

# SUPREME COURT OF QUEENSLAND

CITATION: *Steer v Returned & Services League of Australia (Qld Branch) Beerwah/Peacheater Sub Branch Inc* [2011] QSC 91

PARTIES: **ARTHUR DENIS STEER**  
(Applicant)

v

**RETURNED & SERVICES LEAGUE OF AUSTRALIA  
(QUEENSLAND BRANCH) BEERWAH/PEACHESTER  
SUB BRANCH INC (AN INCORPORATED  
ASSOCIATION)**  
(Respondent)

FILE NO/S: BS 2000 of 2011

DIVISION: Trial Division

PROCEEDING: Originating Application (Declaratory Relief)

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 29 April 2011

DELIVERED AT: Brisbane

HEARING DATE: 6 April 2011

JUDGE: Boddice J

ORDER: **The application is dismissed**

CATCHWORDS: ASSOCIATIONS AND CLUBS – GENERAL MATTERS – MEETINGS – Where association subject to *Associations Incorporation Act 1981 (Qld)* – Where validity of a resolution passed at a general meeting to terminate a lease agreement in dispute – Where failure to give notice of subject of resolution – Whether resolution and notice of termination are void

*Associations Incorporation Act 1981(Qld)*

Concise Oxford Dictionary (8th Edition)

*Cameron v Hogan* (1934) 51 CLR 358

*Dhami v Martin* (2010) 79 ACSR 121

*Dykyj v Logan and District Services Club Inc* [2009] QSC 108

*Efstathis v Greek Orthodox Community of St George* [1989] 1 Qd R 146

*Esposito v Wilderness Society Inc* [2010] TASSC 21

*Green v Nanango Bowls Club Inc* [2002] QSC 201

*H G Royal Park Pty Ltd v Stratacorp 7176 Inc* [2007] SASC 348

*Kovacic v Australian Karting Association (Qld) Inc* [2008] QSC 344

*Meehan v Cunningham District Bowls Association* [2005] QSC 156

*Re Vassallo* [2001] 1 Qd R 91

*State Government Insurance Office (Qld) v Rees* (1979) 144 CLR 549

*Workers' Compensation Board of Queensland v Technical Products Pty Ltd* (1988) 165 CLR 642

COUNSEL: C Wilson for the Applicant

FG Forde for the Respondent

SOLICITORS: TAYLAW SOLICITORS for the Applicant

MULLINS LAWYERS for the Respondent

- [1] Arthur Denis Steer (“the applicant”) is a retired officer of the Royal Australian Navy. He is also a service and financial member of the Returned & Services League of Australia (Queensland Branch) Beerwah/Peachester Sub Branch Inc (“the respondent”). The respondent, which is incorporated pursuant to the *Associations Incorporation Act 1981 (Qld)* (“the Act”), is a sub-branch of, and affiliated with, the Returned & Services League of Australia (Queensland Branch) (“the RSL”).
- [2] The applicant seeks declarations, pursuant to s 72 of the Act, to the effect that a resolution passed at a general meeting of the respondent held on 28 November 2010, that the respondent terminate a lease agreement it had with the Beerwah RSL Citizens Memorial Club Inc (“the Memorial Club”), is invalid, and that the consequent notice of termination issued by the respondent is also invalid.
- [3] The grounds for the alleged invalidity are that the resolution:
- (a) was not the subject of any requisite notice of meeting in accordance with the RSL’s State Rule 6.28, and Branch Rule 17.6;
  - (b) was put to the meeting without the applicant being given an opportunity to speak against the motion;
  - (c) was not authorised by prior resolution of the RSL;
  - (d) was in breach of the contract between the applicant and the respondent.

