

# SUPREME COURT OF SOUTH AUSTRALIA

(Magistrates Appeals: Civil)

## RAGLESS v THE SOUTH AUSTRALIAN FIELD & GAME ASSOCIATION SOUTHERN BRANCH INC

[2016] SASC 8

Judgment of The Honourable Justice Vanstone

12 February 2016

**MAGISTRATES - APPEAL AND REVIEW - SOUTH AUSTRALIA -  
APPEAL TO SUPREME COURT**

**ASSOCIATIONS AND CLUBS - EXPULSION, SUSPENSION AND  
DISQUALIFICATION - POWER TO EXPEL, SUSPEND AND  
DISQUALIFY**

Appeal against ruling of Magistrate - appellant unsuccessfully sought relief against the respondent association for alleged breaches of the Associations Incorporation Act 1985 (SA) and the respondent's Constitution - whether Magistrate erred in ruling that the appellant resigned from the respondent association as opposed to being expelled and as such had no standing to institute proceedings.

Held: Appeal dismissed. The Magistrate was correct in determining that the appellant had resigned and had no standing to bring proceedings against the respondent association.

*Associations Incorporation Act 1985* (SA) s 61; *Firearms Act 1977* (SA) s 21H, referred to. *Elmawey v Adelaide Mosque Islamic Society of South Australia Inc* (unreported, Supreme Court of South Australia, Williams J, 3 December 1997); *Finch v Oake* [1896] 1 Ch 409, considered.

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**On Appeal from MAGISTRATES COURT OF SOUTH AUSTRALIA (MAGISTRATE FAHEY) CHBCI-15-22**

**Appellant: STEPHEN JOHN RAGLESS In Person**

**Respondent: THE SOUTH AUSTRALIAN FIELD & GAME ASSOCIATION SOUTHERN BRANCH INC Counsel: MR A LAZAREVICH - Solicitor: BENNETT LEGAL**

**Hearing Date/s: 18/01/2016**

**File No/s: SCCIV-15-1427**

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**RAGLESS v THE SOUTH AUSTRALIAN FIELD & GAME  
ASSOCIATION SOUTHERN BRANCH INC  
[2016] SASC 8**

**Magistrates Appeal:      Civil**

1    **VANSTONE J:** On 14 January 2015 Stephen John Ragless lodged a “statutory application” in the Magistrates Court against the South Australian Field and Game Association Southern Branch Inc (“the Association”) alleging breaches of the Constitution of the Association and of the *Associations Incorporation Act 1985*, invoking s 61 of that Act. The relief sought included orders regulating the conduct of the Association, orders expelling certain members and orders in respect of a claim for damages and reimbursement of legal costs in the sum of about \$500,000.

2            It seems that this claim is only one of a number instituted by Mr Ragless against the Association in various courts and tribunals.

3            Section 61(2) of the *Associations Incorporation Act* provides that an application by a former member must be made within six months of the cessation of the person’s membership of the relevant body. As part of its defence, the Association pleaded that Mr Ragless was precluded from bringing the application because he had resigned from the Association on 27 October 2012. If that is so then the time within which s 61 might be invoked expired on 26 April 2013 and the application made by Mr Ragless was substantially out of time.

4            The Association persuaded the Magistrate to conduct a preliminary hearing on the question of whether Mr Ragless had indeed resigned on the date mentioned, that issue having the capacity to dispose of the action, as well as other actions.

5            The trial on the preliminary issue took place on 14 September 2015 before Mr Fahey SM. During the hearing, Mr Ragless gave evidence and was cross-examined and a number of documents were tendered. The Magistrate took submissions from Mr Ragless, who represented himself, and from Mr Bennett for the Association. Mr Ragless now appeals against the Magistrate’s finding.

**The Magistrate’s finding**

6            The Magistrate found that Mr Ragless had resigned his membership on 27 October 2012. In his reasons for decision, the Magistrate focussed on correspondence both before and after that date. It is convenient to set out some parts of some of that correspondence. I also include excerpts from some additional documents which Mr Ragless referred to during the argument on the appeal. He had submitted these with his Outline of Argument to the Magistrates Court, but they had not been tendered.

