

THE HIGH COURT

[2023] IEHC 665

[RECORD NO. 2020/3442P]

BETWEEN

GLENN DOYLE

PLAINTIFF

AND

**CRUMLN BOXING CLUB AND IRISH ATHLETIC BOXING
ASSOCIATION**

DEFENDANTS

**JUDGMENT of Ms. Justice Siobhán Phelan, delivered on the 16th day of
November, 2023**

INTRODUCTION

1. This matter comes before me for trial of a preliminary issue as to whether the Plaintiff was a member of Crumlin Boxing Club (hereinafter “the Club”) in June, 2017 when he travelled with the Club to Benidorm, Spain and sustained injuries when assaulted by a club member.

PROCEEDINGS

2. By Personal Injuries Summons dated the 13th of May, 2020, the Plaintiff claimed damages for personal injuries against the Club and the Irish Athletic Boxing Association (hereinafter “the IABA”). In the Indorsement of Claim it was pleaded that he was a member of the Club and he swore an affidavit of verification affirming the facts as pleaded. Further, in his Replies to Particulars, the Plaintiff confirmed that the trip to Benidorm had been organised for club members and an affidavit of verification was also sworn in this regard. The injuries sustained, as pleaded, included a fractured jaw, damage to his teeth and hospitalisation.

3. In the Defence delivered in October, 2020, it was pleaded that the Club had no liability in law or in fact for any personal injury, loss or damage alleged sustained as the Plaintiff was a member of the Club and thereby estopped from maintaining the within proceedings against the Defendant.

4. By Notice of Motion dated the 9th of November, 2020, the trial of a preliminary issue as to whether the Plaintiff was estopped from maintaining the within action against the Club by reason of his membership of the club and therefore his action was bound to fail was sought. The application was based on the then undisputed plea made by the Plaintiff was that he was a member of the Club at material times. In an affidavit grounding the application, a document described as the Plaintiff's "*club membership form dated*" the 15th of September, 2010 was exhibited. On its face the document appeared to issue from the County Dublin Board, the IABA rather than the Club. It records the name of the Club as Crumlin and the date of registration as the 15th of September, 2010. It bore a stamp which read:

"As Registrar I certified that the Holder of this Record Card has complied with the IABA Central Council Regulation regarding the Members' Acknowledgement Form."

5. The space for the Registrar's signature is left blank and the Card is not signed on behalf of the Club.

6. In a replying affidavit sworn in March, 2021 and served in unsworn form on the return date of the Motion, the Plaintiff maintained that while he considered himself a member of the Club and had pleaded as much given a long-time association with the Club, this was not in fact or in law his actual status at the time of the incident. He confirmed:

"My actual status at the club in 2017 was that of a boxing coach and I was in fact paid informally for my work as a coach. I did not participate as a boxer, was not required or expected to pay any membership subscription. I was not, as far as I am aware, on any current role of members, albeit I had previously been registered as a member at a time when I was an active participant and competitive boxer."

7. He confirmed that he had been a member since commencing training for and participating in boxing at the age of 19 and had paid subscriptions on a weekly basis at the rate of €10.00. While there was some informality in this regard, he confirmed that records were kept and it was his understanding that the Club kept a roll of members. He confirmed that his status changed as he had ceased paying subscriptions and assumed a role as coach for which he received money towards expenses a number of years prior to the incident in June, 2017.

8. He stated his belief that records were maintained by the Club, including medical records and a roll or register of membership, and he indicated that discovery would be required for the purpose of fairly determining the issue of his status with the Club. He stated that he would also require an opportunity to cross-examine relevant witnesses in relation to his actual status as member of the Club. Discovery identified as relevant and necessary by Mr. Doyle on affidavit were:

- i. The Constitution of the Club and all documents which evidence rules and procedures relating to membership of the Club and in particular applications and processes for becoming a member;
- ii. The Membership Roll or Register and/or any other document or data which purportedly evidences the Plaintiff's membership of the Club on the date of the assault the subject matter of the proceedings;
- iii. All records of subscription payments purportedly received by the Club from the Plaintiff for the three years prior to the assault;
- iv. All doctors' certificates for the Plaintiff to include the original certificate required upon becoming a member and all certificates required to renew that membership;
- v. All complaints made relating to the Plaintiff's assailant and any other documentation which evidences his violent propensity to including his assault upon another member named Eric in Benalmadena in 2016.

