

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE COMMONWEALTH OF DOMINICA

CASE NO. DOM/HCV 22 OF 2010

BETWEEN:

ANTHONY BURNETT-BISCOMBE
As Honorary Secretary and Member of The Dominica Club

1st Claimant

ORLANDO ALLAN RICHARDS
As Honorary Treasurer and Member of The Dominica Club

2nd Claimant

KIERON PINARD-BYRNE

3rd Claimant

SOPHIE NASSIEF

4th Claimant

NORMAN PENNYCOOK

5th Claimant

YVOR NASSIEF

6th Claimant

AND

MICHAEL F. FADELLE
As President of the Dominica Club

1st Defendant

TREVOR BURTON
As 1st Vice President and Trustee of the Dominica Club

2nd Defendant

RICHARD GREEN

Appearances

Mrs Noelize Knight Didier and Miss Indira St Jean for the Claimants
Mr John Carrington QC with Mr Henry M Shillingford for the Defendants

2016: March 03, 06, 23
November 23
2017: March 17
2018: November 9

JUDGMENT

- [1] STEPHENSON J: **The Dominica Club (“the Club”) was a social club established over fifty years ago. The Club was at all material times, governed by its Rules & By- Laws of 1973, which rules were amended at a Special General Meeting of the Club on June 30, 1990 (“Club Rules”).**
- [2] **The Club’s activities were conducted at the Club house located at High Street Roseau. The premises were owned entirely by the Club. The Club’s activities and facilities included social activities, squash and lawn tennis. There was a bar on the premises and members attended social functions at the Club and also utilised its facilities.**
- [3] The Club was not an incorporated entity. Its members paid fees and annual subscriptions upon becoming a member. It is not disputed that the law regarding membership of a club is primarily **contract law. “Membership of a club or association is primarily a matter of contract. The members make their payments and in return they become entitled to the benefits of membership in accordance with the rules”** *Re: Sick & Funeral Society of St John’s Sunday School Goldcar.*¹ (hereinafter referred to as “re: Sick”).

¹ [1973] Ch 51 at pages 59-60

- [4] The parties in the case at bar were at some point in time all members of the Club.
- [5] The rules of social clubs normally provide for the purposes of the club and would generally also make provisions for and regulate all matters pertaining to membership and the management of the affairs of the club, including ordinary, special and extraordinary general meetings of the membership. The rules also usually make provisions for the amendment or alteration of the said rules and also for the distribution of assets upon the dissolution of the club.
- [6] As is normal the Club Rules provided for the annual subscriptions for various categories of members, expulsion of members, the resignation and re-election of members, management of the club, division of assets upon dissolution of the club, and meetings of the club. This case concerns rules 10, 15, 16, 17, 18 and 20 of the Club Rules.
- [7] **The Club has now become defunct. A Management Committee was put in place for the “winding up” of the Club so to speak. The Club’s premises were sold to the Government of the Commonwealth of Dominica. The monies for the sale of the Club’s premises have been paid over** to the Management Committee and have been deposited in the bank awaiting the decision to be rendered in this case. Whether or not the Management Committee could have validly functioned after 2005 will be addressed and decided on later in this judgment.
- [8] The primary issue which arises in the case at bar is whether or not the claimants were still members of the Club at the time of the dissolution of the Club.
- [9] There is however, a preliminary issue brought up by the defendants regarding whether or not the claimants can bring an action on behalf of themselves and others, and can the defendants be sued on behalf of the Club? I will deal with this issue first. Thereafter, I will address the issue as to the whether or not the claimants were still members of the Club.

Can the claimants bring this action on behalf of themselves and others and can the defendants be sued on behalf of the Club?

- [10] The defendants raise the issue as to whether or not the claimants can bring this suit on behalf of themselves and other members of the Club and whether the defendants can be sued on behalf of the Club. Without deciding at this stage the validity of the actions of the defendants it is safe to say that because they are the ones who took action and who are at this time the trustees of the monies **paid for the Club's properties it is my considered view that they** are the fit and correct persons to be brought before the court in this matter.
- [11] In their certificate of truth in the amended statement of claim the claimants say that the action is brought on their own behalf and on the behalf of all other members of the Club. The defendants contend that the claimants can only advance the case at bar in their own rights because they have failed to apply to the court to be appointed representatives of a class of persons as is required by part 2.11 and 2.12 of the Civil **Procedure Rules 2000 ("CPR")**. **The defendants submit that in the** circumstances therefore, the **claimants' purported representative action is wrong in law and the** claimants can only in these circumstances represent themselves and not the other members of the Club.
- [12] There was no submission from the claimants in regard to this point taken by the defendants.
- [13] This argument raised by the defendants in their closing submissions does not find favour with this court for the following reasons.
- [14] I have perused the defence filed on behalf the defendant to the amended statement of claim filed on 19th November 2010² and this issue which is a factual argument has not been raised or addressed. The issue was not raised again in the pre-trial memorandum. It would appear as though this is the first instance at the closing submissions stage that the point is being taken. Therefore, clearly it cannot be properly addressed at this late stage of the game.

