

Johnson v Commissioner of Consumer Affairs [2009] NTSC 4

PARTIES: PAUL ANTHONY JOHNSON
v
COMMISSIONER OF CONSUMER
AFFAIRS

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING TERRITORY
JURISDICTION

FILE NO: 90 of 2006 (20619538)

DELIVERED: 27 February 2009

HEARING DATES: 7 and 8 July 2008

JUDGMENT OF: SOUTHWOOD J

CATCHWORDS:

ASSOCIATIONS – DISSOLUTION - application under s 71 of Associations Act (2003) (NT) for an order declaring the dissolution of an incorporated association is void - dissolution made by Commissioner of Consumer Affairs under s 65 of Associations Act (2003) (NT) - application dismissed - insufficient evidence to establish association in operation or carrying out its objects - association found to be defunct at time of dissolution.

REPRESENTATION:

Counsel:

Plaintiff:	I Morris
Defendant:	W Priestley

Solicitors:

Plaintiff:	Maleys
Defendant:	Solicitor for the Northern Territory

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Johnson v Commissioner of Consumer Affairs [2009] NTSC 4
No 60 of 2006 (20619538)

BETWEEN:

JOHNSON, Paul Anthony
Plaintiff

AND:

**COMMISSIONER OF CONSUMER
AFFAIRS**
Defendant

CORAM: SOUTHWOOD J

REASONS FOR JUDGMENT

(Delivered 27 February 2009)

Introduction

- [1] The plaintiff, Paul Anthony Johnson, has made an application for an order declaring that the dissolution of the Blonks Motorcycle Club Incorporated¹ is void. The Blonks Motorcycle Club was dissolved by the Commissioner of Consumer Affairs on 12 July 2006, by notice published in Northern Territory Government Gazette No. G28². It was dissolved because the Commissioner of Consumer Affairs believed that the club was not carrying out its objects and was not in operation.

¹ Hereafter referred to as the Blonks Motorcycle Club.

² The notice was published in accordance with s65 (6) of the Associations Act (2003) (NT).

- [2] Mr Johnson was the public officer of the Blonks Motorcycle Club at the time of its dissolution. He claims to be an interested person in accordance with s 71(1) of the Associations Act (2003) (NT)³. He maintains the Blonks Motorcycle Club was carrying out its objects and was in operation at the time of its dissolution.
- [3] The Commissioner of Consumer Affairs is appointed by the Minister under the provisions of the Consumer Affairs and Fair Trading Act (NT). He has certain functions and powers under the Associations Act (2003) (NT) including the power, granted by s 65 of the Act, to dissolve an incorporated association if he has reasonable cause to believe that an incorporated association is not carrying out its objects or is not in operation.

The nature of the application

- [4] The application is made under s 71 of the Act by originating motion filed on 2 August 2006⁴. The hearing of the application is a hearing de novo. Mr Johnson bears the burden of proving that at the time of its dissolution, the Blonks Motorcycle Club was carrying out its objects or was in operation. He must do so on the balance of probabilities.
- [5] The purpose of s 71 of the Act is to enable an interested party to apply to the Court for relief against a decision of the Commissioner of Consumer Affairs to dissolve an incorporated association under the provisions of s 65 of the

³ Hereafter referred to as the Act.

⁴ Points of Claim and Points of Defence were filed by the parties in the proceeding. However, both of the parties conceded these pleadings were largely irrelevant to this application.

Act. Section 65 of the Act establishes a procedure whereby an incorporated association may be dissolved by the Commissioner of Consumer Affairs if there is reasonable cause for him to believe that the incorporated association is not carrying out its objects or is not in operation. There are three steps in the dissolution process. First, the Commissioner of Consumer Affairs must send a letter to the public officer of the incorporated association or to a member of the committee of the association requiring, within one month after the date of the letter, an answer showing that the incorporated association is carrying out its objects or is still in operation. Second, if a satisfactory answer is not received by the Commissioner of Consumer Affairs within one month of the date of his letter, the Commissioner of Consumer Affairs may publish in the Northern Territory Government Gazette and send to the public officer, or a member of the committee of the incorporated association, a notice stating that unless cause is shown to the contrary within three months after the date of that notice, the association will be dissolved. Third, if cause to the contrary is not shown within the three months stipulated, the Commissioner of Consumer Affairs may publish in the Northern Territory Government Gazette a notice stating the association is dissolved. If such a notice is published, the association is thereby dissolved.

[6] While the Court has a wide discretion under the provisions of s 71 of the Act, the Court may only make an order declaring the dissolution of the

incorporated association void, if it is satisfied the association was, at the time of dissolution, carrying out its objects or in operation.

The issues

- [7] The principal issue in the proceeding is, was the Blonks Motorcycle Club carrying out its objects or in operation when it was dissolved on 12 July 2006? In my opinion, Mr Johnson has failed to satisfy the Court that the Blonks Motorcycle Club was either carrying out its objects or in operation at the time it was dissolved by the Commissioner of Consumer Affairs. The application should be dismissed.
- [8] There is also an issue about whether the Court should make the declaration sought by Mr Johnson if the members of the Blonks Motorcycle Club were unable to appoint a Management Committee of the club because all of the members of the club had criminal records. Mr Priestley argued that, even if the Blonks Motorcycle Club was carrying out its objects or in operation, the Court should not make the declaration sought by Mr Johnson because all of the members of the club had criminal records which disqualified them from being appointed to the Management Committee. Mr Morris argued to the contrary. I accept Mr Morris's submissions that it is not appropriate for the Court to resolve this issue. Under s 30(2) of the Act the Commissioner of Consumer Affairs has the power to grant leave to a person with a criminal record to be a member of the Management Committee. Such decisions are best left to the Commissioner of Consumer Affairs.