24.10.2012 Letter from Mr Stringer, State Secretary of the South Australian Field and Game Association Inc, **Exhibit D4:**

*"This letter serves to advise you that your Membership to The South Australian Field & Game Association Inc has been suspended immediately due to conduct unbecoming of a member of this Association.*

*Generally your conduct has for some time been causing great concern to many members as demonstrated in correspondence received from you and other members.*

*You have the right to appeal this decision and the opportunity to defend your conduct at the State Council meeting on 10 November 2012.*

*Please provide written notice of your intention to appeal this action. ..."*

26.10.2012  
4.46 am

Email letter to Mr Stringer from Mr Ragless, **Document B:**

*"... I would like to appeal the State Council Decision to suspend my membership and will be attending the State Council meeting on 10/11/12 at your suggested time of 1.30 pm. I will be seeking legal advice next week and may have legal representation at my appeal.*

...

*I was pleased to hear from Dave [the President] that the A.G.M. is open to the public and therefore I can attend. Could you confirm that in writing A.S.A.P. so I can notify my supporters. ..."*

12.51 pm

Mr Stringer's answer to Mr Ragless' email letter, **Document C1**. This letter took the form of Mr Stringer inserting his responses to various questions asked of him in the previous email letter.

Against the request for confirmation of Mr Ragless' entitlement to be present at the Annual General Meeting, Mr Stringer wrote:

*"The Club has the right to exclude you from the Club under the Firearms Act 1977, Section 21H. ..."*

3.29 pm

Mr Ragless wrote to the Association's solicitor, Mr Bennett, **Document D5:**

*"My firearms licence was suspended and my membership of S.A.F.G.A. was suspended on your advice. Please provide me with documentation you based this advice on."*

27.10.2012  
4.02 pm

This is the critical letter of Mr Ragless to Mr Stringer and others, **Exhibit D2:**

*"Subject: Be Proud*

*To the State Council South Australian Field and Game Association Inc.*

*I have no intention to pursue my membership or the friendship of members of South Australia Field and Game Association Inc.*

*Please remove my name from the member register.*

*Be Proud”*

29.10.2012  
7.27 am

Email letter from Mr Ragless to Mr Bennett, **Document E:**

*“John: I will be attending the State Council Meeting in relation to an incident report.*

...

*As this is not an action against the S.A.F.G.A. but the conduct of one of the branches and some of the members of the association under your control and I am still a member I have a right to all documentation relating to this incident to prepare a defence or an instigate of legal proceeding.*  
...”

31.10.2012

Email letter from Mr Bennett to Mr Ragless, **Document F1:**

*“Please be aware that I had not given any advice that you be suspended as a member as you have suggested. ...”*

Undated

Letter from Mr Bennett to Mr Stringer, **Document F3:**

*“The Special Meeting of State Council convened for 1 December 2012 has been called for the purposes of permitting Steve Ragless an opportunity to present his case before State Council.*

...

*I stress that a Constitution protects the interests of a member. In the present case you have told me verbally that you have a written resignation by Steve Ragless as a member of SAFG. Once that resignation has been received by you as the responsible person representing the State Association any rights that existed previously laps [sic] with the resignation upon its receipt by you. ...”*

7 The Magistrate took the view that the email letter from Mr Ragless of 27 October 2012 constituted a letter of resignation. He found that, although the first sentence of the letter, referring to friendship with members, was equivocal, the second sentence seeking removal of the writer’s name from the register was capable of one interpretation only, being that the writer was resigning.

8 The Magistrate then considered whether, in order to be effective, a resignation must be accepted and whether an effective resignation could be

retracted. Referring to *Elmawey v Adelaide Mosque Islamic Society of South Australia Inc* (unreported, Supreme Court of South Australia, Williams J, 3 December 1997) and *Finch v Oake* [1896] 1 Ch 409, he held that the answer to both questions was in the negative.

9 Accordingly the Magistrate ruled that as at 27 October 2012 Mr Ragless was no longer a member of the Association. It followed that he had no standing to institute the proceedings of 14 January 2015.

### Arguments on appeal

10 Mr Ragless renews the arguments he took before the Magistrate. He contends that his email letter, Exhibit D2, was not a letter of resignation. He emphasises that the word “resignation” was not mentioned. The point of the letter was, he submits, to advise that he would not be attending to prosecute the appeal he had foreshadowed. He further puts that actions and letters by Mr Stringer and Mr Bennett subsequent to Exhibit D2 demonstrate that they did not consider that D2 was a letter of resignation either. He argues that the letter of resignation was not acknowledged by Mr Stringer until three days after the State Council meeting on 10 November 2012. He also points to the fact that subsequent to sending Exhibit D2, Mr Bennett acknowledged receipt of Mr Ragless’ advice that he would not appeal against suspension (Document F1), and, in his letter to Mr Stringer, confirmed that he had not seen a letter of resignation.