² Tab C of Bundle 1

- [15] **It is trite law that a party's statement of case, in this case the defendants' amended defence to the amended statement of claim must state the material facts upon which that party seeks to rely on and also to enable the other party to know what case it has to meet.**³
- [16] The basic principles of pleading are well established by the plethora of cases along this well trodden path which simply put, is that any statement of case must be concise and plead only material facts. The statement of case should not include extensive evidence, factual or other arguments, reasons or rhetoric. The case of *Tchenguiz –v- Grant Thornton UK LLP*⁴ reminds us of these principles.
- [17] Having had cause to review the amended defence filed by the defendants in this matter I am constrained to comment on same and to say that the amended defence does not comply with the basic rules of pleading. The amended defence contains a lot of evidence, factual arguments, rhetoric and reasons which made reading and discerning the defendants defence an unnecessarily difficult one.
- [18] The submissions made by the defendants regarding the capacity of the claimants to represent the other persons of the Club falls foul of Part 10.7 of CPR which states:-

Consequences of not setting out defence

10.7 The defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission or **the parties agree.**"

- [19] It is noted that there was no agreement or permission requested or granted to the defendant regarding presenting this factual argument. Thus this challenge made by the defendants therefore fails.

³ See *Ferdinand Frampton et al –v- Pinard et al DOMHCV2005/149,150,151 &152*, *Jacqui Quinn Leandro et anor – v- Dean Jonas et anor (Antigua & Barbuda) HCVAP2010/019 & 020*

⁴ [2015] 1 ALL E R 131 (Mar), [2015] 1 ALL E R Comm 961

[20] In the event that I am not correct in this regard I would briefly address the provisions of CPR 2000 on the question regarding the defendants concern about the claimants not having the authority or right to bring these proceedings on behalf of others.

[21] **Part 21.1 (1) of CPR is stated to “apply to any proceedings, other than proceedings falling within rule 21.4, in which 5 or more persons have the same or a similar interest.”** Sub paragraphs 2 and 3 says that

“The court may appoint – (a) a body having a sufficient interest in the proceedings; or (b) one or more of those persons; to represent all or some of the persons with the same or similar interest.

(3)A representative under this rule may be either a claimant or a defendant. “

[22] It is well established and understood law that the use **of the word “may” in legislation is an enabling** word which creates either an obligatory duty, a discretionary or enabling power or an undetermined right. In Baker, Nichols –v- Baker⁵ **Cotton LJ said “ ‘May’ can never mean ‘must’ so long as the English Language retains its meaning; but it gives a power then and may be a question in what cases, where a judge has a power given him ‘may’ it becomes a duty to exercise that power”**

“Appointment of representative claimant or defendant – procedure

21.2 (1) An application for an order appointing a representative party may be made at any time, including a time before proceedings have been started.

(2) An application for such an order may be made by any –

(a) party;

(b) person or body who wishes to be appointed as a representative party; or

(c) person who is likely to be a party to proceedings. “

⁵ 44 CH.D 262

[23] **It is this court's conclusion that it was not absolutely necessary for the claimants to make** application to the court to represent other persons and is not fatal to their status or claim. In the event that the claimants are successful ultimately in their claim then I would think in the interest of justice that a decision or direction would have to be given as to other persons who may be entitled to share in the assets of the now defunct Club.

[24] In my view the major issue which falls to be decided in this case is whether or not the claimants were members of the Club at the date of dissolution. To resolve this issue it is necessary to decide whether or not failure to pay subscriptions caused the claimants to lose their membership. It will also be necessary thereafter to decide whether or not the defendants were correct to refuse to accept the payment of the subscriptions which were in arrears from the claimants.

Payment of subscriptions

[25] Evidence regarding the practice of the payment of subscriptions came from most of the witnesses in one way or another. The witnesses, Mr. Orlando Richards and Mr. Kieron Pinard-Byrne who both **served as treasurers to the Club, to this court's mind gave substantive evidence regarding the payment** of subscriptions and the practices surrounding same.

[26] Mr. Richards said that persons who were in arrears did not lose their membership. The witness referred the court to the schedule which he drew up.⁶ The information on this list was prepared by the witness in or about 2012 when the claimants were preparing to make their claim. His evidence is that it was extracted from information held by the witness and compiled by the witness when he was treasurer of the Club.

[27] It is noted that a perusal of this document shows that a number of the defendants in the case at bar were in arrears and that they did not pay their dues on the due date as was required by Rule 10 of the Club Rules. It is noted that Mr. Michael Fadelle for the financial year 2002 to 2003 which was due the 15th July 2002 made payment in December 2004. He also made his 2003 to 2004 dues

⁶ List of selected members who did not pay membership subscriptions by July 15th prepared by the Honorary Treasurer Page 49 of Trial Bundle number 3

which was due on 15th July 2003 in December 2004. Likewise, Mr. Trevor Burton paid his dues for 2000-2001, 2002-2003 and 2003-2004 on 23rd September 2009. All of these dues were paid in arrears as they were all due on 15th July of the given year as was required by the Club Rules.

[28] It was also noted that Dr. Richard Green paid his 2006 to 2007 dues on the 19th January 2007 and his 2007 to 2008 dues on 130th January 2008, and his payments were made after the due date as per the Club Rules.

