

# SUPREME COURT OF QUEENSLAND

CITATION: *Gresham v Beerwah RSL & Citizens Memorial Club Inc*  
[2011] QSC 288

PARTIES: **JOHN GRESHAM**  
(applicant)  
v  
**BEERWAH RSL & CITIZENS MEMORIAL CLUB INC**  
(respondent)

FILE NO: BS 2819 of 2011

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 26 September 2011

DELIVERED AT: Brisbane

HEARING DATE: 19 April 2011

JUDGE: Daubney J

ORDERS: **1. It is declared that the following of the respondent's rules are invalid:**

- (a) The first sentence of rule 11(A),**
- (b) The first sentence of rule 11(B), and**
- (c) The first sentence of rule 11(C).**

**2. The application is otherwise dismissed.**

**3. There be no order as to costs.**

**4. The parties have liberty to apply for any further or consequential orders.**

CATCHWORDS: ASSOCIATIONS AND CLUBS – INCORPORATED ASSOCIATIONS – OTHER MATTERS – where the applicant is a member of the respondent – where the respondent is an association incorporated under the *Associations Incorporation Act 1981 (Qld)* - where the applicant applies pursuant to s 72 of the *Associations Incorporation Act 1981 (Qld)* – where the applicant seeks orders which would have the effect of declaring the election invalid and another election held – whether the election of the respondent's management committee is contrary to its rules - whether the election of the respondent's management

committee is invalid

*Associations Incorporation Act 1981 (Qld)*, s 46, s 47, s 55, s 62, s 72, s 133

*Associations Incorporation Regulation 1999 (Qld)*, Schedule 4

*Re Vassallo* [2001] 1 Qd R 91

*The Citizens Theatre Ltd* [1946] SC 14

COUNSEL: T A Nielsen for the applicant  
A B Balzamo for the respondent

SOLICITORS: Mumfords Lawyers for the applicant  
Caboolture Law for the respondent

- [1] Beerwah RSL & Citizens Memorial Inc (“the respondent”) is an association incorporated under the *Associations Incorporation Act 1981 (Qld)* (“AIA”). The applicant, Mr Gresham, is a member of the respondent.
- [2] The respondent was originally established (as an unincorporated association) to open up use and enjoyment of the facilities of the Beerwah-Peachester Sub-Branch of the Returned Services League (“RSL Sub-Branch”) to persons beyond the categories usually entitled to RSL membership (predominantly serving and retired servicemen and servicewomen). The respondent was incorporated under the AIA in 1991.
- [3] The respondent’s current management committee was elected at its annual general meeting held on 30 November 2010. The applicant has applied for orders which would have the effect of declaring that election invalid and having another election held. He has applied pursuant to s 72 of the AIA, which provides:

**“72. Enforcement of rights and obligations**

- (1) The Supreme Court may, on the application of an incorporated association, or of a member thereof, make orders, including interim orders –
- (a) giving directions for the performance and observance of the rules of such incorporated association by any person who is under an obligation to perform or observe those rules; or
- (b) declaring and enforcing the rights and obligations of members of such incorporated association between themselves, and the rights and obligations between such incorporated association and any member or members thereof.
- (2) An order may be made under this section notwithstanding that no right of a proprietary nature is involved, or that the applicant has no interest in the property of the incorporated association.”
- [4] The applicant’s argument turns on the proper construction, and efficacy, of the rules of the respondent relating to election of its management committee.

- [5] It would seem (although there was no specific evidence to this effect) that when it was incorporated, the respondent registered its own rules in accordance with s 46 of the *AIA*. In any event, the parties before me both agreed that the respondent's rules were those exhibited to the applicant's affidavit as Exhibit JHG1.<sup>1</sup> Relevant for the purposes of the present application is rule 11, which provides:

