

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



HARDY V HOADE, RE NORTH HARROW TENNIS CLUB [2017] EWHC 2476(CH)

England and Wales High Court, Chancery Division, Pepperall QC, 6 October 2017

Application for directions for winding up of an unincorporated tennis club.

Key words: Unincorporated Association, England and Wales, Winding Up, Tennis Club, Lack of Members, Distribution of Surplus Funds

1. This English case concerned the affairs of the North Harrow Tennis Club (the Club). The Club operated between 1927 and 2012 at Harrow in Middlesex. The Club's premises consisted of 17,500 square feet of land on which there were three tennis courts, a pavilion and two huts. Unlike other local clubs, the Club did not have either night lighting (thereby limiting its use during winter) or parking facilities. In recent years, membership dwindled until the Club eventually ceased operating in 2013.
2. The claimants sought the court's advice on the proper conduct of the winding up of the Club's affairs. The question of sale had already been dealt with. On 4 May 2017, District Judge Goldberg granted a declaration that the claimants held the freehold land on trust for sale and that they might sell the land without further reference to the Club's members and former members. The land was sold by auction on 14 September 2017 for £460,000. From that sum, the trustees had to pay the auctioneer's fees, their legal costs incurred in dealing with objections to the proposed sale and the legal costs of these proceedings. The net funds available for distribution were in the region of £260,000. The question was how these should be distributed.
3. The claimants advertised as instructed by the court and 20 former members came forward to be considered, and were the defendants in this case. The Rules of the Club were last amended in 2012. Rule 18 stated:

If the club resolves at a General Meeting not to continue it's (sic) activities then the assets of the Club shall, after payment of all the Club's liabilities, be divided proportionately as between past and present Members in the ratio of the length of playing membership, which division in no event shall be applicable to any person with less than three years playing Membership.
4. However, the word three was struck through and 'five' substituted, thereby purporting to extend the qualifying period before new members might had an interest upon a dissolution of the Club. Moreover, no such resolution to cease activities had occurred at a general meeting.

5. Rule 19 was also pertinent:

Provided that no person whose Membership has been determined in accordance with rule twelve or a member who has defaulted in Payment of his or her annual subscription shall be entitled to any part of the Club's assets. Provided and notwithstanding Rule 18, that no alteration of this rule shall be made except with the consent of such a number of persons as would be jointly entitled to two thirds or more of the Assets of the Club, if the date of the proposed alteration were treated as the date of the discontinuance of the Club's activities.

6. The court then looked at possible implied terms that might justify a detour around Rule 18, and the lack of a resolution at a general meeting. The court said that 'subscriptions to a tennis club are paid in return for the privileges of membership and, accordingly, the proper approach to the distribution of the assets of a private members' club is to consider the matter in contract law' (at [37]). As to implied terms, the court held (at [39]-[40]):

Starting from this position, I consider that rules 18-19 clearly indicate a contrary intention [to equal distribution at common law], namely that the assets of the Club are upon dissolution to be distributed in accordance with the length of playing membership of each of the members. In my judgment, this is a case in which the members simply failed to foresee that there might be dissolution other than following a members' resolution. If asked whether rules 18-19 were intended to be a comprehensive scheme for the distribution of the Club's assets on dissolution, I am satisfied that the members would have replied positively. Put another way, they would not, in my judgment, have intended that there be a very different distribution of assets upon dissolution depending upon the matter of chance of whether the dissolution was preceded by a resolution at a general meeting or the members simply drifted away. I am fortified in this by the terms of rule 19 which assume that distribution will necessarily be in accordance with rule 18 upon a dissolution. For these reasons, there was, in my judgment, an implied term in the rules that the net assets of the Club would be distributed in accordance with the provisions of rules 18-19 upon a dissolution other than following a resolution of a general meeting.

7. As to whether the relevant period should be three or five years, there appeared to have been a mere error involved (at [43]):

...it does not appear that there was ever a decision of the members to lengthen the qualifying period to 5 years. Rather it appears likely that a mistake was made in retyping the rules...back in the days when a document could not simply be amended in a word processing package. That might be, as Mrs Hardy suggested in evidence, because the typist was working from a faint copy of an earlier set of rules. In any event, even if the rules were at one time amended to lengthen the qualifying period to 5 years, I am satisfied on the balance of the evidence before me that the final version of the rules as approved by the members at the October 2012 EGM only provided for a three-year qualifying period.

8. Of the 22 claimants in total (the two claimants and the 20 defendants), two failed to pass the three- year rule. The others met the rule based on evidence derived from:

- Membership lists from 1971 to 1974, 1992 and 1994 to 2012

- A small number of further spreadsheets and tables showing the members of the Club at various points
- The Club's accounting books from 1938 to 2005
- The minutes of meetings from 1950 to 2007 together with the minutes of the EGM on 23 October 2012.

9. The proceeds were to be distributed amongst these members proportionately with the length of their membership, which spanned 46 years to four years.

IMPLICATIONS



Most associations in Australia that have income tax exemption have a clause that prevents distribution of surplus assets on dissolution to members, instead being transferred to an organisation with similar tax status and objectives in the area.

VIEW THE CASE



This case may be viewed at: <http://www.bailii.org/ew/cases/EWHC/Ch/2017/2476.html>

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Date of creation: October 2019

Number of case: 2017-33

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