[29] Mr. Richards refuted the statements made by Mr. Trevor Burton that ***“there was never any convention practice or procedure or custom in the Dominica Club that allowed anyone to go more than a year without paying their annual dues”***⁷

[30] Mr. Pinard-Byrne said that there was a practice for collecting and the payment of subscriptions which was honoured and carried out by him when he performed the functions of Treasurer for the Club.

[31] In his witness statement Mr. Pinard-Byrne addressed the manner of collection of the subscriptions of the Club. He said that requests to pay subscriptions were made when the notices of the AGM were sent out as provided for by rule 20 of the Club Rules. The witness described the process of payment as a ***“time honoured policy”***.

[32] Mr. Pinard-Byrne said that there was no AGM convened for the years 2005 through to 2008. He **said further that he did not receive any notification in writing from the “interim management committee “that the required declaration of annual subscription had been made or that the payment was required in keeping with Rule 10 of the Club Rules** amen.⁸

[33] Mr. Pinard-Byrne also said having been informed of the move to dissolve the Club and of the sale **of the Club’s premises and other information passed on to him regarding the** refusal of the

⁷ Witness statement of Trevor Burton paragraph 33 at Trial Bundle 2 page 42

⁸ Paragraph 14 of the Witness Statement of K Pinard-Byrne at page 10 of Trial Bundle number 2

“incumbent management committee” of the Club to accept payment from certain members ⁹ that he tendered his subscription based on the last subscription rate and his payment was rejected and returned to him by Mr. Michael Fadelle the 1st named defendant.

[34] Mr. Pinard-Byrne in expanding his evidence spoke of what appeared to the court to be an ad hoc arrangement for the payment of subscriptions prior to the 1990 amendment of Club Rules regarding the payment of subscriptions.

[35] Mr. Pinard-Byrne said that the defendants’ case that the non-payment of subscriptions led to the membership being forfeited was a myth and that there was provision for the members to pay in arrears. He said that based on Club Rules there was no provision that if the member did not pay his subscription that he would not be a member.

[36] Mr. Michael Fadelle also gave evidence regarding the payment of Club subscriptions. Mr. Fadelle **also at some point in the Club’s life served as treasurer. In his witness statement, Mr. Fadelle said** that the payment of the subscriptions was sacrosanct and that he was aware that there were members of the Club who lost their membership due to failure by them to pay their dues; he spoke of the need for those members to be re-nominated and elected to membership of the Club.

[37] Mr. Fadelle was of the stated view that there was no practice or convention as contended by the claimants that allowed persons to pay their subscriptions outside of the provisions of the Club Rules. He stated in his witness statement that he had never heard of a convention or custom which allowed a member to pass a year and not pay their dues and still continue to be a member.

[38] Mr. Fadelle said when subscriptions were paid in arrears whilst he was treasurer those names were referred to the Management Committee. None of the other witnesses who at one time or another were members of the Management Committee spoke of such a practice.

⁹ See paragraphs 15,16 and 17 of the Witness Statement of K Pinard Byrne at pages 10 and 11 of Trial Bundle number 2

- [39] Under cross-examination this witness accepted that he did not pay his subscriptions in 2002 to 2003 and in 2003 to 2004 and that during that period he still considered himself a member even though he had not paid his subscriptions. He further agreed that there was no strict practice when **Counsel Mrs. Knight Didier put to him that “there is no rule that you are not a member if you fail to pay by the end of a year, and that there is no practice in the Dominica Club by the end of the Club year you are no longer a member”.**
- [40] **Mr. Fadelle’s evidence was certainly contradictory and in this court’s view cannot be accepted with** regard to the payment of the subscriptions and the continuance of membership of the Club.
- [41] **I accept the claimants’ evidence in this regard, that** is, the rules regarding payments and subscriptions of the Club were not strictly enforced and in the circumstances, I reject the **defendants’ case that the late payment of subscriptions led to the loss of membership. It is noted** that both the first and second named defendants in their evidence admitted that during their period of membership of the Club, they paid their subscription in arrears or that they paid their subscription late and that they never lost, neither did they ever consider themselves as having lost their membership.
- [42] On the evidence of the claimants which I accept there was to my mind a practice in the Club where there was no strict adherence to the Club Rules regarding the payment of subscription dues.
- [43] I accept the evidence of the former treasurers Messrs. Richards and Pinard-Byrne in this regard **and find that there was the “convention” in the Club where** members paid their subscriptions in arrears and not necessarily within the time frame as laid down in the Club Rules. There to my mind was a practice and convention in the Club where subscriptions were paid late and the members did not lose their membership. I find that based on the evidence adduced which I accept, the defendants also operated within this practice and convention and they themselves paid their dues some years late and did not lose their membership.

- [44] As I understand the practice of the Club, a member could have paid their dues at the AGM and continued to be in good standing with the Club and therefore they were entitled to all of their rights as a member.

