



LEVEL
TWENTY SEVEN
CHAMBERS



Faamate & Ors v Congregational Christian Church in Samoa-Australia (Ipswich) Congregation [2020] QCA 87

Judgment Notes
28 April 2020

The Court dismissed an appeal by twenty-one members of an incorporated association operating as a congregational church against the decision of the trial judge to order the appointment of a receiver and manager to determine the membership of the association and conduct an election of a new management committee (and, correspondingly, to not order the winding up of the association on the just and equitable ground).

The appellants raised six grounds of appeal, and succeeded as to one of them with respect to finding made by the trial judge, but failed to demonstrate that the winding up of solvent incorporated association – being a “remedy of last resort” – was appropriate.

Particularly, the Court of Appeal determined that:

1. Whilst the Association (being the first respondent both in the appeal and to the originating application at first instance) had a proper interest in, and was entitled to expend the Association's funds in defence of, the case that it was insolvent and as to the determination of its membership, it was not appropriate for it to expend “more than a trivial proportion” of such funds to defend conduct of the respondents which was “clearly inconsistent with the procedural requirements of the Act and the constitution”.

2. It could not be assumed that the expression by the trial judge of a “preliminary view” as to one of the membership issues ultimately ordered to be resolved by the receiver and manager would unduly influence the latter's view, and did not in any event advance the case for winding up.

3. The trial judge did not err in appointing a receiver for the purposes summarised above despite the evidence available at trial having been insufficient for the membership to be determined by the Court. The suggestion that in those circumstances the appointment involved the imposition of “judicial tasks” upon the receiver was considered unpersuasive, as their determination on membership would not have the effect of a judgment.

4. Whilst the determination of membership was potentially a difficult task for the receiver to undertake, and would require both the consideration of evidence not available to the Court and also likely a translator, the appointment nonetheless remained a practicable one.

5. In considering whether a winding up order ought to be made it was to be borne in mind that the association was not a commercial enterprise, and that the proper interests of the members is the operation of the church in furtherance of its objects, which the Court considered could be achieved by way of the trial judge's orders. The Association continued to provide a spiritual and community hub for its members and a winding up order would have substantial adverse consequences for much of the Samoan community. The appellants had not demonstrated that a winding up order should be made.

The judgment is available [here](#).

Paul McQuade QC and Nola Pearce appeared on behalf of the respondents, instructed by Neumann & Turnour Lawyers.

THE VIEWS AND OPINIONS EXPRESSED IN THIS ARTICLE ARE THOSE OF THE AUTHORS AND DO NOT NECESSARILY REFLECT THOSE OF OTHER MEMBERS OF LEVEL TWENTY SEVEN CHAMBERS.



PAUL MCQUADE QC
T +61 7 3008 3960
E PAUL@QLDBAR.ASN.AU



NOLA PEARCE
T +61 7 3008 3947
E NOLA@QLDBAR.ASN.AU

Legal Updates

To stay updated with the latest legal developments register for upcoming events and publications from Level Twenty Seven Chambers via our [website](#):

<https://www.level27chambers.com.au/register-seminars-publications/>

Level Twenty Seven sends marketing communications to those who have either, 1) consented to the processing of their personal data for such purposes; 2) provided their details in the course of the sale or negotiations for the sale of services and we believe the communication is of legitimate interest. If at any time you do not wish to receive notifications regarding publications or events from Level Twenty Seven please email [Practice Management](#) who will update Chambers' records immediately.