### **Background**

- [4] The respondent’s constitution provides that the respondent has various powers to enter into contracts and deal with property subject to RSL approval as required by the RSL’s State Rules and By-Laws (cl 4.2). Relevantly, the RSL’s State Rules provide that:

- (a) the State Rules apply to an incorporated sub-branch;<sup>1</sup>
  - (b) at least 14 days notice of a meeting of a sub-branch is to be given to each member, including notice of the general nature of the business;<sup>2</sup>
  - (c) a sub-branch shall cause accurate minutes to be prepared for all meetings which record, inter alia, the names of the members present, and all resolutions and proceedings;<sup>3</sup>
  - (d) a sub-branch has no power to undertake to, without the authority by resolution of RSL, “purchase, sell, lease, mortgage, charge, exchange or otherwise acquire or dispose any real property”<sup>4</sup>
- [5] The respondent has 136 members. The Memorial Club has approximately 3,500 members. Virtually all of the members of the respondent are also members of the Memorial Club. The applicant was a member of the management committee of the Memorial Club. The Memorial Club conducted a licensed club on premises leased from the respondent. That lease was entered into in 2001. The lease agreement provided for rent of approximately \$20,000 per month, and represented a substantial part of the respondent’s income.
- [6] The respondent formed the Memorial Club. It held a controlling interest in the management of the Memorial Club. In the usual course of dealings between the two organisations, the respondent would elect six of their members to become members of the management committee of the Memorial Club which would include the Memorial Club’s President and Senior Vice-President. This procedure operated without incident until February 2010 when the Memorial Club refused to accept three of the respondent’s nominees.
- [7] Attempts to resolve the dispute were unsuccessful. A meeting between the respondent and the Memorial Club was held on 15 November 2010. On 28 November 2010, the respondent held its monthly general meeting. The minutes record the following transpired in relation to the dispute with the Memorial Club:
- “On Monday the 15<sup>th</sup> of Nov, five representatives from the Sub Branch met with six or seven representatives from the Citizens Club, to see if we could come to a solution to the current problem. We again offered the compromises we thought were agreeable to both sides back in August. But the goat posts were moved. As it stands in the rules now, the Sub Branch elects its six members to go up to the Citizens Club Committee to represent them. They now want any other Sub Branch members to be able to nominate over and above your duly elected six members. They also say that the Incorporation Assoc Inc Act overrides the current Citizens Club Constitution. This is also evident when they are holding an illegal Annual Gen Meeting on the 30<sup>th</sup> of Nov instead of the 31<sup>st</sup> of August 2010, under the current constitution. So as a result of this meeting, nothing was gained. Allot of members are unaware of the new fees to be paid to the citizens club for their membership. Instead of just paying the normal \$20, they are requesting you pay an extra \$6 to be a member of the citizens club. This was not known until a couple of members

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<sup>1</sup> r 1.07.

<sup>2</sup> r 6.28.

<sup>3</sup> r 6.58.

<sup>4</sup> r 6.66; see also r 7.04.

paid their Subscription fees recently. I feel this is very disrespectful to the Sub Branch and very discourteous, as we should have been notified of the changes. This however is not against our lease agreement under rule 16.05. Years ago all this extra work for both the club and Sub Branch, was short circuited, to save alot of work on both sides. We will request all the extra fees paid, to be returned to the Sub Branch under our lease agreement. This in turn will be paid back to the members.

George Cowen then bought up the subject the disagreement between the Sub Branch and the Citizens Club, The president then moved onto the State RSL offer that was put to our meeting back in November. It has been postponed for the time being, as there have been major changes around, with their staff at state, also they have large numbers of Sub Branches and Clubs having troubles. They would like to see if we can rectify the problem ourselves, and they will be there to back us if required. If we went ahead on our own, the only difference would be that the Sub Branch will still own all property, but, instead of state injecting funds in, we would have to get a bank loan ourselves. To refurbish etc. A decision needs to be made, as negotiations won't work, and we have solicitors that agree to disagree.

### **Options:**

Roll over and let the Citizens Club go on their way, and we concentrate on welfare.

Go to court.

Follow state RSL recommendations, and go ahead oh our own.

This was then opened to the floor for discussion.

There was much heated and emotive discussion:

Suggestions:

Peter Farrell then suggested that we follow the states recommendation.

Change the name of the Citizens club.

The against mentioned that the elected Sub Branch members on the Citizens club only want to dictate.