The Law

Membership of the club:

- [45] Membership of a club or an association is primarily a matter of contract. When a member pays his or her dues or subscriptions they become entitled to the benefits of membership in accordance with the rules of the organisation. **When a club's activities come to an end or has become defunct that club is to be dissolved.** This dissolution must be done in compliance with the rules of the club. Upon dissolution the property of the club falls to be distributed amongst persons who are members of the club on the day of dissolution. The rules of the club form the basis of the contract between all the members and it is to the rules of the club that one must look to determine the rights of the members of the club.
- [46] It was not contested that the relationship between a member of a club and a club is a contractual one which is governed by the principles of contract law. There is however the issue of the status of the claimants. Were they or were they not members of the Club at the material time?
- [47] The defendants contend the claimants were not members in 2008 and they submit that it is an uncontested fact that the claimants did not pay their Club dues after the years 2004 to 2005. The defendants submit that in the circumstances of this case the effect of the claimants' non-payment is that their membership came to an end at the end of the financial year on 30th June 2005.
- [48] The defendants also contend that there was no absolute requirement by the claimants for them to resign or for them to be expelled from the Club. It is their contention that the non-payment of Club dues by the claimants and others was sufficient to cause termination of their membership of the Club.

- [49] The defendants rely on the authority of re: Sick¹⁰. It was submitted that this case dealt with virtually the same situation as the case at bar and that this case is authority for the proposition that **resignation may come into effect by lapse of membership arising from a members' failure to pay their fees.**
- [50] The defendants also made reference to the learning in Ashcroft & Reid¹¹ which they contend establishes that:
- “(a) even if the right to resign is regulated in the club rules, the concept of resignation by conduct e.g. through non-payment of membership dues, still exists; and
(b) the requirement of re-election to membership cannot be waived by the management committee in the absence of an express rule permitting them to do so. “
- [51] The defendants contend that the failure by the claimants to pay their annual subscriptions over a number of years was properly construed as a lapse and or abandonment of their membership on the part of the claimants by the Management Committee appointed by the members.
- [52] The claimants contend that they never resigned their membership of the Club as was provided for by Rule 16 of the Club Rules and that they were never expelled from the Club as provided for by Rule 15 of the Club Rules. They also claim that they did not abandon their membership and that their non-payment of Club dues was due to the fact that they never received notices for an AGM which was the trigger so to speak for the payment of the annual Club dues over the years.
- [53] The claimants contend that they were at all material times members of the Club entitled to receive **a share of the sale of the Club's property on dissolution and they have commenced these** proceedings in an attempt to secure same on behalf of themselves and other members of the Club.
- [54] **It is the claimants' evidence that they did not receive notices for the meeting of May 2008 and that** they however sought to tender payments to the Management Committee as was customary in the Club before the AGM. They complain that those payments were returned to them. In the case of

¹⁰ Op cit

¹¹ On Clubs & Associations 2nd Edition at paragraph 7.9

the fifth and sixth named claimants their evidence is that they were essentially told to not even bother to try pay their subscriptions.

[55] The claimants say that over the years the practice of the Club has been, that when notices for the AGM were sent to the members it contained a notice and or reminder to pay the subscriptions. Members would usually have up until the AGM to pay.

[56] The claimants submit that based on the authority of re: Birmingham District Land CO –v- London & Northwestern Rly CO (1888) 40 CH. D 268 that it is permissible for members to pay in arrears as was the practice despite what the Club Rules provided.

[57] The claimants also submit that there is nothing in the Club Rules of the Club prohibiting the forbearance as practiced over the years in the Club. The forbearance in the claimants stated view was if you pay your dues even though late your membership remained intact.

[58] The claimants submit that in the circumstances of this case it would be wrong and inequitable for the defendants to now assert the 1st July deadline as opposed to the accustomed or actual deadline of up to the AGM to pay subscriptions.

[59] All of the witnesses gave evidence as it regarded the issue of payment of the annual Club dues.

[60] The claimants rely on the provisions of the Club Rules which provide for the subscriptions to be set and included in the summons to the AGM. It is their contention that during the period 2005 to 2008 these notices were never sent out and in the circumstances that they were not required to pay dues or subscriptions as required by the Club Rules.

[61] The claimants also contend that the Club Rules provide for the formality for exclusion from the Club which formality was never followed.

- [62] The claimants also contend that the case at bar is to be distinguished from Re: Sick Case because in Re: Sick there is no mention of provisions for expulsion or resignation in that society and therefore it was safe to say that a member could have resigned by not paying their dues over a period of time.
- [63] The claimants further contend that formerly the Club Rules provided for the expulsion of members for non-payment of dues but that however this was no longer the law as it was amended in the 1990 amendment. Therefore they case of Re: Sick would not apply to the case at bar and that the defendants cannot rely on the non-payment of dues by the claimants to exclude them and that they were wrong to refuse their payment.
- [64] **It is the defendants' contention that the claimants were among the former members of the Club** whose membership lapsed for the non-payment of Club dues.
- [65] Rule 10.1 (1) of Club Rules provided *"Annual subscription for membership of the club shall be determined annually by a majority decision of the committee of management and shall be paid by members on or before July 15 each year."*
- [66] The defendants contend that the claimants have no standing to institute these proceedings as they were not members of the Club in 2008 when the special resolution was passed to dissolve the Club **and to have the trustees deal with the Club's property. Further that the claimants** were not members of the Club when these proceedings were commenced. The defendants rely on the case of Re: Sick in support of their position.
- [67] The defendants contend that the claimants all failed to pay their subscriptions after 2005 and in 2008 when the decision was made to convene a meeting, which meeting appointed them to the Management Committee which was followed by resolution to dissolve the Club, the claimants by virtue of their non-payment of their dues had in fact forfeited their membership of the Club.

