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Volunteers or Employees? Employment Court Determines Status of Gloriavale Residents

In the Gloriavale case, the court considered whether former residents of the Gloriavale Christian Community who worked in the Community's commercial businesses ("Plaintiffs"), were employees or volunteers.

The case was centred on the application of section 6 of the Employment Relations Act ("Act"). This section defines the meaning of "employee" as a person of any age employed by an employer to do any work for hire or reward under a contract of service. This definition excludes "a volunteer who doesn't expect to be rewarded and does not receive reward for work to be performed as a volunteer".

The section also says that, in determining whether a person is employed by another person under a contract of service, the Court or the Authority must determine the "real nature of the relationship". The Court or Authority must take account of all relevant factors, including the intention of the parties. A statement by any person describing the legal nature of their relationship, while a factor, is not determinative.

The Court's Analysis

The Court said that, for the purposes of the current case, its attention should be focused on the real nature of the relationship, rather than establishing the terms of the agreement or what the parties themselves might believe the relationship to be. The Court emphasised that an employment agreement was a relational contract, and its existence could be inferred by the conduct of the parties.

Gloriavale's defence was that any argument that the applicants were employees would be wholly incompatible with the way in which the Gloriavale community members had chosen to live their lives. The Court found that although Gloriavale was faith-based, the Community dealt with more than just religious matters and that was reflected in its extensive commercial operations. The Court commented that, despite work practices taking place within a religious community with a particular view on operations and the principles under which it would function, that did not mean those work practices were not subject to the Employment Relations Act or any other laws.

The Court did consider the issue of whether the activities undertaken were the equivalent of "chores" undertaken in family and community situations. For children who were between the ages of 6 and 14, these activities included milking cows at 3:30 am and cleaning pigsties. These activities were being undertaken to support Gloriavale's commercial businesses, and so, perhaps not unsurprisingly, the Court found the activities of the former residents were more towards the "employee conducted work" end of the spectrum.

An essential ingredient of the "employee" definition is a requirement for the work being undertaken for "hire or reward". On that issue, the Court accepted that each of the Plaintiffs understood that through each stage of their working life within the Community they would receive reward in exchange for their work. This was by the provision of food, the necessities of life and the ability to participate in the Community. This was not a coincidental benefit, but one linked to the work, and an understanding that the Plaintiffs would be deprived these benefits if they did not work.

Relevance of Documentation

Before the Plaintiffs reached the age of 15 there was no written agreement describing them as having any sort of relationship with Gloriavale. The fact that the parties subjectively believed they were not in an employment relationship was not seen as relevant, and for that period the real nature of the relationship was reasonably to be drawn from conduct.

Once the Plaintiffs reached 15 years of age, they participated in what was referred to as a 12-month transitional education/work experience program. The documentation included an acknowledgement that benefits were to be provided to the participants without charge including accommodation, meals, clothing, medical expenses, access to Community entertainment and events facilities, as well as work experience and training. The Court rejected that this period of work could properly be described as "work experience" or a "learning" opportunity offered in the context of attendance at school. And the work during this period was more geared towards using the 15-year-old male workforce to meet the business needs of Gloriavale's business enterprises.

Further documentation was signed by the Plaintiffs after they reached 16 years of age, which involved an agreement to adhere to and be bound by a Partnership Agreement. The Partnership Agreement envisaged that the Plaintiffs would eventually become Associate Partners. A key aspect of the Partnership Agreement the Plaintiffs agreed to adhere to was the provision of "labour hire" services to Gloriavale businesses under a detailed contract for services document (an independent contract). Under this structure the Plaintiffs understood that they would receive money into a bank account but that would immediately be taken out and put into the Gloriavale sharing account. Evidence was given that there was an opportunity to seek legal advice but, in reality, there was an expectation that the document would be signed without complaint.

Once over the age of 16, the Plaintiffs had their placements determined by the senior Gloriavale leadership, having regard to business needs. Nothing changed in relation to the conditions under which the Plaintiffs worked once they became Associate Partners under the Partnership Agreement.

The Act expressly states that in determining the real nature of the relationship between a worker and a principal, the Court is not to treat any statement the parties make describing the nature of their relationship as a determining matter. Here the documentation and the agreement of the parties concerning the legal nature of their relationship (being that of partnership providing work as independent contractors) was not seen as a compelling feature.

Were the Plaintiffs Volunteers?

If the Plaintiffs were volunteers, they could not be employees under the Act. For the Plaintiffs to be volunteers they would need to not expect reward for their work nor receive reward for their work. The Court found that these requirements were not met, and the Plaintiffs expected and had been rewarded for their labour by way of the food, shelter and other benefits they received by participating in the Community.

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So, throughout the period they were undertaking work at Gloriavale, the Court found the real nature of the relationship the Plaintiffs had with Gloriavale was as employees. Applying usual indications of an employment relationship, the Court found the Plaintiffs worked where and when and for whom they were told in Gloriavale's commercial enterprises, and they were fully integrated into the Community's business structure. They did not work for themselves – they worked for the benefit of the Gloriavale businesses, and the economic reality of the relationship was one of employment.

The Court's judgement is probably only the beginning of matters for Gloriavale. Not only does the declaration raise the spectre of significant liability for wage and holiday pay arrears due to the Plaintiffs, but also to other Gloriavale Community members. It also raises other issues concerning penalties for breach of minimum standards, and what the Court described as "serious concerns across a broad range of subjects" identified in the judgement.

Key Takeaways

- There is a real risk for an organisation to assume that a particular relationship involving the undertaking of work is going to fall outside of a relationship of employer and employee, even where both parties may agree or believe this to be the case at the outset.
- People undertaking work on a "voluntary" basis may nevertheless be employees even where they are not paid in cash but receive some form of non-financial benefit (such as food and accommodation) that is linked to their work.
- As with most situations that are not clear-cut, legal advice should be sought to identify the actual relationship where work is being carried out.

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