[2004] QSC 298

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Date: 19 August, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MUIR J

No S10232 of 2002

JOHN DAVID EVANS	Applicant
and	
ANTHONY LAWRENCE CORNELIUS	First Respondent
and	
ROBERT JOHN DUFF	Second Respondent

BRISBANE

..DATE 13/08/2004

JUDGMENT

1th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Telephone: (07) 3247 4360 Fax: (07) 3247 5532

HIS HONOUR: The respondent to this application is John David Evans, the applicant in an application to review the decision of the first respondent, Anthony Cornelius dated 10 October. 2002. By that decision ministerial approval was given under the Land Act 1994 for the conversion to freehold of land vested in the third respondent, Trustees of the Returned Services League of Australia (Queensland branch) Southport sub-branch.

The applicant is Robert John Duff. I will explain shortly his role in the proceedings. The amended application filed 6 December, 2002, is 15 pages long. It contains much narrative irrelevant and argumentative matter. In my view it ought to be struck out as an abuse of process but there is no application before me of that nature.

The application I have to decide is the second respondent's application that Mr Evans' Judicial Review Act application be dismissed for want of standing. The first limb of Mr Duff's application is that Mr Evans can have no standing, not being a member of the Southport RSL sub-branch. Before addressing that argument, it is desirable to say a little about the facts behind the judicial review application.

Mr Duff is the receiver of the subject property under a mortgage granted in favour of the National Bank by the trustees. He was also appointed receiver and manager of the assets and undertaking of the Southport RSL Memorial Club Inc.

The Returned and Services League of Australia (Queensland Branch) Act 1956 makes provision for the vesting of property held by sub-branches of the RSL (if I can be permitted that abbreviation) to be vested in trustees (section 3). Section 4 sets out the powers of such trustees. They can deal with such property as if they were absolute owners thereof. The section also provides, "It shall not be incumbent upon any person to inquire whether any proposed dealing constitutes a breach of trust."

In earlier proceedings in this Court Mr Evans challenged the validity of Mr Duff's appointment as trustee. The Judge who heard the matter found, however, that Mr Evans had no standing in the proceedings to which the trustees and the Southport RSL Memorial Club Incorporated were parties. It was held that Mr Duff's appointment was valid and that he had power as receiver and manager in respect of the subject property under a number of security documents.

I note also that the RSL Southport Sub-branch has passed a resolution in general meeting confirming that the sub-branch wishes to have the subject property freeholded. The trustees support the application for freeholding and oppose the application by Mr Evans for judicial review of the decision.

I turn now to the question of Mr Evans' membership. Mr Mason, the State president of the Queensland branch of the RSL,

swears that Mr Evans' membership of the sub and State branches has expired, and that he is no longer a financial member of the RSL. He swears that if Mr Evans applied for membership, the application would not be approved. The financial services manager of the Queensland branch of the RSL swears to like effect. There was no objection to this evidence.

...

HIS HONOUR: There is in evidence a certificate of trustees of the RSL Queensland branch certifying as to the names of the trustees and the matter so certified has not been the subject of challenge in any evidence that I accept.

Mr Evans seeks to meet the evidence concerning his alleged lack of membership by referring to a letter dated 24 march 2004 sent by him to the secretary of "RSL Queensland Branch" under cover of which he forwarded a cheque for $480 and a list of members in respect of whom the cheque was allegedly provided by way of annual subscription. Accompanying the letter, the cheque and the list of applicant members is a receipt dated 14 December 2003 which shows $20 having been received by a person unknown on account of "subs.2004". Mr Evans swears that these documents were sent to the Queensland branch. He does not swear, however, that the cheque was presented or that it was not returned by the Queensland

branch. He put to Mr Mason in cross-examination that the cheque was not returned to him.

The thrust of Mr Mason's evidence was that he regarded the membership applications as being invalid and that he gave instructions for the cheque to be returned, it would seem, to the solicitors on whose trust account the cheque was drawn. It was not suggested to Mr Mason that the cheque was kept or that anything was done to process the membership applications. The state of the evidence is thus that on the balance of probabilities Mr Evans is not a member of the RSL Southport sub-branch.

It may be that he has some entitlement enforceable by legal process to oblige the sub-branch to accept him as a member. On the state of the evidence, though, I could only speculate about that. The entitlements of persons to be made members under the relevant rules or constitution was not investigated in the course of the hearing. I am left with evidence which asserts that any membership application by Mr Evans would be rejected and there is nothing before me which challenges the ability on the part of the sub-branch to effect such a rejection.

It thus does not appear to me that Mr Evans has shown the existence of any standing on his part to make his Judicial

Review Act application and that the applicant has shown the contrary. That is the first limb of the applicant's argument. It was contended also that even if Mr Evans was a member of the sub-branch he would have no standing to bring the proceedings either in his capacity as member or in his capacity as beneficiary of the trust in respect of the subject property. I do not intend to spend much time in stating my views on this aspect of the second respondent applicant's argument. It is unnecessary to deal with it in order to dispose of the application.

Mr Evans, in the course of argument, asserted, in effect, that the argument took him by surprise in that he had prepared to deal only with the argument based on the question of whether he was or was not a member. I profess some scepticism about that matter. The application Mr Evans had to meet was unconfined in its terms. I consider it likely that Mr Evans, simply qua member, has no relevant standing. He sought to base his standing upon the prospect of a liability arising out of the conduct of Mr Duff as receiver.

I was unable to understand from anything Mr Evans submitted how the determination under challenge could affect Mr Evans's liability as a member of the sub-branch. One would have thought that, if anything, the asset position of the sub-branch would be improved by freeholding. As Mr Hanson QC, who appeared with Mr McQuade for Mr Duff, pointed out, Mr Evans even if he was a member, would not attract liability as a

result of action taken in respect of the subject securities or the freeholding application.

Furthermore, cases such as Cameron v. Hogan (1934) 51 CLR 358 and Rendall-Short v. The Autistic Therapy Society of Queensland Limited [1980] QdR 100 are authority for the proposition that members of an unincorporated association, without more, do not have standing to bring proceedings in lieu of or on behalf of the association.

The position in relation to beneficiaries is somewhat different. It was the subject of a useful discussion by Gray J in Fried v. National Australia Bank Limited (2001) FCR 322 at 373, 374 where his Honour cited a passage from Jacobs Law of Trusts in Australia, fourth edition 1977, which had been quoted by Powell J in Romage v. Waclaw (1988) 12 NSWLR 84. The thrust of the provision is that a beneficiary can sue in his own name only where the relief sought is in the equitable jurisdiction of the Court and, even then, only where the circumstances are exceptional.

The circumstances here would not appear to be exceptional at all, particularly when regard is had to the approval of the freeholding procedure by the trustee, by the committee and by the members in a general meeting. One gets the distinct impression that Mr Evans is running, in effect, a spoiling action with a view to creating as much confusion and difficulty as possible. He is a practitioner of long standing

but the wording of the application does not reflect his lengthy experience as a legal practitioner.

For those reasons, I order that the application for judicial review commenced by application filed 8 November 2002 be dismissed.

I order that the applicant John David Evans pay the respondents to the applications the costs of and incidental to the proceedings including the costs of all interlocutory applications and reserved costs, if any, to be assessed on the standard basis.

MR McLEOD: Your Honour, there was just one matter. Whilst you did say the application, you did amend the application on the 6th of December 2002.

HIS HONOUR: Yes. I wondered about that but I was simply trying to identify the initiating proceeding.