The Blonks Motorcycle Club

[9] I find the Blonks Motorcycle Club was incorporated on 7 April 1986 under the Associations Incorporation Act (1963) (NT)⁵ as amended. Of significance, the Constitution of the Blonks Motorcycle Club provides:

- The basic objectives of the Association are: the preservation and restoration of British and American motorcycles; to encourage the use in touring and sports of British and American motorcycles; and to promote all aspects of road safety concerning motorcycles.⁶
- In addition to the basic objectives of the Association, the objectives and purposes of the Association shall be deemed to include: The purchase, taking on lease, or in exchange, the hiring or otherwise acquiring of real or personal property that may be deemed necessary or convenient for any objectives or purposes of the Association; The buying, selling, supplying of, and dealing in goods of all kinds; The taking of such steps as the Committee or Members in General Meeting deem expedient for the purposes of the Association, whether by way of donations, subscriptions or otherwise; and The borrowing and raising of money in such manner and on such terms as the Committee may think fit, or as may be approved or directed by resolution passed at the General Meeting, and securing the repayment of money so raised or borrowed or the payment of a debt or liability of the Association by giving mortgages, charges or securities upon or over all or any of the real or personal property of the Association.⁷
- Annual General Meeting means an Annual General Meeting of all full financial members for the purpose of receiving from the Treasurer/Auditor of the Association reports upon the transactions of the Association during the preceding financial year. The Annual General Meeting will be held in the month of July each year.⁸

⁵ The Associations Incorporation Act (1963) (NT) was repealed by the Associations Act (2003) (NT).

⁶ Clause 2.

⁷ Subclauses 3(a), (b), (e) and (g)

⁸ Clause 4

- A quorum for the Annual General Meeting shall be 75% of financial members.⁹
- General Meeting shall be held each month at a place and time agreed to by the members of the Association at the previous General Meeting. Non-members of the Association may be excluded or removed from any meeting. All meetings shall be convened by the Public Officer unless otherwise specified by the Committee. A quorum for a General Meeting shall be 75% of the membership.¹⁰
- Minutes of all meetings shall be recorded by the Public Officer or a member nominated by the Committee.¹¹
- Discussions that eventuate in a motion being moved shall be recorded in the minutes.¹²
- The Committee shall consist of: the Chairman, the Secretary, the Treasurer, the Public Officer; and two Committeemen. The Committee shall be full financial members of the Association. Subject to the Act and th[e] Rules have power to perform all such acts and things as appear to the Committee to be essential for the proper management of the business and affairs of the Association.¹³
- Membership is terminated by death, resignation, non payment of fees by the due date or a unanimous resolution of the Committee.¹⁴
- True accounts shall be kept of all sums of money received and expended by the Association and the matter in respect of which the receipt or expenditure takes place.¹⁵

[10] The Blonks Motorcycle Club also had club rules which governed the conduct of its members. The rules were filed with the Registrar of

⁹ Subclause 11(h)

¹⁰ Clause 5

¹¹ Subclause 15(a)

¹² Subclause 15(b)

¹³ Clause 6

¹⁴ Subclause 7(d)

¹⁵ Subclause 8(a)

Associations in accordance with s 15 of the Associations Incorporation Act.

The rules state:

- No colours to be worn when a member is in a motorcar.
- Colours to be worn on your bike or when a pillion.
- A minimum period of six (6) months is required after a person has been nominated.
- In the interests of peace among members keep your hands off another woman if she is a member's woman.
- If in your opinion another member is too pissed to have adequate control over his bike relieve the keys from him.
- \$1,000 to be kept in the club account for bail at all times.
- Once a set of colours have been received, that is the only set to be issued look after them they are for the rest of your life, so consider carefully before accepting, backing down after you have received them is serious.
- Due to past circumstances no colours to be worn when shafting gins and no gins to be brought to the house ever.
- Colours to be worn at every meeting.
- When a person nominates a person that person becomes the responsibility of that member. Any fuckups are on his shoulders.
- \$5.00 fine for anyone late to a meeting without a reason.
- Up to \$50.00 fine for member slugging or fighting with another member. If a good reason it will be decided on at next meeting. Out stabbing and shooting.
- A member must have a good reason for having his bike off the road for more than three (3) months or else he gets demoted to

nominee and must do 3 months nominee ship to get his patch back.

- When a bloke wants to join the club he must come to every meeting (if no fucking good reason) and pay \$5.00 a week. He is then a prospect or hanger on. If after a certain amount of time a member of the club wants to nominate the prospect and only if the nomination is 100% then he gets top rocker. Prospect's names don't go in book (finance book) but some record kept.

[11] The Blonks Motorcycle Club had its own set of "colours" which consisted of a waistcoat or a similar garment that was adorned with the club's patch or patches. The patch or patches are located in the middle of the back of the garment. The patch or patches consist of the name of the club, the club's logo or emblem and the letters "MC". The garment and the patches together are referred to as the club's "colours".

The evidence of the defendant

[12] The Commissioner of Consumer Affairs relied on the evidence contained in the affidavits of John McLaren sworn on 1 September 2006 and 19 June 2008 and the affidavit of Jamie Chalker sworn on 19 June 2008. The Commissioner of Consumer Affairs did not read par 9, par 10, par 14 and par 20 of the affidavit of John McLaren sworn on 1 September 2006. The Commissioner of Consumer Affairs did not read par 5, the second sentence of par 10, and par 20 of the affidavit of Jamie Chalker sworn on 19 June 2008.