- “11. (A) The Management Committee of the Club shall consist of ten (10) elected members, who shall comprise of six (6) members elected by the Beerwah Peachester R.S.L. Sub Branch and four (4) Citizen members of the Club. The Committee will consist of; President, Senior Vice President, Junior Vice President, Treasurer, and six other members. The Secretary/Manager of the Club shall also attend to the duties of the Committee.
- (B) The six (6) members elected by the Beerwah Peachester R.S.L. Sub Branch will include the Club President and the Senior Vice President. Those eligible for election by the Sub Branch shall be financial members of both the Sub Branch and the Beerwah R.S.L. & Citizens Memorial Club Inc.
- (C) The four (4) Citizen members of the Committee will be elected by ballot at the Annual General Meeting. Those eligible for election as a Citizen member shall be financial members of the Club, but are to exclude those members eligible for selection by the Sub Branch and current or ex members of the armed forces. The Glass House Country Bowls Club is to elect a delegate to attend Club monthly meetings. This delegate is to have no voting rights at the meeting unless the delegate is an elected member of the Management Committee.
- (D) The position of Junior Vice President and Treasurer will be determined by ballot at the Annual General Meeting.
- (E) Nominations for Citizen and Bowls Club membership must be in writing, proposed and seconded by a financial member of the Club, and be in the hands of the Secretary/Manager at least fourteen (14) days prior to the Annual General Meeting. The nominee must have been a financial member of the Beerwah R.S.L. & Citizen Memorial Club Inc. for the previous two (2) consecutive years.
- (F) Elected members of the Committee shall remain in office under the provisions of this Constitution.
- (G) Retiring members of the Committee shall be eligible for re election subject always to the provisions of this constitution.”

- [6] The applicant's case, in short, was this. For many years, the RSL Sub-Branch had elected six members of the respondent's management committee. In April 2010, the RSL Sub-Branch notified the respondent of the six people it had elected to the respondent's management committee. Despite this notification, at the respondent's annual general meeting held on 30 November 2010, the meeting purported to elect all ten of the management committee members, and three of the people who had

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<sup>1</sup> Affidavit of John Harvey Gresham, filed 5 April 2011.

been nominated by the RSL Sub-Branch were not elected to the management committee.

- [7] I observe in passing that the applicant’s characterisation of the April 2010 communication from the RSL Sub-Branch as advice as to the six elected members for the purposes of rule 11A is optimistic in the extreme. The communication was, in fact, a letter dated 28 April 2010 from the RSL Sub-Branch to the respondent advising of the identities of the Executive and office bearers of the RSL Sub-Branch elected at its AGM on 28 February 2010. The letter did not even purport to advise of the six members elected as members of the respondent’s management committee.
- [8] The statutory provisions relating to the management committees of incorporated associations are found in Part 7 of the *AIA*. Section 62 provides:

**“62 Election of management committee**

- (1) The members of the management committee shall be elected at the annual general meeting or any general meeting of the incorporated association in accordance with its rules.
- (2) Notwithstanding the provisions of subsection (1) the rules of an incorporated association may permit the management committee to fill a casual vacancy on the management committee.
- (3) In this section –

*casual vacancy*, on a management committee, means a vacancy that happens when an elected member of the management committee resigns, dies or otherwise stops holding office.”

- [9] The primacy of the provisions in Part 7 of the *AIA* was explained by Chesterman J (as His Honour then was) in *Re Vassallo*:<sup>2</sup>

“[29] The provisions of Part 7 of the Act are, I think, what used to be called mandatory. Clearly the legislation regards the existence, functions and mode of composition of the management committee as something fundamental to the operation of associations incorporated pursuant to the Act. The sections in the Part enact, in some detail, the means by which the affairs of an incorporated association are to be managed and how those who manage them are to be responsible to its members. Incorporation of a voluntary association confers considerable benefits in terms of the ease with which property may be acquired and dealt with and how contracts may be made without incurring personal liability on the part of individual members. To obtain those benefits the legislation requires certain standards to ensure that the affairs of an association are responsibly conducted by those who have the confidence of the membership so that, in turn, outsiders dealing with the association know that they may safely transact business with it. To achieve this result the Act insists upon the management structure described in Part 7. A departure from that structure is, in my view, prohibited by the statute and is invalid.”

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<sup>2</sup> [2001] 1 Qd R 91 at [29].