[68] The defendants relied on the dicta of Megarry J in *Re: Sick* when he said that when a member has not paid his subscription over a period of time his membership would have lapsed and that such a member could be said to have tacitly resigned.

“However it is described, it seems right that there should be such a doctrine, so that neither the member nor the club or society should be able to claim against the other on the basis that what has long been dead de facto still lives de jure. A moribund membership ought not to be capable of being resurrected”.¹²

[69] **It is the claimants’ case that even though one must look at the rules and regulations of the club that one must also pay heed to the practices and convention of the club where there is no contrary or express terms within the rules of the club.**

[70] Learned counsel submitted on behalf of the claimants that in contract where a party to the contract gives forbearance to the other such as to lead him to believe that the party will not enforce his strict rights against him, the other party is entitled to rely on it. Learned Counsel placed reliance on the case of *Birmingham and District Land Co –v- London & North Western Rly Co* (1888) 40 CH D 268 @ 286 where Bowen LJ said

“...if persons who have contractual rights against others induce by their conduct those against whom they have such rights to believe that such rights will either not be enforced or will be kept in suspense or abeyance for some particular time, those persons will not be allowed by a Court of Equity to enforce the rights until such time has elapsed, without at all events placing the parties in the same position as they were before. ...”

[71] Applying the principle of forbearance giving use to estoppel it was submitted on behalf of the claimants that the practice and convention of the Club was one where members were allowed to pay up all outstanding dues in a manner not provided for by the Club Rules. That they were given **some “leeway” so to speak to pay after the 15th July date.** Further, that the practice was that members made payments upon receipt of the notice for the AGM. That for the period where they were held not to have paid they (the claimants and others) never received any notice of an AGM hence payments were not made.

¹²[1973] 1 Ch. 51 at page 62 H

Estoppel by convention

[72] It would appear to me that the claimants are seeking to rely on estoppel by convention which may arise where parties to a transaction act on an assumed state of facts or law, the assumption being shared by them both or made by one and acquiesced by another.

[73] The question to be posed is therefore, are the defendants estopped from relying on the strict interpretations of the rules regarding payment of the subscriptions by the 15th July of the current year so as to exclude the claimants?

[74] Are the claimants entitled to rely on what they considered to be a convention established in the conduct as club members not to be held to the strict rule of the deadline of the 15th July and to pay **fees when they receive notice of meetings?**"

[75] Estoppel by convention may arise where parties to a transaction act on an assumed state of facts or law, where the assumption is made by both or made by one and acquiesced by another. In Republic of India –v- India Steamship Co Ltd No 2¹³ Lord Steyn in delivering the judgment of the House of Lords said

"It is settled that an estoppel by convention may arise where parties to a transaction act on an assumed state of facts or law, the assumption being either shared by them both or made by one and acquiesced in by the other. The effect of an estoppel by convention is to preclude a party from denying the assumed facts or law if it would be unjust to allow him to go back on the assumption:¹⁴"

[76] In order for an estoppel by convention to arise, the relevant assumption or agreement must be communicated by one party to the other, either by words or conduct¹⁵.

¹³ [1998] AC 878

¹⁴ Ibid at page 913

¹⁵ Ibid

- [77] **Halsbury's Laws of England**¹⁶ states that the court will give effect to the agreed assumption only if it would be unconscionable not to do so.
- [78] In *Amalgamated Investment and Property Ltd –v- Texas Commerce International Bank Ltd*¹⁷ Lord Denning described the doctrine of estoppel as “one of the most flexible and useful in the armoury of law”¹⁸
- [79] It is noted that generally it has been held that estoppel cannot be used as a sword but only as a shield I am however guided by the words of Brandon LJ in *Amalgamated Investment and Property Co Ltd –v- Texas Commerce International Bank Ltd*¹⁹ when he said
- “ ... while a party cannot in terms found a cause of action on an estoppel, he may, as a result of being able to rely on an estoppel, succeed on a cause of action on which, without being able to rely on that estoppel, he would necessarily have failed”²⁰
- [80] In light of these authorities, in my judgment the argument of estoppel by convention has application to the case at bar.
- [81] Did the Claimants forfeit their membership by non-payment of their subscriptions for the period 2005 to 2008?
- [82] Having listened to the witnesses at the trial and having observed their demeanor, having reviewed the statements of case, witness statements and my notes of evidence, I am satisfied that the claimants have established on the balance of probabilities that the practice of the Club over the years was for members to be reminded of their responsibilities to pay their subscriptions and the quantum in their notice for the AGM.