9. It was clear from the Plaintiff's replying affidavit that the facts regarding his membership were not agreed. Indeed, in an affidavit sworn in response to the application for an order directing trial of a preliminary issue it was deposed on behalf of the Club that it now appeared that oral evidence would be required but that the issue was a discrete issue suitable for determination on a preliminary basis and capable of disposing of the proceedings. Despite

the absence of agreed facts in this instance and the terms of the affidavits exchanged, an Order directing trial of a preliminary issue was made on consent on the 19th of April, 2021. The mode of trial of the preliminary issue was not addressed by the terms of the consent order with the result that it remained in contention when the matter was opened before me.

10. Thereafter discovery was formally sought in terms previously agreed but with an enlargement to seek records evidencing the Club membership of the Plaintiff's assailant for three years prior to the assault in June, 2017 and documentation relating to the initial reporting and investigation of the circumstances of the incident the subject matter of the proceedings.

11. An Affidavit of Discovery was sworn in June, 2021. The only relevant documentation discovered was:

- An application Form for Membership completed by the Plaintiff dated the 13th of November, 2006. This form was endorsed above the Plaintiff's signature with the words: *"I wish to join Crumlin Boxing Club, I promise to abide by all the Clubs rules and regulations, to respect all coaching staff and clubmates and to train and box to the best of my ability."* Under the Plaintiff's signature the Form was endorsed as follows: *"Please note there is a yearly membership fee of €50 which applies to all members. Weekly subscriptions are as follows: €5 (ages 10-16) and €10 (ages 17 and up). **ALL SUBS MUST BE PAID BEFORE TRAINING CAN COMMENCE. IF YOU MISS ON WEEK YOU MUST PAY DOUBLE NEXT WEEK**"* (Underlining on original).
- Member's Acknowledgment (undated) signed by the Plaintiff in which he voluntarily assumed the risks of participating in boxing in consideration of becoming a member and accepted that *"in becoming a member of the Club/IABA, which are unincorporated associations, I am thereby waiving my legal right to sue these entities where to do so would be incompatible with my status as a member"*. The Members Acknowledgement Form also stated: *"I agree to abide by the Rules adopted by the IABA, including any Safety Rules as they may be amended from time to time, and I acknowledge that my membership may be revoked or suspended for violation of any Safety Rules"*.
- Application for Membership dated the 28th of February, 2012 completed by the Plaintiff. The Plaintiff signed his name on this form immediately after the words *"I wish to join Crumlin Amateur Boxing Club, I promise to abide by all the Club rules and regulations, to respect all coaching staff and Club mates and to train and box to the*

best of my ability. If a member is missing from the Club for 3 weeks without notifying a coach with a reason, the member will have to apply for membership again if he/she wishes to resume training.” This form was endorsed with the following: “Please note there is a yearly membership fee of €320 (ages 10-16) and €450 for 17 years and upwards. €80 every 3 months on joining the Club for under 17 years. Boxing equipment must be bought within 3 weeks of joining the Club ie gloves, bag, gum shield, skipping rope and hand wraps (rule).”

- Member’s Acknowledgement dated the 28th of February, 2012. In signing this Form the Plaintiff again agreed to voluntarily assume risk and waived his legal right to sue the Club or the IABA “*as to do so would be incompatible with my status as a member*”.
- IABA Coach Application Form dated the 17th of November, 2015. His form contained two sections. Section A to be filled out by the Applicant and section B to be filled out by the Club Secretary. The Form required to be signed only by the Club Secretary to confirm that the Applicant for the coaching course was a member but in fact the form was signed by the Plaintiff rather than by the Club Secretary;
- IABA Level One Coaching course material from the National Coaching and Training Centre (undated).

12. No Club Rules, Constitution, Membership Roll or Membership Register or evidence of subscriptions paid was discovered. Similarly, although records evidencing the Club membership of the Plaintiff’s assailant for three years prior to the assault the subject of the proceedings were sought, the Affidavit of Discovery sworn on behalf of the Club confirmed that there were “*none such*”. No record of any subscription being paid by the Plaintiff in the three years prior to June, 2017 was discovered.

13. In the opening of the case before me an issue was flagged regarding a document which the Club had advised the Plaintiff’s counsel it was proposed to rely upon, being the Rules of Membership of the IABA. These had not been discovered but had been furnished that morning. This document ought to have been discovered. Counsel for the Plaintiff, whilst objecting to the IABA membership rules being introduced based on the failure to discover them, also took the contradictory position of wishing to rely on them because in their terms they required records of membership to be kept and submitted and were therefore helpful to the Plaintiff’s case. Specifically, under Rule 6 dealing with membership, application and affiliation,

provision was made for clubs to become affiliated with the IABA. At Rule 6(4) it was provided that:

“All members shall be enrolled on the Register of Members which is a company law requirement. Member clubs shall also submit their own membership register to the IABA which shall be managed and kept up to date centrally on an annual basis by the Membership Manager and held by the Company Secretary on behalf of the Board. Membership shall not be transferrable.”