[13] Mr Johnson did not seek to cross examine either Mr McLaren or Mr Chalker.

[14] I accept the evidence of Mr McLaren and Mr Chalker. Based on their evidence I find:

- In the early 1980's a group of Darwin residents formed an unincorporated club known as the "Blonks Motorcycle Club".
- In 1982, nine people, who were members of the Blonks Motorcycle Club, purchased a block of land at 385 Duddell Road, Darwin River for \$40,000.
- On 7 April 1986, the Blonks Motorcycle Club applied for and was granted, a certificate of incorporation under the Associations Incorporation Act (NT) (1963).
- Between 1986 and 1993 a principal activity of the Blonks Motorcycle Club was the annual "Darwin River Rocks" rock concert which was held on the block of land at 385 Duddell Road, Darwin River.
- On 22 March 1989, the nine members of the club who owned the block of land at 385 Duddell Road, Darwin River transferred the land to the Blonks Motorcycle Club for the sum of \$100.
- On 12 May 1989, the Blonks Motorcycle Club purchased a block of land at 165 Girraween Road, Howard Springs for the sum of \$64,000. The block of land had a house on it. Up until about 1993, the house was used as the clubhouse of the Blonks Motorcycle Club.
- In 1993, the Hell's Angels Motorcycle Club established a chapter of the club in Darwin. The club did so after some members of the Blonks Motorcycle Club became affiliates of the Adelaide chapter of the Hell's Angels Motorcycle Club.
- After a period of probation, certain members of the Blonks Motorcycle Club were granted full membership of the Hell's Angels Motorcycle Club and the house on the block of land at 165 Girraween Road became the clubhouse for the Darwin chapter of the Hell's Angels Motorcycle Club.

- Since 1993 the house at 165 Girraween Road has been used as the clubhouse for the Darwin chapter of the Hell's Angels Motorcycle Club.
- After 1993, the "Darwin River Rocks" rock concert was sponsored and promoted by the Darwin chapter of the Hell's Angels Motorcycle Club. The last rock concert at the block of land at 385 Duddell Road, Darwin River, was held in 1999.
- On 27 July 2001, title to the block of land at 165 Girraween Road was gifted by the Blonks Motorcycle Club to Angel Investments (NT) Pty Ltd, a company controlled by members of the Darwin chapter of the Hell's Angels Motorcycle Club. The company holds the land as trustee for The Blonks Trust. The possible beneficiaries of The Blonks Trust are the bona fide members from time to time of the Darwin Chapter of the Hell's Angels Motorcycle Club. The land at 165 Girraween Road was the principal asset of the Blonks Motorcycle Club.
- The Blonks Motorcycle Club has not lodged its audited financial documents for the year ended 30 June 2003 as was required by s 25 of the Associations Incorporation Act which was then in force.
- From 9 July 1986 until 2005, Ian Grant Hogan was the public officer of the Blonks Motorcycle Club. He ceased to be the public officer of the club when the Commissioner of Police of the Northern Territory certified him unfit to be an officer of an incorporated association.
- The last audited financial documents lodged by the Blonks Motorcycle Club with the Office of Business Affairs of the Department of Justice of the Northern Territory were for the financial year ended 30 June 2002.
- On 8 July 2005, the Blonks Motorcycle Club lodged the club's audited financial statements for the financial year ended 30 June 2004 with the Office of Business Affairs. The audit reports states "no warranty can be given as to the accuracy and/or completeness of the accounts". There is no evidence these financial statements were presented to the Annual General Meeting of the Blonks Motorcycle Club. There was no signed report by two members of the Management Committee stating: the name of each member of the committee of the club during the financial year; the principal activities of the club

during the financial year; and the net profit or loss of the club for the financial year.

- No financial statements of the Blonks Motorcycle Club have been lodged for the financial year ended 30 June 2005.
- Mr Johnson was appointed as the public officer of the Blonks Motorcycle Club as both Mr Ian Hogan and Mr Phillip Craig Johns had been certified as persons who were unfit to be the public officers of an incorporated association. Formal notification of Mr Johnson's appointment as the public officer of the club was given to the Commissioner of Consumer Affairs on 28 July 2005.
- On 1 March 2006, notices of investigation and production were served on the Blonks Motorcycle Club under s 93 and s 94 the Act. The purpose of the notices was to investigate the club's contention that it was still carrying out its objects and was still in operation. Despite the issue of the notices, the club has failed to produce the books relating to the affairs of the club.
- The Blonks Motorcycle Club did not, within 2 years of the commencement of the Act¹⁶, alter its constitution to comply with the Act.
- On 13 June 2006 the Blonks Motorcycle Club filed with the Commissioner of Consumer Affairs a new constitution as required by s 127 of the Act. The new constitution was filed out of time and the Commissioner of Consumer Affairs determined that the constitution that had been lodged did not comply with s 21 of the Act.
- There has never been any report of a fire at Ian Hogan's residential address.
- Mr Johnson's membership of the Blonks Motorcycle Club ceased in 1993. He is a full member of the Hell's Angels Motorcycle Club.

¹⁶ The Act commenced on 5 May 2004. Section 21 of the Act prescribes what the constitution of an incorporated association must provide. Section 127 states, "If the constitution of an association incorporated under the repealed Act does not comply with s 21 of this Act, the association must, within 2 years after the commencement of this Act, alter its constitution to comply."