Liz Layt then suggested that we vote to go alone.

Nev Anning then gave a short history of the RSL Citizens Memorial Club.

The president then put the motion up that The Beerwah/Peachester RSL Sub Branch Inc terminates the lease agreement with the Beerwah RSL Citizens Memorial Club Inc under section 16.04.

Members voted - In favour 32, 6 against and 2 Abstained.  
CARRIED

It was suggested that we wait until after Xmas. The executive will decide." [Sic]

## **Evidence**

- [8] At the hearing of the application, evidence was given by affidavit. No deponent was required for cross-examination.
- [9] The applicant deposed that the respondent held a general meeting generally once a month. He had attended the majority of those meetings since late 2008 and every general meeting since February 2010. He was present at the meeting held on 28 November 2008. The applicant received no notice of the meeting and no notice was given prior to the meeting that the lease between the respondent and the Memorial Club would be an item on the agenda to be considered and discussed at that meeting or that the lease would be terminated. An advertisement in relation to the meeting had appeared in the Glasshouse Country News but it did not contain notice that the lease would be on the agenda and that the question of its termination would arise for a vote. Whilst minutes of that meeting record the motion, the subject of this application, those minutes do not record who was in attendance at the meeting, and do not record a seconder of the motion. To his knowledge, no resolution was passed by the RSL in respect of approval of termination of the lease. The applicant said he rose to oppose the motion but was not given an opportunity to speak before the vote was taken at the meeting.
- [10] Other members of the respondent also deposed that no notice of the general meeting was given to members, and that members were not given prior knowledge that the lease would be discussed at that meeting or that a resolution might be moved to terminate that lease.
- [11] John Rouhan, the President of the respondent, deposed that the respondent held a general meeting of its members approximately once every month. The respondent has a practice of keeping an attendance book for each general meeting, and attendees sign that book before or at the start of each meeting. The minutes and the attendance book are both kept in the respondent's office. Attendees are reminded at the commencement of each meeting to sign the attendance book.
- [12] Mr Rouhan said the minutes of the meeting held on 28 November 2010 record the number of attendees at that general meeting. The relevant motion was seconded, although the minutes, in error, failed to record that seconder. Before the motion was moved, there was general discussion about the lease, and any action to be taken in relation to it. After the motion was moved and seconded, further discussion occurred. He does not recall the applicant attempting to speak on the motion. The applicant was not denied an opportunity to speak in respect of the motion. Following the meeting on 28 November 2010, and the delivery of the notice of termination of the lease, an agreement was reached between the respondent and the Memorial Club whereby the Memorial Club acknowledged that the notice of termination was valid and properly issued and undertook not to take legal action to dispute that notice. In return, the respondent extended the period during which the Memorial Club could vacate the premises.
- [13] Mr Rouhan deposed that since the general meeting held on 28 November 2010, the respondent has held monthly meetings. At no time has the applicant objected to his treatment at the meeting held on 28 November 2010, sought to have the vote for the issuing of the notice to terminate revisited, objected to the accuracy of the minutes

of the meeting held on 28 November 2010, or objected to the failure to record the name of members who attended the meeting on those minutes.

- [14] Toni Murray, the current secretary of the respondent deposed that she caused the minutes of the meeting of 28 November 2010 to be drawn up. The proceedings were also recorded. That recording reveals the subject of the lease arose in the course of the meeting when the President raised the subject of a meeting held between representatives of the respondent and the Memorial Club on 15 November 2010. The President explained the outcome of that meeting. A member raised from the floor the agreement between the respondent and the Memorial Club. The President opened up that topic for general discussion. The President put to the attendees three options. At least four people spoke before the President asked whether anyone else had an opinion on what option to take. After further discussion, the applicant rose and made some comments. He was not shut off by any person. Further discussion ensued between attendees before the President put the motion and asked if there was a seconder. Whilst no seconder was recorded in the minutes, the motion was seconded by Mike McGrath. The motion was then put and carried.
- [15] Chris McHugh, Chief Executive Officer of the RSL deposed that at a meeting in about May 2010 the respondent advised it was considering terminating the lease to the Memorial Club. He commented that the State Rules did not require the respondent seek permission from, or consent of, the RSL before taking any such step. If a sub-branch was required to seek permission from the RSL before terminating any lease, there would be an “unnecessary unintended and unwanted burden” on the RSL.