11 Mr Ragless further argues that, even if Exhibit D2 did take the form of a letter of resignation, it was not effective, because Mr Ragless had already been expelled from the organisation on 12 October 2012 pursuant to s 21H of the *Firearms Act 1977* (SA). Here, Mr Ragless relies on Mr Stringer’s reference to that section in his email of 26 October 2012 at 12.51 pm, responding to Mr Ragless’ email some hours earlier. Mr Ragless argues that, although the first notice he had of any action under the *Firearms Act* was in Mr Stringer’s email letter, that action took effect on 12 October 2012.

### Consideration

12 I deal with the last point made by Mr Ragless first.

13 It is not clear what event Mr Ragless asserts had taken place on 12 October 2012 which was significant in terms of the *Firearms Act*. However, his *Firearms Act* argument relies only on Mr Stringer’s assertion, made on 26 October 2012 in Document C1, that the Association had the right to exclude him from the Annual General Meeting under the provisions of the *Firearms Act*. In my view, the mere reference to a right which might be had by resort to a statute does not imply any pre-existing action by the body alluding to that right. In my view, the sentence of Mr Stringer’s letter relied on by Mr Ragless does not give rise to the implication that the Association had already acted pursuant to s 21H of the *Firearms Act*. In any event, there is no evidence to support the contention that the controlling body

of the Association had formed the reasonable belief required by the section or had determined to expel Mr Ragless from the Association.

14 I note that this argument was not referred to by the Magistrate and that the document upon which Mr Ragless relies as a basis for it was not tendered at the trial of the preliminary issue. This argument fails.

15 Furthermore, the letter, Exhibit D4, from Mr Stringer to Mr Ragless of 24 October 2012 advising of his suspension was neither an expulsion nor a termination of Mr Ragless' membership, such as might have prevented a resignation from having effect. That letter invoked Clause 79 of the Constitution of the state body which, in part, provides as follows:

The State Council shall have the power to censure, suspend or expel any member and/or terminate any membership or affiliation:

- (a) for, as a result of or in relation to any proven conduct which, in the reasonable opinion of the State Council:
  - (i) is unbecoming of a member;
  - (ii) is discreditable or injurious to the character, purposes or interests of the State Association; or
  - (iii) renders the member unfit to associate with other members of the State Association; ...

The advice by Mr Stringer to Mr Ragless in Exhibit D4 made it clear that the action taken was in the nature of suspension (rather than expulsion) and the balance of the letter explained something of the process by which the State Council might proceed to "a final determination".

16 For these reasons I consider that as at 27 October 2012 Mr Ragless was a member of the Association – albeit under suspension – and it was open to him to resign his membership.

17 In respect of the interpretation of the letter of 27 October 2012 (Exhibit D2), I agree with the findings of the Magistrate. In my view, the brief letter evinces a clear determination to resign from the Association forthwith. There is no other way to read its words. Whether others read the letter in that way – if they saw it – cannot affect its proper interpretation.

18 Clause 46 of the Constitution deals with the time at which resignations take effect. It provides:

Members may resign their membership by giving to the Secretary a notice in writing to that effect. Every such notice shall be deemed to take effect on the date expressed therein but if there is no date expressed it shall take effect on the date on which it is received by the Secretary.

On the plain terms of that provision, Mr Ragless' letter of resignation was effective on the day it was given. There was no need for the Secretary to acknowledge it. Once Mr Ragless ceased to be a member, then, as a matter of commonsense, it was not open to him to withdraw his resignation and reassert his membership. If he wished to re-join the Association he would need to apply in the usual way. The authorities referred to by the Magistrate support that analysis.

### Conclusion

19 The Notice of Appeal filed by Mr Ragless made a claim of bias against the Magistrate. That was abandoned at the appeal hearing. Similarly, Mr Ragless did not develop his assertion made in the Notice of Appeal that at the hearing he was not permitted a right of reply. The transcript of the hearing before the Magistrate does not support that contention but, in view of Mr Ragless' position before me, there is no need to deal with either of those arguments.

20 For the reasons I have given I consider that the Magistrate was correct in his finding on the preliminary issue. By the time the action was commenced, Mr Ragless had resigned, and it was more than six months after his resignation when he instituted proceedings.

21 The appeal is dismissed.

*with costs of 9 months' to appeal.*