

IN THE SUPREME COURT
OF NEW SOUTH WALES
EQUITY DIVISION

5 BERGIN CJ in EQ

FRIDAY 27 NOVEMBER 2009

10 **5454/09 - PATRICIA CLEARY v RECY KYPRI**

10 **MENTION**

Mr C J Bevan for the Plaintiffs

Mr J Ralston, Solicitor, for the First to Fifth Defendants

15

20 RALSTON: Your Honour, I appear for the first to fifth defendants and I'll be filing a submitting appearance; I'll be seeking leave to file it in court if that's suitable.

HER HONOUR: Yes. Do you have it there?

25 RALSTON: These are the originals, your Honour.

HER HONOUR: Just one of each. Do you appear for each of the first to--

30 RALSTON: First to fifth, your Honour. (Handed up.) And your Honour, could I make it clear that notwithstanding the fact that each of those defendants feel that they have a legitimate grievance and a matter that would otherwise be legally arguable, they simply do not have the resources to fight, and that was made patently clear in the correspondence on 3 November to the other side.

35 HER HONOUR: There is a problem, though, Mr Ralston, I think, because the plaintiff wishes to claim that the calling of the meeting for the 3rd, which is next week, is invalid. Do your clients want to proceed with that meeting or not?

40 RALSTON: I think not, but I would probably need some instructions, your Honour.

45 HER HONOUR: What I would hope is that this matter can actually be settled on the basis that the parties engage in sensible discussions and reach a sensible conclusion about the way forward. If they're not pressing ahead with the meeting on the 3rd, that will enable some time, if you will pardon the vernacular, for the dust to settle.

RALSTON: Indeed, your Honour.

50 HER HONOUR: I will adjourn for a short while.

JEF:CAT

SHORT ADJOURNMENT

HER HONOUR: Yes.

5 BEVAN: Subject to what your Honour has to say about it, the parties have
resolved their differences, but it would require your Honour doing two things;
one is to make declarations and orders, save as to costs, in accordance with
10 the summons; and the second would be to note an agreement to move the
matter forward so that the defendants have an opportunity of in effect being
reinstated to the church at the AGM which must be held on or about
4 February; and the agreement provides a regime for ensuring that they are
accorded natural justice at that meeting; that is, if I can hand the documents up
and--

15 HER HONOUR: Yes, thank you, Mr Bevan. (Handed up.)

BEVAN: The provisions of the typed document speak for themselves. I will
only speak to the handwritten document.

20 HER HONOUR: Just pardon me for a moment. Take a seat, Mr Bevan.

BEVAN: I should say that the proposal is that we all bear our own costs.

25 HER HONOUR: The parties will bear their own costs, yes, thank you.

Are the declarations and orders to be made by consent?

BEVAN: Yes, we've signed them, your Honour.

30 HER HONOUR: I see, thank you.

Are there persons affected by declaration 5 that are not represented before
me?

35 BEVAN: Well, there probably are, your Honour--

HER HONOUR: I can't make that declaration.

40 BEVAN: No.

HER HONOUR: I have a feeling that the better course is to make no
declarations and to, rather, allow the parties to have an inter partes
arrangement of agreement as to what their rights are in respect of the matter
and to make the orders in your handwritten document and to delete from that
45 handwritten document the words "notwithstanding the terms of paragraph 7 of
the declarations and orders", et cetera.

BEVAN: Yes.

50 HER HONOUR: So I will just delete those five lines and it will start: "The

JEF:CAT

parties agree".

BEVAN: Yes.

5 HER HONOUR: And I will hand back those short minutes that you've handed up in the typewritten form. (Handed down.)

10 I would think that it's a better course to note the agreement between the parties and perhaps list it for directions in February; and if nothing is needed to be done, the summons could just be dismissed after the Annual General Meeting takes place.

15 BEVAN: The only complicating factor is we have an issue as to who the members are then, because--

HER HONOUR: When?

20 BEVAN: Well, any time between now and the AGM, because the plaintiffs' position is that there are a number of people who are purported members who have been--

HER HONOUR: Well I can't make orders today.

25 BEVAN: No, no.

30 HER HONOUR: It's as simple as that. Now what you've got from Mr Ralston is a sensible arrangement and a sensible agreement. Now you work out who's a member by reason of financial arrangements. They're not pressing on with the meeting, you're going to call an Annual General Meeting in due course, and I can't see that any parties that are here today will need any further hearing before this Court, but I will allow the matter to go in the list for directions next year, and if it's necessary I will grant liberty to restore on one day's notice. But I think the better regime is the one that's in the handwritten document, without making any declarations or orders by reason of the
35 problems that I have just identified.

I note the agreement between the parties as contained in the document initialled by me and dated today.

40 The matter is listed for directions on 19 February 2010 before the Registrar in Equity.

I grant liberty to restore on one day's notice.

45 Yes, Mr Bevan, anything?

BEVAN: Well, perhaps it could be noted--

50 HER HONOUR: Yes.

JEF:CAT

BEVAN: --that the agreement between the parties is that the plaintiffs for the purposes of procuring the meeting to be held - this is the Annual General Meeting - are the committee of the church.

5 HER HONOUR: Yes.

BEVAN: I mean, otherwise we don't have an organ to actually call the AGM.

10 HER HONOUR: Yes. Do you want to write that out? Do you want to write out the detail of what there is between these parties agreed, if it's not already contained in your short minutes or your notation of your agreement?

BEVAN: Well--

15 HER HONOUR: It says the plaintiffs agree to procure in their capacity as the committee of the sixth defendant that the church will hold its Annual General Meeting.

20 BEVAN: Well, perhaps, can I suggest - could I just have 30 seconds, your Honour?

HER HONOUR: Yes, of course.

25 BEVAN: The proposal is, your Honour, that because we've assumed that the regime - the declarations and orders - would be made--

HER HONOUR: Yes.

30 BEVAN: --could we have that noted as an agreement to assist us to move forward, so that the typewritten document--

HER HONOUR: Yes. If you hand it up please.

35 BEVAN: If I could hand up the short minutes which now note an agreement in terms of the declarations, what were the form of declarations and orders, so that we can move forward. (Handed up.)

40 HER HONOUR: Yes. I note the agreement in the document marked "A", initialled by me and dated today.

Now is there any need, therefore, to keep the matter alive?

45 RALSTON: One would hope not, but the capacity for things to go wrong is always there, but if they go wrong perhaps it will better to start fresh proceedings rather than--

50 HER HONOUR: Well I think perhaps the parties seem to have gone forward sensibly and have reached a very, if I may say, sensible arrangement, but I'll add this order:

JEF:CAT

By consent each party pay their own costs.

I won't list it for directions, and I'll mark it as finalised, and I won't grant the liberty to restore.

5

I will let you have your exhibit back, Mr Bevan. (Handed down.)

BEVAN: Thank you, your Honour.

10 HER HONOUR: I congratulate the parties on reaching a sensible arrangement.

ADJOURNED

15

oOo