[10] The respondent's rules regarding the "election" of a management committee clearly do not conform with s 62, which requires that members of a management committee be elected at the annual general meeting or at any general meeting in accordance with the particular incorporated association's rules. The first sentence of rule 11A of the respondent's rules purports to exclude the respondent's members from election of six of the members of its management committee by providing that six of the ten members shall be elected by the RSL Sub-Branch. This is reinforced by the first sentence of rule 11C, which specifies that the four "Citizen members" will be elected by ballot at the annual general meeting. The first sentence of rule 11B, informed as it is by the first sentence of rule 11A, also reinforces the notion of the six members being elected by the RSL Sub-Branch rather than the members of the respondent.

[11] The respondent's rules provide for various classes of membership, including "RSL Members" and "Citizen Members". Rule 4 of the rules define those classes of membership:

“4. (A) The membership of the Club shall consist of the following classes of members:-

- (a) R.S.L. Members;
- (b) Citizen Members;
- (c) Life Members;
- (d) Honorary Members;
- (e) Temporary Members;
- (f) Junior Sporting Members;

The number of R.S.L. and Citizen members shall be unlimited. The Committee shall have the power to limit from time to time, as it sees fit, the number of members in each other class of membership.

(B) The following persons shall be eligible as R.S.L. members:-  
Persons who are members of the Returned Services League of Australia Beerwah/Peachester Sub-Branch, and

Persons who are either servicemen or ex-servicemen, ex-service women or members of the Permanent Forces or persons who from time to time are eligible by reason of service as Merchant Seamen to be admitted to membership of the Returned Services League of Australia or its successor in title.

(C) The following persons shall be eligible as Citizen Members:-

Any person of Beerwah and districts not otherwise included in this paragraph whose aims are compatible with the members referred to in sub-paragraph 4(A)(a), 4(A)(b) and 4(A)(c) hereof.”

[12] One might suspect that what was sought to be implemented under the rules was a scheme by which six places on the management committee were reserved for RSL Members and four places for Citizen Members, and that the persons proposed for election as the RSL Members should be those nominated by the RSL Sub-Branch. This, however, is simply not what is provided for under the respondent's rules. I note in passing that at the meeting on 28 November 2010, six of the members

elected to the management committee were “RSL Members” and four were “Citizen Members”.

[13] The conflict with the requirements of s 62 means that the following parts of the respondent’s rules were at the time of the 2010 annual general meeting, and are, invalid:

- the first sentence in rule 11A;
- the first sentence in rule 11B;
- the first sentence in rule 11C.

[14] The invalidity of those provisions in the respondent’s rules leaves a lacuna relating to the election of members of the management committee. In that regard, s 47(1) of the *AIA* provides:

“(1) If a matter is not provided for under an incorporated association’s own rules but the matter is provided for under a provision of the model rules (the *additional provision*), the association’s own rules are taken to include the additional provision.”

[15] The “model rules” are contained in Schedule 4 to the *Associations Incorporation Regulation* 1999 (Qld). Model rule 13(1) provides:

“The management committee of the association consists of a president, vice-president, treasurer, and any other members the association members elect or appoint at a general meeting.”

[16] It was conceded in argument before me that all ten of the persons who were elected to the management committee at the respondent’s annual general meeting had been properly nominated before election, and that their nominations had been received in proper time before the meeting was held. There was, therefore, no formal impediment to those ten people being elected at the annual general meeting.

[17] Some argument was advanced before me with respect to the interpretation which the respondent’s management committee had placed on rule 11. Rule 14A of the respondent’s rules provides:

“The Committee, in addition to other powers conferred by this constitution ... shall have the authority to interpret the meaning of these rules and any matter relating to the Club upon which these rules are silent.”

[18] In June 2010, the respondent’s management committee published an “interpretation” of, inter alia, rule 11. The summary of its interpretation of rule 11 was as follows:

**“Summary and conclusions on Rule 11**

Specifically the provisions of rules 11(A) and 11(B) show that the intent of the rules in relation to the makeup of the Management Committee is to maintain a 6 to 4 Sub Branch members to Citizen members.