The evidence of the plaintiff

- [15] Mr Johnson relies on the evidence contained in his affidavits sworn on 18 July 2006 and 29 April 2008 and on the evidence contained in the affidavit of Scott Eaton sworn on 29 April 2008. I ruled that par six and par eight of Mr Eaton's affidavit sworn on 29 April 2008 were inadmissible in evidence. Mr Eaton also gave oral evidence and both Mr Johnson and Mr Eaton were cross examined.
- [16] Mr Ian Hogan was not called to give evidence. Neither was the President, Secretary or Treasurer of the club called to give evidence. Mr Johnson conceded that Mr Hogan had a good knowledge of the history and activities of the Blonks Motorcycle Club.
- [17] The evidence of both Mr Johnson and Mr Eaton was vague and lacking in necessary detail. They were not completely conscientious witnesses and some of their evidence was given in a dissembling manner. I found their evidence to be unconvincing. Despite the fact the affidavits of both Mr Johnson and Mr Eaton were prepared by their legal advisers, there were unexpected omissions in their affidavit evidence.
- [18] Mr Johnson does not state in his affidavits whether or not he is a member of the Blonks Motorcycle Club. His interest in this proceeding is based upon his position as public officer only. I have found he is not a member of the Blonks Motorcycle Club.

[19] Neither Mr Johnson nor Mr Eaton stated in their affidavits who were the members of the Blonks Motorcycle Club. They did not state the names of the persons who were the members of the committee of the club. Nor did they state the names of the chairman, secretary and treasurer of the club. The affidavits contain no evidence about a management committee with the responsibility for the management of the club's affairs. They do not provide any details about the last Annual General Meeting of the club. Nor did they provide any details about all of the general meetings of the club that were said to have been held during 2006. The affidavits contain no evidence that the club expended any funds in conducting any operations or in carrying out its objects. Apart from the minutes for the meeting held on 26 June 2006, the documents said to relate to eight meetings held during 2005 and various bank statements, the affidavits do not annex the books or records of the club for the period from the beginning of 2005 to July 2006. For example, no records of the members of the club were annexed to the affidavits, nor were any records of the payment of membership fees or receipt of any other funds. Nor do the affidavits state why such documents have not been annexed to the affidavits or what searches were made in order to obtain such documents. None of the affidavits contain any evidence about the reasons why the members of the club wish to sell the parcel of land at 385 Duddell Road, Darwin River. Nor do they contain any evidence about what the club proposes to do with the proceeds from the sale of the land. Mr Johnson merely asserts in his affidavit sworn on 18 July 2006 that the sale of the

property is part of the club's plans for its and its member's future. Contrary to cl 15(b) of the of the club's constitution the minutes of the meeting held on 26 June 2006 do not record the discussions of the members of the club or the motions that resulted in the resolutions recorded in those minutes.

[20] I do not accept Mr Johnson's oral evidence that there was a fire at Mr Hogan's house which resulted in the destruction of some of the books and records of the Blonks Motorcycle Club. At best the evidence is hearsay, and Mr Hogan was not called to give direct evidence about any such fire. No mention of any such fire is made in the affidavit of Mr Johnson. I think a fair inference is that he invented the explanation during the course of his cross examination. Neither do I accept Mr Johnson's oral evidence that in 2005 and 2006 members of the club attended general meetings in addition to those referred to in his affidavits.

[21] In his two affidavits Mr Johnson deposes, in essence, that:

- He was the Public Officer of the Blonks Motorcycle Club at the time it was dissolved by the Commissioner of Consumer Affairs.
- The objects of the Blonks Motorcycle Club are: to promote all aspects of road safety concerning motorcycles; to encourage the use in touring and sports of British and American motorcycles; and the preservation and restoration of British and American motorcycles.
- On 26 June 2006, in his capacity as a member of the Blonks Motorcycle Club, he assisted Mr Ben Pullman with the maintenance of his motorcycle.

- On 10 June 2006, in his capacity as the public officer of the Blonks Motorcycle Club, he attended a sausage sizzle which was held by the Harley Owners Group. Other members of the club also attended the sausage sizzle. Those present discussed motorcycle “Runs” and the logistics of “Runs”.
- Every member of the Blonks Motorcycle Club owns and rides a motorcycle which they prefer to ride instead of driving a motor car.
- He has raced in sand drag motorcycle events for five years. He raced in speedway motorcycle events for 15 years. He continues to race motorcycles in sand drag events to this day.
- He assists his two sons in their motorcycle racing activities.
- On 13 June 2006, the Blonks Motorcycle Club resolved to sell the parcel of land at 385 Duddell Road, Darwin River.
- At a meeting on 26 June 2006, the Blonks Motorcycle Club resolved to adopt an amended constitution. The constitution was lodged with the Commissioner of Consumer Affairs on 27 June 2006. The club has not received advice from the Commissioner of Consumer Affairs about whether the amended constitution was acceptable or not.
- The Blonks Motorcycle Club has been attempting to sell the parcel of land at 385 Duddell Road, Darwin River since early 2005.
- In addition to the parcel of land at 385 Duddell Road, Darwin River, the Blonks Motorcycle Club owns the following property: tools, motorcycle parts, a lawn mower, a demountable toilet block, 3 water tanks and 2 pressure pumps.
- The Blonks Motorcycle Club has provided spare parts and information about spare parts to the following businesses and associations: Dave’s Bike Shop, Dick’s Motorcycle Repairs, Vietnam Vets Association, the Hog’s Club and RANT.
- The Blonks Motorcycle Club has paid rates for the land at 385 Duddell Road, Darwin River to the Litchfield Shire Council.