¹⁶Halsbury's Laws of England/Estoppel (Volume 47 (2014)) at paragraph 368

¹⁷ [1981] 3 WLR 565

¹⁸ Ibid at page 575

¹⁹ ibid

²⁰ Ibid at page 584

- [83] Further, that those members who paid their subscriptions in arrears and in fact some members were in arrears for many years did not lose their membership.
- [84] The claimants contend which I accept that it was customary in the Club for members to make payments late which payments were accepted. I find as a fact that the defendants themselves based on the evidence of Mr Richards paid their subscription late which subscription were accepted at the time. It seems clear to this court that it was a convention of the Club that members would pay their subscription late and generally not lose their membership. That the members all of them including the defendants accepted this practice.
- [85] Applying the law of estoppel by convention the defendants cannot now want to be seen as refusing payments tendered by the claimants and other members of the Club to bring their subscriptions current as has happened over the years and also to deny that the claimants were members because of their failure to pay their subscriptions. That to my mind would be unconscionable and in the circumstances of this case for the defendants to now seek to enforce the strict requirements of the Club Rules to exclude the claimants from membership. The defendants ought not to be allowed to rely on the date provided by the Club Rules as a cut off when previously that was not enforced.
- [86] The defendants contend that the claimants forfeited their membership because they failed to pay their subscriptions and in fact refused the payments as presented. The claimants on the other hand claim that the convention or practice in the Club was that they paid their subscriptions upon receipt of the notice of the AGM which would customarily state the amount owing by the **member(s)**. I accept the claimants' contention that for the period 2005 to 2008 there was no AGM and as such the customary notice was not received and so payment was not tendered by them. That this was not a case of them abandoning their membership.
- [87] In the circumstances of this case, I think that the defendants were wrong to refuse the subscriptions tendered by the claimants and to seek to exclude them from membership of the Club and will so declare. **It should be noted however, that whether or not the Club's Management**

Committee was right or wrong to not accept the claimant's dues for 2005 to 2008 is really of no moment based on my decision which follows.

The Club's Management Committee post 2005

[88] The evidence before the court is that at a special general meeting of the Club convened on 22nd August 2008, the members in attendance unanimously agreed to dissolve the Club. This was a decision the defendants contend that was taken at the last AGM of the Club and that the decision was a valid one. The claimants disagree with that.

[89] The claimants submit that the Management Committee acting in 2008 was not a validly appointed committee and therefore all of their actions and decision post September 2005 were invalid.

[90] The claimants submit that the Club Rules regarding the election and appointment of a Management Committee are in clear, mandatory and obvious terms. Rules 17 and 18 of the rules state:

"Rule 17:

Management of the Club

(i) *"There shall be a President and two Vice Presidents who shall be elected annually. The President shall preside at the General Meetings and in his absence the Senior Vice President shall preside..."*

Rule 18:

Committee of Management

(i) *The club shall be managed by a Committee consisting of the President, Secretary, the Treasurer and four other members, all of whom shall be elected annually."*

[91] **It is the claimants' contention that for there to have been another valid Management Committee the course of action taken in 2004 should have been taken whereby the members should have signed a petition for a meeting of members to be called or that the members should have sought to come together to convene an AGM for purposes of electing officers.**

- [92] It would be safe to say that the defendants view on the other hand, though they have not **addressed the claimant's contention on the validity of the 2008 AGM and the subsequent** appointment of the Management Committee specifically is that the 2008 meetings were validly held and the 2008 Management Committee was validly appointed.
- [93] It has been submitted by counsel representing the defendants that the decision of the Management Committee cannot be impugned as it is for the members to decide on this resolution under rule 17 of the Club Rules and that this was done unanimously and that even if the claimants were still members of the Club and attended the meeting the vote to dissolve the Club would still have carried as what is required is a simple majority under rule 20(iv) of the Club Rules which simple majority was present and voted²¹.
- [94] A Management Committee of a club is usually tasked with the overall guidance, direction, oversight and stewardship of the club.
- [95] The rules of the club must be applied in accordance with the principles of natural justice.²² The interpretation of club rules is a matter which the courts will examine.²³
- [96] It is necessary for a meeting of the club to be held in accordance with the requirements of the rules of the club. The lawfulness or the validity of a meeting is to be determined on an examination of the club rules or law relating to meetings, that is, have those rules been followed or not.
- [97] Decisions taken at an invalid meeting are not binding even if taken by a substantial majority at the meeting.

²¹ See paragraph 54 of the Defendants' closing submissions

²² Re: Halsbury's Laws of England (2017) Volume 13 at paragraph 219 **Interpretation of Rules**

²³ Ibid, Re: Baker –v- Jones [1954] 2 ALL E R 553, [1954]1 WLR 1005

- [98] In the case at bar, the claimants contend that the last Management Committee of the Club was validly elected in 2004 and that upon a proper construction of the Club Rules the life of the Committee ended in 2005 and therefore any action by the said committee in **September 2005 “was null and void and at the very least, not legitimate.”²⁴**
- [99] Learned Counsel on behalf of the claimants submitted, to put it in my own words, the same procedure adopted by the Club in 2004 should have been adopted in 2008 in order for there to be valid action.
- [100] When one looks at the facts before the court in this case, I am in agreement with the submissions of learned counsel for the claimants.
- [101] I agree that the Management Committee was not a validly appointed one, that it was not a committee that was appointed within the confines of the Clubs Rules. Therefore any decision or action taken by the said Management Committee cannot be valid.
- [102] Learned Counsel for the defendants drew to this **court’s attention that two of the claimants were involved in the activities and decisions of the Management Committee at some time or the other during the life of the said “committee” this to my mind is of no real moment to the issue or decision at hand, in that it does not change the invalidity of the committee in any way shape or form.**
- [103] Likewise the meetings (the two SGM and the AGM) convened by the said committee in 2008 were not validly called or held and any decision taken at those meetings clearly would be invalid.