### **Applicant’s submissions**

- [16] At the hearing, the applicant abandoned reliance upon the ground that he was not given an opportunity to speak in respect of the motion. However, he continued to rely upon grounds that no notice was given of the meeting and that the resolution was in breach of the RSL’s rules and in breach of the contract between the applicant and the respondent as established by s 71 of the Act.
- [17] The applicant submitted:
- (a) Failure to give notice in accordance with the RSL rules is fatal;<sup>5</sup>
  - (b) The respondent did not have power to terminate the lease as cl 6.66 of the State Rules restricts its power to undertake such action without the authority of the RSL. The words “in respect of” denote a relationship or connection between the activities in relation to real property and should be given the widest possible meaning.<sup>6</sup> To dispose of is to “deal with”;<sup>7</sup>
  - (c) The resolution and notice of termination are void.<sup>8</sup>

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<sup>5</sup> *Associations Incorporation Act 1981* (Qld), s 57, *Efstathis v Greek Orthodox Community of St George* [1989] 1 Qd R 146; *H G Royal Park Pty Ltd v Stratacorp 7176 Inc* [2007] SASC 348; *Dhami v Martin* (2010) 79 ACSR 121; *Dykyj v Logan and District Services Club Inc* [2009] QSC 108; *Esposito v Wilderness Society Inc* [2010] TASSC 21.

<sup>6</sup> See *State Government Insurance Office (Qld) v Rees* (1979) 144 CLR 549 at 560; *Workers’ Compensation Board of Queensland v Technical Products Pty Ltd* (1988) 165 CLR 642 at 646-647.

<sup>7</sup> “Concise Oxford Dictionary” (8th Edition).

<sup>8</sup> *Green v Nanango Bowls Club Inc* [2002] QSC 201; *Meehan v Cunningham District Bowls Association* [2005] QSC 156.

## Respondent's submissions

- [18] The respondent submitted:
- (a) Whilst r 6.28 of the RSL's State Rules requires 14 days notice of a general meeting, specifying the general nature of the business to be given to each member, the rules do not prohibit the voting on matters that arise during the meeting. The motion in question arose as an issue during general business at the meeting. Accordingly, no notice of it was required to be given in accordance with the rules;
  - (b) Rule 6.66 deals with the acquisition or disposition of an interest in real property. Termination of a lease is not within that rule;
  - (c) An attendant record was kept by the attendance book. Any omission to record the names in the minutes is a procedural irregularity that does not invalidate the resolution.<sup>9</sup> In any event, neither the rules nor the by-laws contain a provision declaring that decisions made in breach of the respondent's rules are to have no effect;
  - (d) If there was any non-compliance, it ought to be waived pursuant to s 133(3) of the Act. That provision is remedial and is to be afforded a liberal construction;<sup>10</sup>
  - (e) The termination of the lease is valid;<sup>11</sup>
  - (f) Justiciability and the circumstances warrant a refusal to exercise the discretion.

## Conclusions

- [19] The rules of an incorporated association constitute the terms of a contract between the members and the association.<sup>12</sup> This Court has jurisdiction to adjudicate on any decision made under the rules of an association where that decision deprives the member of a right. The Court may give directions as to the performance and observance of rules of the association or may declare and enforce rights and obligations of the members as between members and as between the association and members.<sup>13</sup> The Court has a discretion whether to exercise its jurisdiction.<sup>14</sup> An omission, defect, error or irregularity in the conduct of an incorporated association may be corrected or validated by the Court if satisfied such an order would not do injustice to the incorporated association or to any member or creditor thereof.<sup>15</sup>
- [20] The evidence establishes that no formal notice of the meeting held on 28 November 2010 was given to members, although a notice appeared in a local newspaper. The rules applicable to the respondent require notice to be given of a general meeting. However, it does not follow that notice was required to be given of a proposed resolution in respect of termination of the lease. The issue surrounding termination of the lease arose as part of a discussion in general business. That discussion occurred in circumstances where the President was informing members of the outcome of a recent meeting. The proposition that a resolution be put in respect of termination of the lease arose from the floor of the meeting during that discussion.

