



Précis Paper

Faamate & Ors v Congregational Christian Church in Samoa-Australia (Ipswich Congregation) & Ors [2020] QCA 263

Abstract – A thorough analysis of the 'Faamate' case in addition to insightful commentary on civil proceedings, costs, discretion and the intricacies of remedies.

Discussion Includes:

- Pre-Court measures
- Background
- De-constructing the dispute
- Reverend Reupena's failure
- The plaintiffs
- The deeper issues
- Key points from the judgement

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1. In this edition of BenchTV, Vince Brennan (Barrister at Deane Chambers) and James Tan (Director at Corney & Lind Lawyers) comprehensively analyse the various facets of the 'Faamate' case; civil proceedings, costs, discretion, remedies and broader appeal-related complexities.

Pre-Court measures

2. Charities and churches tend to have internal leadership-related issues. Some disputes can be quite petty, but most involve a moral failure of some sort.
3. Most of these cases are resolved via restorative dispute resolution practices.
4. Mediation is also quite popular because it is a quiet and dignified exit from an issue, which would otherwise cause fracture.

Background

5. This case was first heard by Justice Wilson. The appeal was heard by Justice McMurdo and a few other justices.
6. This case involved an association which adopted the name, 'The Congregational Christian Church of Samoa (Ipswich congregation)'. As the name suggests, it had a connection to the Samoan Christian Church.
7. This relationship formed the 'ultimate object'.
8. We must first look at the structure of the Samoan Church outside of Samoa.
9. The Samoan Church has a network of overseas churches throughout the Asia-Pacific region including Australia.
10. The members usually identify with Samoan culture and are either first or second generation Australians.
11. Samoan was the language that was spoken within the association.
12. The Australian part of the network included the Queensland sub-district and at a national level, an Australian district. There were individual congregations under it.
13. Some of the members of the Samoan Church carried out actions that would be performed usually by the members of the broader organisation. For example, the Samoan Church authorised what the pastors are allowed to preach during congregations.
14. One of the fundamental features of the association is that it is also a Church. Most of the Australian Churches started off in an unincorporated form.

15. The *Associations Incorporation Act*, provides the incorporation of unincorporated associations and it also sets out certain statutory requirements. Part 10 is devoted to the winding up of associations.
16. In 1991, this group of unincorporated individuals decided to become an incorporated association. The members volunteered their time and invested their money to purchase land in Western Brisbane and then, a Church was built. Next, the hall and pastor's residence was constructed.
17. There were a core group of members in this Church, who had been there since 1991. Their voluntary contributions paid for the pastors' salaries and other organisational expenses.
18. There used to be single paster called Reverend Reupena. He was the President of the Association and a Permanent Chairman.
19. He was the spiritual and management head of the congregation.
20. Reverend Reupena was also the head of a group of individuals who formed the 'Elders Committee' with the Church.
21. Essentially, the Elder's Committee decided on the requirements of pastors and other standards about how faith was to be practiced. It was considered as a prestigious group.

De-constructing the dispute

22. Reverend Reupena held the position until 2015. Until 2013, the members were elected in accordance with the Constitution. There were nominations and other common electoral practices.
23. In October 2013, this changed. Reverend Reupena suddenly announced that he would be choosing the Committee members.
24. He did so in growing opposition towards the unchallenged oversight of the association's spiritual and management matters.
25. When the matter came to Court, the main legally contentious point was that there were no registered members.
26. All of the records were kept in the Samoan language. It was contained in special books called 'Church diaries' which were held by Reverend Reupena and his wife.
27. There was a great degree of confusion in relation to the process of becoming a member, especially when it came to the withdrawal aspect. For example, a membership might be withdrawn because of some moral wrongdoing.
28. There were very idiosyncratic ideas about who was and who was not a member.
29. In March 2015, there was a major falling out between Reverend Reupena and the Church. The Church eventually dismissed Reverend Reupena.
30. Proceedings were commenced against the Church for that expulsion. In August 2016, the Church withdrew his pastor credentials.
31. This presented a fundamental fate problem for people within the association.