- The Blonks Motorcycle Club operates two bank accounts, the “Blonks Motorcycle Club Incorporated” bank account, which is held with the ANZ Bank, and the “Blonks Motorcycle Club Inc as Trustee for Sarah and Mitchell Barker” bank account (the M & S Trust account), which is also held with the ANZ Bank. Monies raised from members dues; sponsorship receipts; fund raising activities, such as sausage sizzles; and donations are paid into these two bank accounts.
- Members of the Blonks Motorcycle Club attended eight meetings during 2005. The meetings were held either weekly or monthly.
- The Blonks Motorcycle Club sponsored and supported a “Rider Awareness Week” which was conducted by RANT (Rider Awareness Northern Territory) in 2007.
- The Blonks Motorcycle Club has sponsored the Humpty Doo Boxing Club.

[22] The following documents were annexed to the affidavits of Mr Johnson: the notice of dissolution which was published in the Northern Territory Government Gazette on 12 July 2006, various correspondences passing between the solicitors for the Blonks Motorcycle Club and the Commissioner of Consumer Affairs, various correspondence passing between Mr John McLaren and the solicitors for the Blonks Motorcycle Club, a document headed, “Minutes of General Meeting of Blonks Motorcycle Club Inc, Held at Lot 57 Cyprus Road, Humpty Doo 0836 on 26 June 2006”, a letter from Riders Awareness Northern Territory to Mr Paul Johnson dated 23 April 2008, a rate notice from the Litchfield Shire Council for the parcel of land at 385 Duddell Road, Darwin River, various bank statements for the “Blonks Motorcycle Club Incorporated” bank account which is held with the ANZ Bank, various bank statements for the

“S & M Trust” bank account which is held with the ANZ Bank, various handwritten notes headed Blonks MC, a flyer for Riders Awareness Week June 3 – 8, 2007, which was held by Riders Awareness Northern Territory, and a letter from the president of the Humpty Doo Boxing Club dated 6 March 2008.

[23] I have not given any weight to the contents of the letter from Riders Awareness Northern Territory or the letter from the Humpty Doo Boxing Club. The evidence contained in those letters is not on oath. The authors of those letters were not available for cross examination. There is no evidence about the circumstances in which those letters came to be written or about who are the authors of those letters. The contents of the letters are also lacking in necessary detail. The contents do not establish any temporary nexus between the activities referred to in the documents and the period between the beginning of 2005 and 12 July 2006.

[24] Of relevant significance, the documents annexed to the affidavits of Mr Johnson contain evidence to the following effect:

- On 13 June 2006, the Blonks Motorcycle Club adopted a new constitution.
- On 15 June 2006, a notice advising that the Blonks Motorcycle Club had adopted a new constitution was published in the Northern Territory News.
- On 15 June 2006, a copy of the minutes of the meeting resolving to adopt the new constitution, the new constitution and the notice published in the Northern Territory News were

sent to the Commissioner of Consumer Affairs by the solicitors for the Blonks Motorcycle Club.

- On 26 June 2006, the Blonks Motorcycle Club held a General Meeting. Paul Johnson, Ian Grant Hogan, Darren Wills, Scott Eaton, Phillip Johns, Ross Dunkerton, Mark Island and Mark Murphy were present at the meeting. At the General Meeting those present resolved to: approve the constitution as amended in accordance with the Department of Consumer Affairs letter dated 16 June 2006; approve the sale of 385 Duddell Road, in accordance with the revised constitution; and abide by the rules of the amended constitution. The meeting was chaired by Mr Johnson and he signed the minutes of the meeting as a true and correct record of the meeting.
- On 27 June 2006, the solicitors for the Blonks Motorcycle Club sent a copy of the amended constitution and minutes of the meeting held on 26 June 2006 to the Commissioner for Consumer Affairs.
- Rider Awareness Northern Territory acknowledged in writing that the Blonks Motorcycle Club had provided a copy of a television motorcycle road safety advertisement to them, members of the club had attended previous memorial rides and post barbecues and had supported Rider Awareness Week.
- Deposits into the Blonks Motorcycle Club Inc account with the ANZ Bank were highly irregular and of varying amounts. The only withdrawals were for payment of an AUSTAR account and for Bank fees. No bank statements were provided for the period from 15 November 2005 to 15 August 2006.
- There are no bank statements for the S & M Trust Account with the ANZ Bank for the period from 17 February 2004 to 17 May 2004. As at 17 August 2004, there was a balance of \$66.13 in the account. There was no activity in relation to the account between 17 August 2004 and 15 February 2008, and no bank statements were provided for the period after 15 February 2008.
- The documents described by Mr Johnson as minutes for meetings of members of the Blonks Motorcycle Club, which were said to have been held during 2005, do not list the names of the members who are said to have attended the meetings, nor do they state the number of people who attended the meeting,

nor are they signed by the person who is said to have taken the minutes.

- In 2007, the Blonks Motor Cycle Club, which by then had been dissolved, was listed on a flyer as being a supporter of Riders Awareness Northern Territory.
- The President of the Humpty Doo Boxing Club acknowledged the club had received sponsorship and support from the Blonks Motorcycle Club in the past. No detail is provided as to when the sponsorship or support was received from the Blonks Motorcycle Club.

[25] No receipt book or other document evidencing the payment of fees by the members of the Blonks Motorcycle Club was annexed to Mr Johnson's affidavits. This is an important omission as cl 7(d) of the constitution of the club provides that membership is terminated by non-payment of fees by the due date.

[26] During his cross examination Mr Johnson gave evidence to the following effect. He was not able to state with any degree of certainty the persons who were the office bearers of the committee of the Blonks Motorcycle Club for the period between the start of 2005 and 12 July 2006. He could not state the dates when the office bearers of the committee were elected and he frankly conceded he was merely surmising that office bearers of the committee of the club had been elected. He did not know the difference between the Blonks Motorcycle Club when it was an unincorporated motorcycle club and the Blonks Motor Cycle Club Incorporated. He said he was just a motorcycle rider.