²⁴ See paragraph 35 of the Claimants’ closing submissions

- [104] Learned Counsel for the defendants submit that in any event the decision to dissolve the Club cannot be impugned as this decision was for the members to decide by resolution which was done unanimously and that even if the claimants were found to be members of the Club the vote would still be carried as pursuant to Rule 20(iv) of the Club Rules by virtue of a simple majority and even if the claimants were present as members and voted against the dissolution 17 members attended and voted in favour of the resolution.
- [105] Having decided that the Management Committee post 2005 and more particularly of 2008 was not a live or valid one and that the 2008 meetings and logically any decisions taken at the said meetings were not valid what further can this court do?
- [106] Learned Counsel for the defendants submitted that the court has no jurisdiction to grant the relief sought having stated “ ... It is trite that the role of the court is to interpret but not rewrite agreements made by the parties”. Unfortunately there was no proper reference made to any authority save to say “Authority from Lewison”²⁵
- [107] A court will not usually interfere with or intervene in the affairs of a club or association. However the court will concern itself with the disposal **and administration of the club’s property**. **Re: Gardner –v- M’Lintock**²⁶
- [108] I am therefore not in agreement with Learned Counsel for the defendants in this regard when one looks at the whole of the case before the court. The bottom line of this action concerns the **distributions of the club’s assets upon its dissolution**.

The Dissolution of the Club

- [109] The Club, based on the facts presented and accepted by this court, had fallen into a state of total inactivity by the year 2004. This state it is accepted is what prompted some of the members to action in 2004 when the Special General Meeting was convened which was prompted by a petition

²⁵ See paragraph 55 of the Defendants’ closing submissions

²⁶ (1904) 11 S L tT 654 off as stated in Stairs Memorial Encyclopedia Volume 2 ‘Associations and Clubs’ at paragraph 817

of the members. It is clear that nothing happened after 2004 save for the attempt at dissolving the Club in 2008.

- [110] The sole asset of the Club would be the Club house which property has been sold and the **purchase price paid to the “management committee” and sits in an interest bearing fixed deposit** pending the hearing and outcome of this matter for distribution to persons who are the members of the Club.
- [111] The court has in my view an inherent jurisdiction to deal with what is left of the Club and its property. I hasten to say for reasons following that there is no need for there to be a general meeting of any kind for the Club for there to be a proper dissolution of the Club.
- [112] The case of *Re: GKN Sports and Social Club Leek and others –v- Donkersley and others*²⁷(The GKN Sports Club case) is in my view very instructive as it regards the law and the course that should be applied to the case at bar and the law embraced and applied by the court in that matter will be gratefully adopted by this court in coming to its final decision.
- [113] Based on the undisputed facts in this case the activities of the Club started to slow down some years before 2004 actually in 1996. The members were showing less interest in the Club. The Club started having solvency issues **and there was in an effort to properly utilise the Club’s asset,** the Club house was leased out to Entspor Investment Limited. This lease came to an end at the end of 2002.
- [114] **During what became known as the Entspor years the club’s liabilities were paid off. After the** Entspor lease came to an end in December 2002 there was not much activity in the Club and in 2004 an AGM convened with the intention I understand for the General Membership to resolve to dissolve the Club. This resolution never materialized and instead a Management Committee was appointed to charter the way for the revival and the way forward for the Club.

²⁷ [1982] 2 ALL E R 855

- [115] Unfortunately nothing happened until the move by that Management Committee to convene meetings in 2008 to dissolve the Club.
- [116] It could therefore be said that the Club came to a spontaneous dissolution. In the GKN Sports Club Case²⁸ Megarry V-C said:

“As a matter of principle I would hold that it is perfectly possible for a club to be dissolved spontaneously. I do not think that mere inactivity is enough: a club may do little or nothing for a long period, and yet continue in existence. A cataleptic trance may look like death without being death. But inactivity may be so prolonged or so circumstanced that the only reasonable inference is that the club has become dissolved. In such cases there may be difficulty in determining the punctum temporis of dissolution: the less activity there is, the greater the difficulty of fastening on one date rather than another as the moment of dissolution. In such cases the court must do the best it can by picking a reasonable date somewhere between the time when the club could still be said to exist, and the time when its existence had clearly come to an end.”²⁹

- [117] Applying this test, the Club in the circumstances of this case would have come to an end in 2004 when the last properly convened AGM was held. It is clear that by that date the activities of the Club had totally ceased and the Club had in fact ceased to exist and positive acts were taken to see what life was left in what was a defunct club. There was the stated intention to formally dissolve the Club in 2004 even though there was no decision taken to do so.
- [118] Following and applying the law as laid down in the GKN Sport Club case and following the decisions mentioned by Megarry VC in his decision it can be said that the Club ceased to function as a Club, it had not only fallen into total inactivity but it was clear the members were no longer interested in the Club and its whole purpose of function was no more. The Club was not just dormant but it can be said to have ceased to exist. There is therefore no need for this court to direct that a meeting be convened to dissolve the Club as the Club ceased to exist spontaneously and I so hold.