32. One of the problems with an association (regardless of whether it is incorporated or unincorporated), is that the 'community object' is often overseen by a few select members, which in turns gives too much value to their discretion.

Reverend Reupena's failure

33. Reverend Reupena failed to acknowledge his dismissal and loss of credentials. Before the mass on the 4th of September 2016, two elders publicly announced the dismissal.
34. The secretary of the association (who had been appointed by Reverend Reupena) called a meeting at the Church Hall on the 4th of September.
35. A formal notice was provided in this meeting. There were a lot of messages passed in the Church community, which invited individuals to this meeting. This quickly led to a Constitutional failure.
36. This word-of-mouth approach is central point of contention of the case. The Reupena group tried to gather as many people as possible in the lead up to the meeting.
37. Reverend Reupena expelled the remainder group and subsequently everyone who supported the Samoan Church was also expelled. There was no formal notice provided about the expulsion.
38. The gates were locked within the next week.

The plaintiffs

39. There are 21 plaintiffs in this case. All of them are first generation Australians. The number of people who were disenfranchised by the Reupena group was much more than 21.
40. It includes many of the children and grandchildren of active members.
41. The person that was being sought needed to be fluent in both Samoan and English. He/she also needed to be charitable enough to volunteer their own time. Such a person was found, and they acted as the bridge between both communities during the legal proceedings.
42. The presenters wrote a short and polite letter to Reverend Reupena to notify him that legal proceedings are being taken against him.

The deeper issues

43. The group attempted to break into the Church group before Sunday morning. That factual argument was one of the highlights of the cross-examination.
44. Many issues of this kind tend to be solved via alternative dispute resolution.
45. The presenters also wrote to Reverend Reupena's solicitor to offer mediation. It was an invitation to reconcile. However, it was unsuccessful.

46. In this case, proceedings were the only way to reach a resolution.
47. The proceedings were commenced under Part 10 of the *Associations Incorporation Act*.
48. Each state has a very similar act, and each state has very similar provisions when it comes to the winding up of an association.
49. The Queensland act has very restrictive grounds. It was taken from provisions of the *Corporations Act*.
50. It did not have the more expansive provisions that would be available to members under Section 233.
51. There are 2 relevant grounds in the present case. Firstly, there is the insolvency ground. Ultimately, it was abandoned due to a lack of evidence.
52. The second ground was broad; just and equitable relief. The Court held that it was just and equitable to wind up the association.
53. There were many difficulties when it came to determining who was and who was not a member.
54. 20 members tried to put their name to the group during the proceedings.
55. Other cases expose that there is an overarching reluctance to wind up associations. The reluctance trend is historically strong (even when state legislation was passed).
56. In the 'Ananda' case, the Court commented on applicable principles in a very general manner. It was adopted from the corporations sphere.
57. As the focus case moved towards trial, there was an increasing number of anomalies, but the Court did ultimately recognise that this association was the prime candidate of winding up, if it was to rely on just and equitable grounds.
58. There were a number of issues discovered, especially during the process of disclosure.
59. The first one was the issue of membership. There was initially no clarity about this. The Court emphasised the maintenance of a membership register.
60. However, there were no such registers. There were only Church diaries.
61. Confusion emerged in relation to the basis of entry as a member (e.g. financial or constitutional).
62. There was no clear membership process.
63. The next issue was exclusion. Excluding a number of long-standing association members was unreasonable, but the defendant argued that it was a case of resignation and not exclusion.
64. The third issue was about the money and credit used to defend the proceedings. Non-compliance was at the heart of this.
65. The fourth issue was the forced change. After the September meeting, the remaining members had a meeting on the Church grounds. Subsequently, the Constitution was amended; one of the primary objects were removed.
66. In the primary judgement, the plaintiff was successful in benefiting from several declarations made by Her Honour, but the Court still felt that it fell short to be eligible for winding up on just and equitable grounds.

- 67. The trial went across 10 days which is quite a lengthy trial.
- 68. Reverend Reupena's appointment of the committee was a unilateral decision. It was inconsistent with the Constitution and the legislation.