[27] Mr Johnson said he had no idea where the membership records of the Blonks Motorcycle Club were located. He could not say where the Blonks Motorcycle Club records, which record the payment of dues by members of the club, were located. He did not know where they were kept. He had no idea. He could not recall seeing anyone making a record of the payment and receipt of membership dues at meetings of the Blonks Motorcycle Club.

[28] Mr Johnson said he had no knowledge of whether the Blonks Motorcycle Club had any club rules with which the members of the club were required to comply. He had heard of the rules of the Blonks Motorcycle Club. He knew about some of the rules of the club, but he had never seen the rules. He did not know that one of the rules of the club stated the club's colours were not to be worn by a member of the club when travelling in a motor car. He did not wear the Blonks Motorcycle Club's colours when he was riding his motorcycle. He had not been given the club's colours. He really did not know if any of the rules of the Blonks Motorcycle Club were observed by any members of the club. Mr Johnson said he did not follow the rules of the Blonks Motorcycle Club and he could not say whether the other members of the Blonks Motorcycle Club followed the rules of the club or not. He only stepped into the role of public officer to try and help out.

[29] Mr Johnson stated that Ian Grant Hogan, Mark Ireland, Scott Anthony Eaton, Darren Wills, Wayne Barker and James Parnell Knight were members of the Hell's Angels Motorcycle Club. Phillip Craig Johns had been a member of the Hell's Angels Motorcycle Club. Ross Ian Dunkerton and

Mark Murphy were not members of the Hell's Angels Motorcycle Club. When those persons who were members of the Hell's Angels Motorcycle Club joined that club, they stopped wearing the Blonks Motorcycle Club's colours. Mr Johnson conceded that when he and all other members of the Hell's Angels Motorcycle Club rode their motorcycles they did so in the "colours" of the Hell's Angels Motorcycle Club. That is because a member of the Hell's Angels Motorcycle Club cannot wear the colours of another motorcycle club. Mr Johnson admitted that when he rode his motorcycle he did so as a member of the Hell's Angels Motorcycle Club.

[30] Mr Johnson conceded that money was regularly withdrawn from the Blonks Motorcycle Club Inc account with the ANZ Bank to pay AUSTAR for a television service which was supplied to the Hell's Angels Motorcycle Club's clubhouse at Girraween Road. During his cross examination, Mr Johnson was unable to describe the source of the deposits into the bank account, even though he had deposed to the sources of the funds in paragraph eight of the affidavit he swore on 29 April 2008.

[31] Mr Johnson said the documents which constitute annexure 'F' to his affidavit sworn on 29 April 2008 are minutes of various meetings of the Blonks Motorcycle Club. He said he attended most of the meetings which are referred to in the minutes. Initially he stated he wrote some of the minutes of meetings. He then changed his evidence. He said that while members are speaking at the meeting someone does all of the writing. The minutes are written up there and then. He has observed Ian Hogan writing

such minutes at the meetings of the club. He could not remember the location where all of the meetings he attended were held. However, all of the meetings which Mr Johnson attended were held either in the Hell's Angels Motorcycle Club clubhouse at Girraween Road or in the houses of those persons who were members of the Hell's Angels Motorcycle Club.

[32] Mr Johnson said there were minutes of other meetings held by members of the Blonks Motorcycle Club, however, there was a fire at Ian Hogan's house and a lot of stuff got burnt and damaged in the fire. No mention is made of any such fire in either of his affidavits.

[33] Mr Johnson conceded that Mr Ben Pullman contacted him directly when Mr Pullman wanted assistance with the maintenance of his motorcycle. That is, it was not the Blonks Motorcycle Club that Mr Pullman contacted. Mr Johnson is well known as a person who has knowledge about motorcycles. He agreed that the maintenance he did on Mr Pullman's motorcycle was done at the Hell's Angels Motorcycle Club clubhouse at Girraween Road.

[34] When Mr Johnson attended the fortnightly meeting of the Harley Owners Group on 10 June 2006, he wore the Hell's Angels Motorcycle Club's colours. Most of the time when Mr Johnson rode his motorcycle, he wore the Hell's Angels Motorcycle Club's colours. When Mr Johnson rides his motorcycle wearing the Hell's Angels Motorcycle Club's colours, he is riding his motorcycle as a member of the Hell's Angels Motorcycle Club.

When Mr Johnson attends the Harley Davison Owners Group meetings wearing his Hell's Angels Motorcycle Club colours, he is doing so as a member of the Hell's Angels Motorcycle Club.

[35] Mr Johnson agreed that when he attended sand drag motorcycle events and speedway events he wore his Hell's Angels Motorcycle Club colours. He attended these events as a member of that motorcycle club. The sand drag motorcycle he rides in sand drag events is stored at the Hell's Angels Motorcycle Club clubhouse at 165 Girraween Road. At no stage did Mr Johnson give evidence that the sand drag motorcycle was owned by the Blonks Motorcycle Club.

[36] Mr Johnson conceded during his cross examination that he was involved in his son's motorcycle racing as a parent and as an individual. He admitted it was something he would do regardless of whether he was a member of a motorcycle club or not.

[37] He said the parcel of land at 385 Duddell Road, Darwin River was being put on the market because it was not being used for club activities any longer. The land had essentially only been used for the rock concert and as a sand drag track for motorcycles. All other club activities were conducted at the Hell's Angels Motorcycle Club clubhouse at Girraween Road. Mr Johnson denied the parcel of land had been put up for sale because the Blonks Motorcycle Club was not operating anymore.

