from the e-mail as a whole that the Commission were aware that proceedings had already been brought).

55. I accept that an action can change during the course of the proceedings from not being charity proceedings to being charity proceedings if further relief is sought. I also accept that if the Defendants pleaded a counterclaim seeking relief against the Claimants, then the counterclaim would be the bringing of proceedings by the Defendants and might itself amount to charity proceedings, depending on the issues raised by the counterclaim. If, for example, the Defendants alleged in a counterclaim that the members of the Managing Committee had so mismanaged the affairs of the charity that they were not fit to be charity trustees and should be removed by the Court under its inherent jurisdiction, I do not doubt that these would be charity proceedings. But none of this establishes, or even begins to suggest, that the pleading of a defence can itself amount to the bringing or taking of charity proceedings. Mr Roseman at one stage suggested that the Defendants were seeking to "outmanoeuvre" the protection of the statute by failing to plead a counterclaim. But I

do not think this is a fair characterisation of what the Defendants are doing. They are not obliged to bring a counterclaim, and all they seek to do is plead a defence. I see nothing wrong in that.

56. Quite apart from the language of the statute, I think the Court should be very slow to adopt an interpretation of the statute which imposes restrictions on a defendant seeking to defend himself. The purpose behind the restrictions first enacted in 1853 and now found in s. 115 is explained in *Tudor on Charities* (10th edn, 2019) at §16-006 (by reference to various authorities which it is not necessary to cite) as follows:

> "When the restrictions on charity proceedings were imposed by the Charitable Trusts Act 1853, the object was to stop the abuses which had grown up in the administration of charities in reference to proceedings which used to be instituted to the good of no one save in the way of costs for those who instituted them. The purpose of requiring authorisation for charity proceedings is to prevent charities from frittering away money subject to charitable trusts in pursuing litigation relating to internal disputes and to avoid charities being vexed with frivolous and ill founded claims relating to their administration. It was intended to cure the mischief of strangers instituting suits when the Charity Commissioners were the proper persons really to form an opinion on the subject."

Mr Roseman relied on the references to charities "frittering away money in pursuing litigation relating to internal disputes" and to avoiding them being "vexed with frivolous and ill-founded claims". I accept that these are real concerns, and that there is no reason to think that they are any less real today than they were in 1853. As *Tudor* says in §16-005:

> "It is undesirable for money that ought to be devoted to charitable purposes to be used to meet the costs of litigation."

But it is also noticeable that *Tudor* refers to the abuses of "proceedings which used to be instituted to the good of no one" and "strangers instituting suits"; that does not apply to a defendant who is sued and seeks to defend himself by alleging that the charity trustees who are suing him are abusing their powers, and I would take some persuading that Parliament had intended that such a defendant would be unable to defend himself without the prior authorisation of the Charity Commission – leaving aside the question whether that would be compatible with Article 6 of the European Convention on Human Rights. Bringing proceedings is always a voluntary act; being sued is not, and in general there is nothing wrong with a person who finds that he is sued seeking to defend himself.[2] Mr Roseman accepted that there was no authority that pleading a defence could amount to the bringing of charity proceedings, and I decline to create one now. I would therefore dismiss Ground 3.

Ground 1: no pleaded defence

57. Ground 1 is that the Judge exceeded his powers, or wrongly exercised them, in dismissing the Claimants' application for summary judgment on the basis of a defence that was not pleaded, nor even the subject of an application to amend.

---

[2] The argument that he should not be able to is reminiscent of the saying: *"Cet animal est très méchant: quand on l'attaque, il se défend."*

58. The Judge dealt with this in the Judgment at [74] (paragraph 31 above). As can be seen he accepted that the defence had not been pleaded yet, although he said that the basic facts were set out in the Defence; he also thought he should give the Defendants an opportunity to amend. That looks very much like a case management decision, and it is well established that an appellate court will be slow to interfere with discretionary case management decisions.

59. Mr Roseman submitted that the question whether a defendant has a real prospect of success is not a discretionary decision. CPR r 24.2 is in these terms:

> "**Grounds for summary judgment**
>
> 24.2 The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if–
>
> (a) it considers that–
>
> (i) that claimant has no real prospect of succeeding on the claim or issue; or
>
> (ii) that defendant has no real prospect of successfully defending the claim or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial.
>
> (Rule 3.4 makes provision for the court to strike out a statement of case or part of a statement of case if it appears that it discloses no reasonable grounds for bringing or defending a claim)."

60. I would accept that the assessment by a judge whether a defendant has any real prospect of successfully defending a claim is not a pure exercise of discretion: it is an evaluative exercise. But the rule itself does not prescribe what material the judge can and cannot look at for this purpose. In practice, as the Judge said, applications for summary judgment are often made before a defence has been pleaded, something that is expressly recognised by the rules: see CPR r 24.4(1)(a) under which a claimant may apply for summary judgment once the relevant defendant has filed an acknowledgment of service, and CPR r 24.4(2) which provides that if a claimant applies for summary judgment before the relevant defendant has filed a defence, that defendant need not file a defence before the hearing.

61. In such a case the defendant will in practice need to explain what his proposed defence is, and give evidence in support of it: see the notes in *Civil Procedure (The White Book) 2020* at §24.2.5 where it is pointed out that although the overall burden of establishing that there is no real prospect of success lies on the claimant, once the claimant adduces credible evidence in support of the application, the evidential burden will shift to the defendant of adducing evidence to rebut this, although the standard of proof is not high and that it suffices to show some real prospect of success. Hence the longstanding practice under Part 24 of the CPR (as it was under RSC Order 14) is for the defendant to adduce sufficient evidence to show a genuinely triable issue, and this needs to be done, and routinely is, whether or not a defence has already been served.