In light of the non validity of the election provisions of the 6 Sub Branch members to be elected by the Sub Branch itself in r 11(a), the best interpretation consistent with the 6 to 4 intent (and in keeping with the legislative requirements) is as follows.

The Management Committee of the Beerwah RSL & Citizens Memorial Club Inc adopts the following interpretation of Rule 11:

- All 10 members of the management committee may only be elected at a general meeting of the Club (as required by s 62 of the Act); and
- All members of the Club (which may include Sub Branch Members and Bowls Club Members) with voting rights are entitled to vote; and
- The 10 elected members of the management committee must be members of the Club; and
- The President, Senior Vice President, Junior Vice President, and Treasurer are included in the 10 members of the management committee; and
- 6 of the elected members of the management committee must also be members of the Sub Branch or be eligible to be members of the Sub Branch; and
- The positions of President and Senior Vice President must be elected at the general meeting; and
- The President and Senior Vice President must also be members of the Sub Branch or be eligible to be members of the Sub Branch; and
- The President and Senior Vice President are included in the 6 elected members of the management committee who are members of the Sub Branch or a eligible to be members of the Sub Branch; and
- 4 of the elected members of the management committee must be Citizen members of the Club (that is, they must not be members of the Sub Branch or be eligible to be members of the Sub Branch); and
- The positions of Treasurer and Junior Vice President must be elected at the general meeting.”

[19] It is to be noted that the management committee itself accepted the invalidity of the relevant provisions of rule 11. The fact that the management committee adopted this interpretation to circumvent the effect of that invalidity, however, does not of itself regularise the respondent’s rules. As I have said, the invalidity of those parts of the respondent’s rules gives rise to the necessity to refer back to the model rules.

[20] The applicant also sought to raise a technical point that, according to the minutes of the respondent’s annual general meeting, the then President of the respondent vacated the chair of the meeting at the time of the election, and that part of the meeting was chaired by one of the other members of the respondent.

[21] The minutes of the annual general meeting record:

**“Election of Officers:** President Doug Kippen declared all positions vacant and asked Terry Little to take the chair for the election of officers.

Terry Little advised that Max Schmock had withdrawn his nomination and as all positions were unopposed the –

President	Denis Steer	RSL
Snr Vice President	Doug Kippen	RSL
Jnr Vice President	Trevor Cave	Citizen
Treasurer	Alan Christie	RSL
Committee	Denis Bochow	Citizen
	Jenny Hanson	RSL
	Gerry Ryan	Citizen
	Denis Hume	Citizen
	Greg Smith	RSL
	Ross McKenzie	RSL”

- [22] The applicant pointed to rule 24 of the respondent’s rules, which specifies procedures to be followed at meetings of the respondent. Rule 24A relevantly provides that at any general meeting:

“the President shall preside as Chairman, or ... if he is ... unwilling to act, a Vice President shall be the Chairman or if a Vice-President ... is unwilling to act or in any other case then the members present shall elect one of their number to be Chairman at the meeting.”

- [23] It was completely appropriate for the then President to vacate the chair for the election of the management committee – he had been nominated for election to that committee. It is not clear whether a resolution was formally passed to endorse the installation of the alternate chair for the purposes of conducting the election. If such a formal resolution was not passed, then it is clear that this was, at worst, a procedural irregularity which did not invalidate the election which ensued.

- [24] The applicant also took the point that this annual general meeting was held on 30 November 2010, but rule 20A of the respondent’s rules requires that the respondent’s annual general meeting “shall be held no later than the 30<sup>th</sup> day of September in each year”.

- [25] I note, however, that s 55 of the *AIA* provides:

“An incorporated association must hold an annual general meeting within 6 months after the end date of the association’s reportable financial year.”

- [26] Rule 31 of the respondent’s rules provides that its financial year closes on 30 June in each year.

- [27] Even if there were formal non-compliance with rule 20(A) of the respondent’s rules it would be appropriate for that to be regularised by an extension, if necessary.