[38] In his affidavit Mr Eaton deposes that:

- He was a member of the Blonks Motorcycle Club between 1983 and 12 July 2006.
- He and the Blonks Motorcycle Club were involved in the production of a road safety advertisement entitled, “Don’t Ride Us Off” which is used in New South Wales.
- During 2005, he attended eight meetings of the Blonks Motorcycle Club.
- On behalf of the Blonks Motorcycle Club he was involved with the “Darwin River Rocks” rock concert which was conducted annually by the club until 1999, when the concert was discontinued.
- The Blonks Motorcycle Club has sponsored Fred Capes, a boxer from Queensland.

[39] During his examination in chief Mr Eaton stated:

- The Blonks Motorcycle Club organises memorial runs for Glen Pullman and Kevin Hunt. The Blonks Motorcycle Club in conjunction with the Hell’s Angels Motorcycle Club, organises annual memorial runs for Peter Thirlwell.
- The Blonks Motorcycle Club organised the Triangle motorcycle run which goes from Darwin to Pine Creek to Jabiru.

[40] Mr Eaton provided no detail about what he or the members of the Blonks Motorcycle Club actually did to organise the memorial runs or the Triangle motorcycle run. Nor did he state the names of the members of the club who participated in the runs or the dates when the runs were held.

[41] During cross examination Mr Eaton gave the following evidence. He wore his Hell’s Angels Motorcycle Club colours when he participated in the memorial run for Peter Semmler in Adelaide. He wore his Blonks

Motorcycle Club colours when he participated in the memorial runs for Peter Thirlwell. The meetings he attended at which his participation in the various runs was discussed were held at the Hell's Angels Motorcycle Club clubhouse at Girraween Road. He could not give precise evidence about the dates on which he participated in each motorcycle run. He did not give evidence that he participated in any such motorcycle runs during 2006.

Consideration of the evidence

[42] The evidence reveals that Mr Johnson principally relies on the following matters to demonstrate that at the time of its dissolution, the Blonks Motorcycle Club was carrying out its objects or in operation:

1. The Blonks Motorcycle Club owns the following personal property: tools, motorcycle parts, a lawn mower, a demountable toilet block, three water tanks and two pressure pumps.
2. The Blonks Motorcycle Club operates two bank accounts.
3. The Blonks Motorcycle Club has provided spare parts and information about spare parts to the following businesses and associations: Dave's Bike Shop, Dick's Motorcycle Repairs, Vietnam Vets Association, the Hog's Club and RANT.
4. The Blonks Motorcycle Club has supported the Humpty Doo Boxing Club and a boxer in Queensland.
5. The Blonks Motorcycle Club was involved in the production of a road safety advertisement entitled, "Don't Ride Us Off" which is used in New South Wales. A copy of the advertisement was given to Riders Awareness Northern Territory.
6. The Blonks Motorcycle Club organises memorial runs for Glen Pullman and Kevin Hunt. The Blonks Motorcycle Club

in conjunction with the Hell's Angels Motorcycle Club organises annual memorial runs for Peter Thirlwell.

7. The Blonks Motorcycle Club organised the Triangle motorcycle run that goes from Darwin to Pine Creek to Jabiru.
8. Mr Johnson continues to race motorcycles in sand drag events.
9. Mr Johnson assists his two sons in their motorcycle racing activities.
10. The members of the Blonks Motorcycle Club held eight meetings during 2005.
11. The Blonks Motorcycle Club has resolved to sell the parcel of land at 385 Duddell Road, Darwin River.
12. On 10 June 2006, Mr Johnson attended a sausage sizzle organised by the Harley Owners Group.
13. On 13 June 2006, the Blonks Motorcycle Club held a meeting at which the club resolved to adopt an amended constitution.
14. On 26 June 2006, Mr Johnson assisted Mr Pullman with the maintenance of his motorcycle.
15. On 26 June 2006, the Blonks Motorcycle met and resolved to: approve the constitution as amended in accordance with the Department of Consumer Affairs letter dated 16 June 2006; approve the sale of 385 Duddell Road, in accordance with the revised constitution; and abide by the rules of the amended constitution.
16. In 2007, the Blonks Motorcycle Club has paid rates for the land at 385 Duddell Road, Darwin River to the Litchfield Shire Council.

[43] I am not satisfied the matters referred to in subpar 42.1 and subpar 42.3 above are established by the evidence. The evidence of Mr Johnson about these matters is hearsay and is mere assertion. The evidence is vague and

lacking in detail. Mr Johnson did not state when and by whom the items of personal property were purchased or acquired and no receipts, invoices or other such documents were tendered in evidence. Interestingly, Mr Johnson did not give evidence that the sand drag motorcycle was the property of the Blonks Motorcycle Club. Mr Johnson conceded during his cross examination that he did not know where the “three tons” of parts were currently located. Likewise, no details were provided about the information or parts that were said to have been given to the various shops and associations, nor were any details provided about the dates when any assistance or parts were said to have been provided. Further, the mere possession of personal property is not a basis from which it may be inferred that an association is either carrying out its objects or in operation. A defunct incorporated association may own personal property which may have been acquired during the period the incorporated association was carrying out its objects or was in operation.

[44] The evidence about the two bank accounts held by the Blonks Motorcycle Club does not support the contention that at the time the club was dissolved it was carrying out its objects or in operation. The bank statements annexed to Mr Johnson’s affidavit show that the monies deposited into the Blonks Motorcycle Club Inc bank account were used to either pay for bank fees or for a television service that was supplied by AUSTAR to the Hell’s Angels Motorcycle Club. There was no evidence of any substance about the source

of any monies paid into that account. The S & M Trust bank account has not been used since 17 August 2004.