62. In other words, the assessment that the judge undertakes under Part 24 is one of assessing the evidence, not the pleadings. The question is not whether the *pleaded defence* has a prospect of succeeding, but whether the *defendant* has no real prospect of successfully defending the claim. What then is a judge to do if the defendant's evidence appears sufficient to raise a triable issue, but the defendant has served a defence in which the relevant defence has not yet been pleaded? Unless the judge can rule out any possibility of amendment (which would be unusual) I see nothing wrong in the judge concluding that the defendant had some real prospect of success even though this would require the defendant to amend. That is the conclusion that the Judge came to here, and I do not myself think we can say that he was wrong to do so.

63. Mr Roseman said that the Judge was wrong to conclude that the basic facts had been pleaded. But as set out above (paragraph 34), paragraphs 12 to 15 of the Defence pleaded the background facts; what was missing, and is now sought to be pleaded in paragraph 16 of the proposed Amended Defence, is the allegation that the Management Committee was not exercising its powers properly for the purposes of the Masjid. That is an additional allegation but I do not think the Judge was wrong to refer to the basic facts being already pleaded.

64. Mr Roseman objected that the new argument was advanced at a very late stage and that the Judge should have required the Defendants to properly formulate an amendment to the Defence and make a formal application to amend, adjourning if necessary for that purpose. In some cases that might indeed be an appropriate way to deal with a proposed defence that emerges at a late stage in the application and has not yet been pleaded; experience shows that it is often easier to judge the soundness of a proposed defence if it is properly formulated. But once it is appreciated that the question under CPR 24.2 is not the state of the pleadings but the position on the evidence, I do not see that it is always required.

65. Mr Roseman referred us to *Magdeev v Tsvetkov* [2019] EWCA Civ 1802 at [27] per Sir Geoffrey Vos C where he said that there were a number of reasons why the Court responds formally to formal applications to amend. But that was not said in the context of an application under Part 24, but in the context of an amendment that had been floated, but not formally applied for, to add new heads of loss. The judge had been persuaded to rule on whether such an amendment would be permissible without the application for an amendment actually having been made, and it was that that Vos C said was unsatisfactory. I do not think it has any direct application to the position under Part 24.

66. In my judgment the Judge was entitled to conclude that the fact that the Defendants had neither pleaded their proposed defence, nor yet applied to amend, did not prevent him from assessing that they had a real prospect of success in such a defence. I would dismiss Ground 1 of the appeal.

Ground 4 – no real prospect

67. Ground 4 is that the Judge was wrong to hold that the Defendants' proposed defence had a real prospect of success.

68. Mr Roseman said that the suggestion that the Management Committee was acting improperly was quite unfounded. They had only sought to exclude 15 people out of

thousands of worshippers; and they had done so because they were trying to prevent troublemakers who had repeatedly breached the Code of Conduct over a long period of time, both before and after proceedings were issued, from coming onto the Premises.

69. Mr Roseman may be right that the Management Committee were entirely justified in their actions. But the Judge did not think that that could be resolved on the basis of the witness statements: see Jmt at [73] (paragraph 31 above). He had more evidence than we do, and was immersed in the detail of it in a way that we cannot be. I am not persuaded that his evaluation that this was a case which required a fuller investigation into the facts was wrong, or that we are in a position to overturn it.

70. I would dismiss Ground 4 of the appeal.

Conclusion

71. I have addressed the four Grounds of Appeal advanced before us. For the reasons I have given I consider that none of them is well founded and that the Judge was entitled to reject the Claimants' application for summary judgment.

72. But I add a few comments. It seems to me that the case will need careful case management to ensure that it does not get out of control. The resolution of the issues in the present case should not require a lengthy investigation into the rights and wrongs of the history of difficulties at the Masjid, far less an exploration of the doctrinal differences between the parties, something which the Court, as both parties recognise, is ill-equipped to carry out and unable to adjudicate on. As Mr Tunkel said, religious differences can often generate great passions; but these should not be allowed to obscure the issues: see *Shergill v Khaira* [2015] AC 359 per Lord Neuberger at [46].

73. If this case goes to trial, there will therefore be an obvious need for active case management by identifying the issues that will need to be decided and by controlling the evidence that the Court will be willing to hear. The focus should be on what the Defendants are shown to have done, or have admitted doing, and whether that justifies their exclusion from the Premises. Mr Tunkel rightly accepted that if they were shown to have been violent and aggressive, it would be difficult to dispute that they were properly excluded in the interests of the Masjid (cf *Mohammed v Mohammed* at [13]). Mr Roseman said that the code of conduct went beyond violent behaviour, and any breach of its provisions, however minor, meant that in law they had exceeded the terms of their licence to enter the Premises and become trespassers. That may be right as a matter of legal analysis, but it does not follow that the Management Committee was, or is, justified in excluding them permanently from attending the Masjid, or that the Court would consider it just to grant a permanent injunction. If all that is established at trial are some isolated incidents during a week of high tension in February 2019 (now over 2 years ago) and some *de minimis* breaches since, it becomes much more plausible to suggest that the Defendants are not the persistent troublemakers the Claimants say they are, and are simply vocal critics of the current Management Committee whose exclusion is not genuinely being pursued in the interests of the charity but in the interests of the current Management Committee in an attempt to silence opposition.

74. How these matters are best handled is not however a matter for us, and the order I would make therefore is simply to dismiss the appeal.

Lord Justice Baker:

75. I agree.

Lord Justice Peter Jackson:

76. I also agree.