Key points from the judgement

- 69. In respect of the failures of the Church, Justice Wilson communicated a number of interesting points throughout her 100 page judgement.
- 70. Paragraph 126 states that serious concerns have been raised about the management of the association under the leadership of Reverend Reupena. He exerted his power and influence as the Congregations Minister to chart the course of the association.
- 71. Her Honour's view was that the applicants raised justifiable complaints about the management of the association; the exclusion of the group, the amendment to the Constitution, the failure to maintain a register of members (until September 2016) and the use of the association's money.
- 72. Her Honour also determined that the amendment-related complaint required remedy and some form of redress was needed to counter the uncertainty around the membership process.
- 73. The redress in relation to the amendment is as follows; the amendment was declared as void and a receiver/manager was appointed to determine membership and to organise general meetings.
- 74. The appointment of a receiver was earlier sought as an alternative remedy but it was abandoned during the trial due to the belief that there was an irreparable schism in the association.
- 75. Litigation takes time and money. By the time of the hearing, 3 years had elapsed since the expulsion of the group.
- 76. During this time, Reverend Reupena regularised many of the unorthodox affairs of the association.
- 77. It must be noted that Reverend Reupena admitted a raft of new members who were loyal to him, without having recourse to existing members.
- 78. Associations are driven by members and by accepting Reverend Reupena's view of membership, the receiver was essentially handing the Reupena group with power that kept the balance in their favour.
- 79. Eventually, the Reupena group lost the battle but in the end, won the war. This group retained the control of the association and the opposition was forced to start afresh.
- 80. As part of starting afresh, they commenced an appeal.
- 81. There were 6 grounds of appeal. At first instance, Her Honour emphasised the need to assess conduct.

82. After reconsidering the decision, the Court found against the presenters. In appeal cases, the former decision is what matters (not the former reasons).
83. The only small comfort that they got was the costs of appeal. On the costs decision, the Court determined that only half of the association's costs was to be paid. Reverend Reupena had to pay the other half.
84. The leading judgement communicated that it must be kept in mind that this is not a commercial enterprise. This is not a case where it is just and equitable for a corporation to be wound up for members to recover their investment.
85. The proper interest of members is in the operation of the Church in furtherance of its objects as stated at anytime in its Constitution.
86. In most cases, the act of winding up is considered as a last resort.
87. The need for winding up has not been met.
88. The consequences are difficult to anticipate but it is likely that they are not too prejudicial.
89. Within the context of associations, the focus case tested the depths of key principles.
90. The Court considered the spiritual and community purpose in its judgement for the appeal.
91. In this case, the appointment of the receiver was an exceptionally costly exercise. The receiver provided the Reupena group with an opportunity to legitimise their practices.
92. The key takeaway lesson from the focus case is that sometimes some legal battles can be won, but no matter how just a cause may be, the Courts might not offer any remedy.
93. However, the Court does seem to provide some guidance about what some members ought to do in the short term and before the hearing.
94. The steps that were taken by the Reupena group to rectify remedy the historical issues that were faced by the association is a key facet of the case.
95. Such cases are generally confined to their own facts.
96. The lack of a financial interest of a member in an association deprives them to a certain degree of a right to a remedy which has at its base, a financial consequence.
97. The provisions are still tailored for the corporate space, and the factual limitations of the focus case means that the consequences are not going to be major.

BIOGRAPHY

Vince Brennan

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Vince has extensive experience in commercial and corporations law, specialising in taxation and insolvency. He regularly appears in the trial and appellate jurisdictions of the Federal Court of Australia, the Supreme Court of Queensland and the Administrative Appeals Tribunal. He used to serve as an Associate to Senior Judge Skoien in the District Court of Queensland.

James Tan

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James has appeared on behalf of his clients in several jurisdictions including the Federal Circuit Court, Family Court of Australia, Queensland Civil and Administrative Tribunal, Magistrates Court of Queensland, District Court of Queensland and the Supreme Court of Queensland. He has assisted his clients in mediation and dispute resolution conferences.

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