

COMMONWEALTH OF DOMINICA
DOMHCV2010/0022



BETWEEN:

MICHAEL FADELLE
TREVOR BURTON
RICHARD GREEN
and

Claimants

ANTHONY BURNETTE-BISCOMBE
ORLANDO ALLAN RICHARDS
KIERON PINARD-BYRNE
SOPHIE NASSIEF
NORMAN PENNYCOOK
YVOR NASSIEF

Defendants

Before: The Hon. Justice Brian Cottle

Appearances:

Ms. Lauri Smikle for the Claimants
Mr. Henry Shillingford for the Defendants

[2012: November 30th]
[December 18th]

RULING

- [1] **COTTLE J:** This is an application by the defendants to have the claimants' statement of case struck out as disclosing no cause of action. Naturally the claimants resist the application. On 25th January 2010 the claimants filed a claim form. They sought the following relief
- 1) *A declaration that the decision of the 1st and 2nd defendant to dissolve the Club is ultra vires, null and void and of no legal effect;*
 - 2) *A declaration that the appointment of the Trustees to carry out the dissolution of the Dominica Club is ultra vires, void and of no legal effect;*

- 3) *A declaration that the general membership of the Club comprises of all members that are listed on the Club's list of members as at June 2004;*
- 4) *An Order that an Annual General Meeting of the Club be called within 21 days of the date of the Order and that the standards notice of the Club notifying its members of the said meeting be served on all members of the Dominica Club as at the year ending June 2004, thereby informing the members to pay their outstanding subscriptions at least 7 days prior to the Annual General Meeting in order to be eligible to vote on matters that are on the agenda for consideration;*
- 5) *An injunction prohibiting the Accountant General of the Commonwealth of Dominica from making the proceeds of the compensation of the Club's 49 High Street property available to the defendants until the resolution of this matter.*
- 6) *Costs;*
- 7) *Further and/or other relief as the Court deems fit.*

- [2] The Dominica Club was established in 1902. By 2004 the club was largely inactive. A meeting was convened. The claimants, and others who were in arrears of their subscriptions to the Dominica Club, were written to and reminded of the need to pay up arrears to maintain membership in the club. No further meetings were held until 2008. The claimants did not pay subscriptions for the years 2005-2008. It seemed that the club was either dormant or defunct.
- [3] The club owned a building in Roseau Dominica. The Government of Dominica acquired the building. Compensation for the acquisition of the club's property stood to be paid to those who were club members. The claimants sought to pay off the arrears of their unpaid subscription for the intervening years. The payments were returned to the claimants, on the basis that they had ceased to be members. It is against this backdrop that the current claim was filed. If the claimants are members, they stand to share in the compensation payable for the acquisition of the club property.

The Striking out submission

- [4] The submissions were made at the pre-trial review stage. At this stage all pleadings have been closed. All the documents to be used at the trial have been disclosed. All the witness statements have already been filed. The applicants now submit that, with the benefit of all this information the claimants' case still does not disclose any reasonable grounds.
- [5] As I understand the case for the claimants, they remain members of the Dominica club despite the fact that they failed to pay club membership dues for several years. As it is put in the pleadings, they are non-retired members. They say there has been developed a convention under which persons who are members and fail to pay their dues are allowed subsequently to pay those dues and maintain continuous membership. Additionally they say some persons were allowed to pay up outstanding dues and retain membership.
- [6] It would be unfair in the circumstances for the claimants to be shut out from a share in the expected proceeds of the dissolution of the club and distribution of its assets, is the argument the claimants advance. In short the claimants assert a right to pay arrears and thus regularize their status.

The Law

- [7] The law which governs clubs is the law of contract. This point is well made in the case of In Re Bucks Constabulary Widows' and Orphans' Fund Friendly Society (No. 2) [1979] 1 W.L.R 936. It was held that the entitlement of members inter se to the surplus funds of the society was governed purely by contract, unaffected by equitable doctrines.
- [8] The point was emphasized in the case of Harrington v Lendall [1903] 1 Ch 921. The plaintiff was a member of the Oxford and Cambridge University club. The defendant represented the management committee of the club. At a general meeting, a large majority of the members voted to increase the annual subscription fees. The plaintiff disputed the validity of the increase. Joyce J. found for the plaintiff. He held that there is no power of the majority of members of the club to alter the terms and the constitution of the club as they see fit, where such a power forms no part of the written contract by which the members are bound.
- [9] The further point was taken by the club that there had been many changes of the club rules before and the plaintiff had acquiesced therein. This was held not to preclude the plaintiff from subsequently insisting on his contractual rights where his pecuniary interests are directly and materially affected.
- [9] Membership in a club depends on the payment of subscriptions. In Re Sick and Funeral Society of St. John's Sunday School [1973] 1 Ch. 51, Megarry J. held that members could resign from a club by conduct. I can do no better than to quote him

"I should be very slow to accept that a member of a society may disregard all his obligations as a member for several years, and then, when it appears that there is some advantage in resuming his membership, assert that he is still a member because the correct procedure under the rules to terminate his membership has not been followed. The question, of course, is not one of expulsion, or of the society snatching at some trivial or short-lived breach of rules by a member to deny him membership: it is a question of a voluntary disregard of the obligations of membership over a continuous period of years. There must be many instances in clubs up and down the country in which this sort of thing happens. Yet if the contentions on behalf of the four members are right, either the society or the members concerned may, if it suits them, claim that the membership is still in being. Such members might find that the society is claiming many years' arrears of a substantial subscription, or the members might, as here, suddenly reassert their membership when some advantage turns up." The Learned judge went on to add "a moribund membership ought not to be capable of resurrection"

The Facts

- [10] For the purposes of this ruling I take those facts as averred by the claimants as proven. At the highest, the claimants say they have not paid their subscriptions for 3 or more years. They say they have a right to make good the payments and thus retain membership. The written contract, the rules of the Dominica Club required all members to pay subscriptions annually.

The Claimants submissions

- [11] Counsel for the claimants says that the defendants have sought to have the statement of claim struck out at the Case Management Conference. They remind the court that striking out is a drastic remedy. They cite the dicta of Byron JA in Baldwin Spencer v Attorney General of Antigua and Barbuda et al Civil appeal No. 20A OF 1997 They also argue that apart from the strict rules of the club there are conventions and practices which alter the contract among members and permit late payment of dues.
- [12] Having carefully considered the arguments I conclude that this is an apt case in which the striking out application can be considered at the Pre Trial Review. All of the evidence of the claimants has been adduced. The claimants must be taken to have advanced their best case. Taken at its highest I conclude that the claimants' case cannot succeed. The claimants' rights, if any, lie in strict contract law. By their conduct they evidenced a desire to no longer be part of the Dominica club. Because they now perceive some benefit to be imminent for club members they seek to pay up. But it is too late. Once a member has resigned, by words or conduct he ceases to be a member unless he applies for and obtains new membership.
- [13] I conclude that the claimants, not being members, can advance no claim to any assets of the Dominica club. I grant the application and strike out the claim as utterly hopeless and without any grounds.



Brian Cottle
High Court Judge