

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.



Gavin v Geelong Greyhound Racing Club [2022] VSC 811

Supreme Court of Victoria, Irving AsJ, 22 December 2022

Whether a plaintiff could obtain access to documents to determine his prospects for success in possible litigation.

Key words: Club, Victoria, Company Limited by Guarantee, Greyhound Racing, Suspension of Right of Access, Right to Discovery of Documentation

1. Gavin (the plaintiff) is a greyhound trainer who holds a public trainer's licence and is subject to regulation by Greyhound Racing Victoria under the [Racing Act 1958](#) (Vic) (the Act).
2. The plaintiff used the facilities of the Geelong Greyhound Racing Club (the defendant) to trial his greyhounds.
3. The defendant owns and runs the Geelong Greyhound Racing Club. It is a public company limited by guarantee, licensed to omit "Limited" from its name. It is not otherwise established under statute and does not have not-for-profit status. The defendant's registered office is at its racing track in Corio, Victoria.
4. On 28 February 2022, the General Manager of the defendant wrote to the plaintiff informing him that he had been suspended from the defendant's facility during trial sessions for a period of six months.
5. The plaintiff's contention was that as a result of the plaintiff's suspension and ban from the defendant's facility, the plaintiff's business has been interrupted by having to conduct his trials at other tracks, resulting in significant financial loss. The reduction in the plaintiff's business had meant that he was no longer conducting trials and had terminated employment of two staff members.
6. The plaintiff's solicitor advised that the plaintiff might have a right to obtain relief from the actions taken by the defendant either through an internal review of the defendant's decision, judicial review of that decision, or possibly an appeal under section 50K of the Act.
7. The plaintiff, who is not a member of the defendant, applied for preliminary discovery of the defendant's internal governance documents pursuant to r 32.05 of the [Supreme Court \(General Civil Procedure\) Rules 2015](#) (Vic) (the Rules). The plaintiff sought the documents to obtain legal advice on any avenues that might be available to him to review or appeal his suspension.

8. The defendant opposed the plaintiff's application.
9. The plaintiff's suspension arose from an incident at the track on 4 October 2021. Various correspondence ensued, but none of it allowed access to relevant documentation for the plaintiff to assess his rights, or to commence litigation.
10. Rule 32.05 of the Rules provided the three issues for consideration by the Court, stating:

Where:

- (a) there is reasonable cause to believe that the applicant has or may have the right to obtain relief in the Court from a person whose description the applicant has ascertained;
- (b) after making all reasonable inquiries, the applicant has not sufficient information to enable the applicant to decide whether to commence a proceeding in the Court to obtain that relief; and
- (c) there is reasonable cause to believe that that person has or is likely to have or has had or is likely to have had in that person's possession any document relating to the question whether the applicant has the right to obtain the relief and that inspection of the document by the applicant would assist the applicant to make the decision –

11. The Court considered each part of the Rule in turn.
12. As to (a), the Court held that the plaintiff had reasonable cause to believe he might have a right to obtain relief in the Court from the defendant. The Court's reasoning was that (at [32]-[33]):

I cannot accept the defendant's submission that the plaintiff must identify a source of a right to access the defendant's facility or a right to procedural fairness. It appears to me that to require that of the plaintiff would be akin to requiring the plaintiff to show a potential cause of action...The plaintiff merely needs to show that the facts are such that it may be reasonable to believe that the plaintiff may have a right to obtain relief. The defendant has excluded the plaintiff from its facility which the plaintiff alleges has caused him business harm. The plaintiff believes he may have a right to obtain relief from the actions taken by the defendant through an internal review of the defendant's decision or judicial review of that decision or some other mechanism. He seeks access to the defendant's governance documents to assist him to assess whether, in fact, such a right to obtain relief exists. As the plaintiff submitted, one possibility is that if the documents are provided, the plaintiff may see there is not a viable right to obtain relief and further litigation is avoided.

13. In relation to (b), there was no dispute that the plaintiff had made reasonable efforts to obtain the information he needed. Accordingly, the issue was whether the plaintiff has sufficient information to enable him to decide whether to commence a proceeding.
14. The Court accepted that on the basis of the documents currently available to the plaintiff, he had not been able to discern a clear basis to commence a proceeding. Therefore, the Court found that, objectively, without the governance documents the plaintiff sought, he was not in a position to obtain the legal advice necessary to determine whether to commence a proceeding.

15. The plaintiff sought the defendant's constitution (to the extent the one available on the ASIC website was not the latest version), the defendant's by-laws, code of conduct, member protection policy, disciplinary policy or guidelines, safety rules and the minutes of any Board meeting in which the plaintiff was discussed. Therefore, for issue (c), the Court found that (at [47]):

Given that I have found that the plaintiff has satisfied the first two elements of the rule, it follows that I am satisfied that there is a question whether the applicant has the right to obtain the relief and that inspection of the documents sought by the applicant would assist the applicant to make the decision about whether to commence a proceeding. This aspect of the rule requires the Court to determine whether the documents sought are likely to be in the defendant's possession. Given the nature of the documents sought, being foundational and operational documents and minutes of the defendant's Board meetings, I am satisfied that they are likely to be in the defendant's possession. I note that the defendant has not submitted otherwise.

16. Therefore, the plaintiff was successful in his application.

IMPLICATIONS



This decision describes the Geelong Greyhound Racing Club as a company limited by guarantee licenced to omit the word 'Limited' from its name. ASC has power under s 383 of the Corporations Law issue a licence authorising a proposed company to be incorporated as a limited liability company without the word "Limited" in its name. Under s383(2) the ASC may issue a licence authorising a company to change its name to a name approved by the ASC that omits the word "Limited". ASC policy is set out in ASC Regulatory Guide 50 and it is usual to only grant a licence to nonprofit entities (refer para 3 above).

VIEW THE CASE



This case may be viewed at <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC//2022/811.html>

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