<sup>9</sup> See *Cameron v Hogan* (1934) 51 CLR 358 at 376.

<sup>10</sup> *Re Vassallo* [2001] 1 Qd R 91 at 97.

<sup>11</sup> See ss 25 and 26 of the Act.

<sup>12</sup> *Associations Incorporation Act* 1981 (Qld), s 71.

<sup>13</sup> *Associations Incorporation Act* 1981 (Qld), ss 72.

<sup>14</sup> *Associations Incorporation Act* 1981 (Qld), s 73.

<sup>15</sup> *Associations Incorporation Act* 1981 (Qld), s 133.

The rules provide that business can be transacted from the floor of a meeting. There was no requirement for notice to have been given of any proposal to terminate the lease prior to a consideration of that resolution.

- [21] Whilst the applicant contends a consideration of the termination of the lease was not possible having regard to r 6.66 of the RSL's State Rules, that rule only requires a resolution of the RSL before a sub-branch undertakes any of the following actions: "purchase, sell, lease, mortgage, charge, exchange or otherwise acquire or dispose of any real property". I accept the respondent's contention that this clause does not include action in relation to the termination of an existing lease as opposed to action in relation to the acquisition of an interest in real property by way of lease. The termination of lease is an act done in administering the business and affairs of the sub-branch. Those acts are properly matters within the authority of the management of the respondent. There was no breach by the respondent of its rules by failing to obtain the prior authority by resolution of the RSL.
- [22] The applicant contends there was also a breach of the rules in that the minutes do not record who was in attendance at the meeting. Whilst that is technically correct, those minutes do record the number of attendees and the sub-branch had in place an attendance register which records the names of each member present at the relevant meeting. I am satisfied that arrangement complies with the rules. If I had held otherwise, the failure to specifically record the names of the attendees in the minutes is a procedural irregularity which does not invalidate any resolutions undertaken at that meeting. Were it otherwise, it would be an appropriate case for the Court to make an order pursuant to s 133 of the Act that the resolutions passed at the general meeting on 28 November 2010 be valid, notwithstanding any non-compliance with the rules.
- [23] The applicant further contends there has been non-compliance with the rules as there was no seconder to the motion. I accept the evidence of Ms Murray and Mr Rouhan that the motion was seconded. Whilst the minutes, in error, failed to record the seconder, that failure does not invalidate the resolution.
- [24] The failure of the respondent to give notice to members of the general meeting was a breach of the rules of the respondent. However, members of the respondent were aware of the holding of the meeting on the relevant date. A substantial number of members attended, including the applicant. The absence of formal notice in such circumstances is an irregularity. Having regard to the circumstances, it is an appropriate case to order, pursuant to s 133 of the Act, that that irregularity be waived and that all resolutions passed at the meeting were valid, notwithstanding that irregularity. There has been no interference with the applicant's proprietary rights or interest in the club. The management committee of the Memorial Club, of which he is a member, has agreed to compromise any action it may have had in relation to the notice. Courts do not lightly interfere in contentions or quarrels of voluntary associations.<sup>16</sup>
- [25] The applicant contends the notice to terminate given following the resolution was itself invalid. Agreement has been reached between the parties to that notice, and it

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<sup>16</sup> See *Cameron v Hogan* (1934) 51 CLR 358 at 384; *Kovacic v Australian Karting Association (Qld) Inc* [2008] QSC 344 at [26].

has been complied with by the Memorial Club. The validity of that notice is therefore not an appropriate matter for further consideration in these proceedings.

[26] The application is dismissed.

[27] I shall hear the parties as to the form of orders, and costs.