[45] The evidence about the support given to the Humpty Doo Boxing Club and to Fred Capes, and the evidence about the Blonks Motorcycle Club's involvement in the production of the road safety advertisement and organisation of the various motorcycle runs is not sufficiently detailed to support an inference that the Blonks Motorcycle Club was carrying out its objects or in operation at the time of its dissolution. No evidence of any substance was tendered to the effect that such activities were carried out during the 12 to 18 months prior to 12 July 2006. Nor was any evidence tendered about what activities or conduct the members of the Blonks Motorcycle Club or the club actually did or engaged in when they are said to have attended to these matters. The statements about these matters are mere assertion and are largely hearsay.

[46] The evidence about Mr Johnson continuing to race motorcycles in sand drag events, assisting his two sons, and attending a sausage sizzle organised by the Harley Owners Club does not support an inference that the Blonks Motorcycle Club was either carrying out its objects or in operation at the time the club was dissolved. Based on the evidence Mr Johnson gave during his cross examination, I find that Mr Johnson assisted Mr Pullman and his sons in his personal capacity and he participated in sand drag events and attended the Harley Owners sausage sizzle as a member of the Hell's Angels Motorcycle Club. He wore his Hell's Angels Motorcycle Club colours when

he participated in sand drag events and when he attended the Harley Owners sausage sizzle. The sand drag bike is stored at the Hell's Angels Motorcycle Club clubhouse and Mr Johnson did not give evidence that the sand drag motorcycle was owned by the Blonks Motorcycle Club.

[47] I do not accept Mr Johnson's or Mr Eaton's evidence that there were eight meetings of the Blonks Motorcycle Club during 2005. In contrast to the detail contained in the minutes of the meeting held on 26 June 2006, the evidence of Mr Johnson and Mr Eaton about the 2005 meetings is vague and lacking in detail. They did not give evidence about the persons who attended these meetings, the number of persons who were present at the meeting, whether there was a quorum at the meetings or where the meetings were held. The evidence does not establish who was the person who prepared the minutes and the person who prepared the minutes was not made available for cross examination. The documents which are said to be the minutes of the meeting do not state who was present at the meeting and are not signed by any person who was said to have taken the minutes.

Mr Hogan or Mr Dunkerton, who were said, may have been the chairman and the treasurer of the club, were not called to give evidence about these meetings. In any event, the fact that there were eight meetings of the club between 20 March 2005 and 7 August 2005, is not a basis for inferring the club was carrying out its objects or in operation at the time it was dissolved. The fact that there is no evidence of any substance whatsoever about meetings of the club being held between 7 August 2005 and 13 June 2006,

tends to support an inference that the club was not in operation and not carrying out its objects at the time it was dissolved. Clause 5 of the constitution requires that a general meeting of the club is to be held each month.

[48] I accept Mr Priestley's submission that the fact that certain people who were members of the Blonks Motorcycle Club, are trying to sell the parcel of land at 385 Duddell Road, Darwin River tends to show the Blonks Motorcycle Club is defunct. The proposed sale of the land establishes the members of the club are no longer using the club's principal asset. No evidence was tendered by Mr Johnson about what the club plans to do with the proceeds of the sale of the block of land. Funds that have been paid into the club's bank account are currently being used for the purposes of the Hell's Angels Motorcycle Club.

[49] I am not satisfied the resolutions made by those persons who attended the meeting on 26 June 2006 to amend the constitution of the Blonks Motorcycle Club and to instruct solicitors to lodge the amended constitution with the Commissioner of Consumer Affairs, demonstrates that the Blonks Motorcycle Club was carrying out its objects or was in operation at the time the club was dissolved. Those actions have to be looked at in the following context: it has not been established that there are any financial members of the club; with one or two exceptions all the persons who were members of the club are now members of the Hell's Angels Motorcycle Club; monies that have been deposited into the club's main bank account have been used

to provide services to the Hell's Angels Motorcycle Club; the club does not have a management committee; the club does not appear to have been holding Annual General Meetings; the club has not been holding regular General Meetings; the one or two General Meetings, which were held in 2006, were held for the purpose of considering the sale of the land at 385 Duddell Road, Darwin River and amending the club's constitution; no properly audited financial returns which show what funds the club has raised and what funds the club has expended in conducting its operations and carrying out its objectives have been filed with the Office of Business affairs since the 2002 financial statements were lodged; no Annual General Meetings have been held to approve any financial statements since 2002; and no satisfactory evidence has been tendered about the clubs activities.

[50] On the whole of the evidence I am not satisfied that the Blonks Motorcycle Club was carrying out its objects or was in operation at the time the club was dissolved by the Commissioner of Consumer Affairs. The Oxford Dictionary's definition of "operation" is the action or process of working or operating; the state of being active or functioning. "Operation" implies continuing and reasonably regular activity. There is insufficient evidence for me to find the Blonks Motorcycle Club was in a state of being active or functioning at the time of its dissolution.

[51] A fair inference on the whole of the evidence, is the great majority of members of the Blonks Motorcycle Club ceased to be members of the club and became members of the Hell's Angels Motorcycle Club. Consistent

with this occurrence, significant assets of the Blonks Motorcycle Club, such as the land and clubhouse at 165 Girraween Road, were transferred to the Hell's Angels Motorcycle Club for the use of that club; and other assets of the Blonks Motorcycle Club, such as the land at 385 Duddell Road, Darwin River, and the club's bank account, were simply used by those persons who had become members of the Hell's Angels Motorcycle Club when it suited them. In such circumstances, the Blonks Motorcycle Club became defunct and was defunct at the time of its dissolution.

Order

[52] The application is dismissed. I will hear the parties further as to costs.