²⁸ Ibid

²⁹ Ibid at page 860 paragraph b

[119] There are question are therefore two questions to be decided as follows:

- I. Having decided that the date of dissolution was at the end of the club year in 2004 what happens to the dues paid by members between 2004 to 2008? The answer to that is very simple; that those members will have to be refunded the monies paid. Every effort will have to be made to locate and refund those members. I have every confidence that those persons are known and can be located as they were the persons that the 2008 Management Committee considered to be members and they are no doubt waiting in the **wings to collect their share in the proceeds of the Club's** sold asset.
- II. **Who are the persons entitled to share in the proceeds of the sale of the Club's asset?**
Having decided that the Club spontaneously ceased to exist in 2004, it stands to reason that the persons who were fully paid up members at the end of the 2004 year would be valid members and would be validly entitled to share in the proceeds of the sale of the **Club's asset.**

[120] Having decided that the Club has spontaneously ceased to exist and that there is no reason in the circumstances to convene a meeting of the members of the Club and having come to the conclusion that the Club ceased to exist at the end of the 2004 Club year; Having also decided the persons who have paid dues between 2004 and 2008 should be reimbursed the fees paid from the **Club's monies** sitting at the bank and that the members validly on the books of the Club as **members in 2004 are entitled to share in the proceeds of sale of the Club's assets less of course** the sum refunded to members who paid their subscriptions between 2004 and 2008 the question is how will that process take place.

[121] It is my view that based on the Overriding Objective of the CPR 2000 and on the fact that the parties on both sides before the court did indicate to the court that they all remain on good terms that in order to bring this long outstanding matter to an expeditious end all the parties having a duty to help the court to further the Overriding Objective, I am minded to order that:

- I. The parties decide amongst themselves a committee of five to be appointed by the Court or failing consensus that together they all oversee the administration of the dissolution of the Club;

- II. A list identifying the persons who paid up their dues between 2005 and 2008 and the amounts to be refunded to those person and a single list of members of the Club at the end of the Club year 2004-2005 is presented to the Court within 45 days hereof.

Conclusion

[123] For the foregoing reasons the court has determined as follows

- a. That the claimants are entitled to commence and proceed with this matter for and on behalf of themselves and persons who could validly be members of the Dominica Club as at June 2004 which was the last Annual General Meeting;
- b. That the Club in all circumstances of the case ceased to exist at the end of the 2004 -2005 Club year.
- c. That the assets of the Dominica Club shall be distributed according to the terms and provisions of the rules of the Dominica Club to all persons who were lawfully and validly members of the Club as at the end of the 2004 – 2005 Club Year. That is, in June 2005.
- d. The parties shall decide amongst themselves a committee of five to be appointed by the Court or failing consensus that together they all oversee the administration of the dissolution of the club.
- e. A list identifying the persons who paid up their dues between 2005 and 2008 and the amounts to be refunded to those person and a single list of members of the Club at the end of the Club year 2004-2005 is presented to the Court within 45 days hereof.
- f. The defendants shall pay the costs of the claimants to be assessed if not agreed within 28 days hereof which costs are not to come from the funds being held on behalf of the Club.

[124] The court has reviewed the quite lengthy submissions filed by both counsel in this matter.

Reference will be made to those submissions **which were considered necessary to explain the court's** conclusions. It is to be noted that failure to make specific mention of any point of submission does not mean that it has been ignored or there has been a failure to take it into account. Some of the issues **and points which have been raised by both counsel were in the court's view not necessary to discuss in** order to resolve or to decide the main issues in the case at bar.

[125] As a short post script to this judgment, due to the unavailability of full court facilities to ensure the timely delivery and proper editing and presentation of this ruling, this Court apologises for the delay in delivering this ruling and for any errors which may appear herein. Further, the original file was unfortunately destroyed in the passage of Hurricane Maria which ravaged Dominica in September 2017 hence there is uncertainty as to the date that the decision was reserved.

[126] I wish to thank Learned Counsel Mrs. Noelize Knight Didier and Miss Indira St Jean Counsel representing the claimants and Mr. John Carrington QC and Mr. Henry Shillingford Counsel representing the defendants for the manner in which they conducted the trial and their valuable and professional assistance given to the Court both in their submissions and in providing the court with scanned copies of the trial bundles and later copies of the said bundle which assisted the court in writing this judgment after the original file was destroyed in Hurricane Maria.

M E Birnie Stephenson

High Court Judge

[SEAL]

By the Court

Registrar