

Frewin v Emmdale Sports Club Inc. & Ors

NOTE: This decision was made by Master Harrison in the Supreme Court of NSW on 4 March, 2003. It relates to the liability of members, in particular, management committee members of an Association. [A Master is not a judge, however, a Master has the authority of a judge in limited circumstances, and his/her judgment is a judgment of the Court.]

The judgment is not a judgment after a normal hearing of the evidence. The judgment is a preliminary one, where the defendant applied to the Court for the claim to be struck out before a hearing. This can be done in limited circumstances, one of the circumstances is where there is no claim at law. These preliminary 'skirmishes' are often called "interlocutory" proceedings.

Interlocutory proceedings are usually determined on an agreed set of facts.

The facts were that the Emmdale Sports Club Inc (Emmdale) operated at the Emmdale racetrack near Wilcannia. The racetrack was typical of any country racetrack.

Once a year (provided there was no drought) Emmdale conducted a gymkhana. The events complained of occurred at the 1989 gymkhana when a rider on a horse in one of the races was injured. The horse apparently veered off the racetrack, which did not have an outer fence, stumbled in a hole and caused the rider to fall.

The rider (plaintiff) sued Emmdale and each of the directors and officers of Emmdale for negligence. The claim specifically alleged that Emmdale and its officers breached their duty of care to the plaintiff by failing to provide a proper race track, proper & safe outside rails, a proper track surface and proper supervision of the race. At all times, there was no asserted difference in the duty owed by the officers and Emmdale. In other words, it was never claimed that the directors or officers of Emmdale had different or separate duties to Emmdale in respect of race participants.

[This is an important distinction. If it was claimed that any of the officers or members of the Association had taken on any duties over and above those undertaken by the Association, then the claim may well have asserted that they owed a separate duty of care because of the additional responsibility undertaken by that individual.]

Master Harrison referred to s16 of the Associations Incorporation Act, 1984 and noted an earlier decision in *New South Wildlife Information and Rescue Services Incorporated v Goshi & Ors (18 July, 1997)*. In particular, she noted that this section gives protection to members against liability to contribute towards the payment of the debts and liabilities of the incorporated association. Accordingly, as there was no claim that the directors or officers owed any separate or different duty of care to race participants, then the claim against them cannot be maintained. Therefore, the claim was struck out as against the directors and officers of Emmdale only.

The proceedings against Emmdale are still on foot, however, there is as yet no directions for the hearing of that matter. Emmdale, by the way, has been cancelled. This would make suing the association financially unattractive.