- [28] To the extent that there were these technical irregularities, I note that s 133 provides:

**“133 Irregularities in proceedings**

- (1) No proceeding under this Act shall be invalidated by any defect, irregularity or deficiency of notice or time unless the court is of the opinion that substantial injustice has been or may be caused thereby which cannot be remedied by an order of the court.
- (2) The court may if it thinks fit make an order declaring that such proceeding is valid notwithstanding any such defect, irregularity or deficiency.
- (3) Without affecting the generality of subsections (1) and (2) or of any other provision of this Act, where any omission, defect, error or irregularity (including the absence of a quorum at any meeting of the incorporated association or of the management committee) has occurred in the management or administration of an incorporated association incorporated under this Act (whether or not such omission, defect, error or irregularity occurred before or after the incorporated association became incorporated under this Act) whereby any breach of any of the provisions of this Act has occurred or whereby there has been default in the observance of the rules or constitution of the incorporated association or whereby any proceedings at or in connection with any meeting of the incorporated association or of the management committee thereof of any assemblage purporting to be such a meeting have been rendered ineffective, the court –
  - (a) may, either of its own motion or on the application of any interested person, make such order as it thinks fit to rectify or cause to be rectified or to negative or modify or cause to be modified the consequences in law of any such omission, defect, error or irregularity, or to validate any act, matter or thing rendered or alleged to have been rendered invalid by or as a result of any such omission, defect, error or irregularity; and
  - (b) shall before making any such order satisfy itself that such an order would not do injustice to the incorporated association or to any member or creditor thereof; and
  - (c) where any such order is made, may give such ancillary or consequential direction as it thinks fit; and
  - (d) may determine what notice or summons is to be given to other persons of the intention to make any such application or of the intention to make such an order, and whether and how it should be given or served and whether it should be advertised in any newspaper.
- (4) The court may enlarge or abridge any time for doing any act or taking any proceeding allowed or limited by this Act or any rules or regulations made thereunder upon such terms (if any) as the justice of the case may require and any such enlargement may be ordered although the application for the same is not made until after the time originally allowed or limited.”

[29] For completeness, I observe that a further technical point which might have been, but was not, argued before me related to the procedure adopted at the annual general meeting in connection with this election. In an affidavit filed in this proceeding,<sup>3</sup> the secretary of the respondent described the procedure as follows:

- “h. During the annual general meeting, the chairman (on that occasion the president) stood aside and Mr Terry Little (a member of the respondent):
  - i. Took up the chair of the meeting; and
  - ii. All positions of the management committee were declared vacant; and
  - iii. Advised the members present that Max Schmock had withdrawn his nomination; and
  - iv. Advised the members that all nominations for positions of the management committee were unopposed; and
  - v. Declared all positions of the management committee were elected unopposed.”

[30] It is clear enough that there were ten nominees for ten vacant positions. It seems that what occurred is a practice which is not uncommonly observed at club elections when there are no contested positions, namely that the chair simply declared the positions filled. It might have been argued that the rules required an election, even as a matter of formality, and that the chair of the meeting was not entitled simply to make a declaration of the management committee positions being filled without having observed the formality of conducting a vote.<sup>4</sup> As it was not argued before me, it is not necessary for me to decide this point in the present case, but, having raised the matter myself, I should also indicate that if it had been raised it seems to me that it is the sort of matter which would appropriately have attracted a rectifying order under s 133 of the *AIA*.

[31] The outcome of this case is, then, as follows:

- (a) The applicant’s challenge to the election of the respondent’s management committee on 30 November 2010 is unsuccessful;
- (b) It is appropriate, however, for me to declare the invalidity of those parts of the respondent’s rules which contravene s 62 of the *AIA*.

[32] In those circumstances, there should be no order as to costs.

[33] There will be the following orders:

- 1. It is declared that the following of the respondent’s rules are invalid:
  - (a) The first sentence of rule 11(A),

<sup>3</sup> Affidavit of Mary Lourdes Kilkenny, filed 15 April 2011.

<sup>4</sup> See, for example, *The Citizens Theatre Ltd* [1946] SC 14.

- (b) The first sentence of rule 11(B), and
  - (c) The first sentence of rule 11(C).
2. The application is otherwise dismissed.
  3. There be no order as to costs.
  4. The parties have liberty to apply for any further or consequential orders.