14. Rule 6(13) further provided:

“Clubs in applying for, or renewing their membership online shall submit their full roll of members.”

15. Appendix 3 to the IABA Rules of Membership is entitled “Clubs”. It provided at sub-rule 10 of Appendix 3:

“Each club shall have its own registration book in which the names and other relevant details of all club members are kept.”

16. Sub-rule 11 of Appendix 3 provided:

“Boxers’ club coaches shall do the corners when they are participating in ‘home’ internationals. In the event of the club coach not being available a National coach will be the substitute.”

17. Sub-rule 13 of Appendix 3 provided:

“In all cases of a boxer or Coach transferring to a new club, the prescribed form shall be completed, submitted to, and approved by the immediate governing body before it becomes effective.”

18. Objection was separately taken to reliance on a document which was referred to in the papers as the “*public liability report.*” It was complained that this document had not been furnished to the Plaintiff through discovery. In response it was contended on behalf of the Club that this was a privileged document and therefore not discoverable. It had not, however, been scheduled in the Affidavit of Discovery sworn as it ought to have been.

19. In addition to the early issues identified with the discovery made in the opening of the case, it emerged at the close of the first day and overnight arising from evidence given and the terms of the IABA Rules of Membership produced that morning, that certain returns of names of members made to the IABA had not been discovered despite the terms of the discovery ordered. Seemingly, as explained by counsel, this occurred on the basis that what had been discovered was documentation evidencing membership (hence documentation with the Plaintiff’s name on it) and not documentation showing the contrary (membership lists which did not include the Plaintiff’s name). It appeared that additional documentation existed which had not been discovered in which a list of members had been provided to the IABA. I adjourned the proceedings with a direction that a further affidavit of discovery be sworn on behalf of the Club to include all documentation evidencing whether or not the Plaintiff was a member of the Club before, on or subsequent to the date of the alleged assault. I also sought an explanation on affidavit as to why proper discovery had not been made. Upon the making of discovery in October, 2023, a resumed hearing date of the 9th of November, 2023 was fixed.

20. Supplemental discovery made by Affidavit sworn in October, 2023 included a number of additional documents as follows:

- The IABA Affiliation Form for 2011/2012 – no list submitted (words “*will follow*” inserted) but a grand total membership of 180 described as including boxers and officials was indicated. The names of several coaches were included on the form. The Plaintiff’s name did not appear.
- The IABA Affiliation Form for 2012/2013 – the form records 175 members but the Plaintiff’s name is not included in the list of boxers, coaches, officials or other club personnel but the names provided were far less than 175.
- The IABA Affiliation Form for 2013/2014 - the form records approximately 60 members but the Plaintiff’s name did not appear anywhere on the form.

- The IABA Affiliation Form for 2014/2015 – 80 was given as the number of members but no list was provided. It was indicated that a list would follow. The Plaintiff's name did not appear.
- The IABA Affiliation Form for 2015/2016 – a list appears to have been provided after the form was submitted. The Plaintiff's name was not included on the list.
- The IABA Affiliation Form for 2016/2017 – a list was submitted – the Plaintiff was named as a coach.
- The IABA Affiliation Form for 2017/2018 – This form has a check list on the front emphasising a list of all officers, coaches, volunteers and boxers is required. The Plaintiff's name is not included in the list of coaches, nor does it appear on the list of boxers.
- The IABA Affiliation Form for 2018/2019 – A similar check list appears on the front of this form reminding the Club that a list of all officers, coaches, volunteers and boxers is required. The Plaintiff's name does not appear.
- The IABA Affiliation Form for 2019/2020 – The Plaintiff's name appears on the list of club coaches.
- Photographs of the Plaintiff participating in Club activities between June, 2012 and November, 2018. These photographs show the Plaintiff wearing club tracksuits and tee shirts with others engaging in boxing related activity at times that his name does not appear on the lists of membership submitted.

21. The further Affidavit of Discovery also corrected the omission from the previous affidavit of the IABA Club Rules and Constitution.

ISSUE

22. When the matter first came on for hearing before me on the 18th of July, 2023, it was agreed that the issue I had to determine was whether or not the Plaintiff was a member of the Club in June, 2017 at the time of the alleged assault.

23. Even though there was no agreed evidence, counsel for the Plaintiff initially objected to me hearing oral evidence and wished me to determine the issue on affidavit only. I determined that as there were no agreed facts and as it is well established that a preliminary

issue could only be determined on established facts, I could not decide the issue without hearing evidence. In the circumstances the alternatives open were to hear evidence for the purpose of determining facts and deciding the issue or to adjourn the issue to the hearing of the full action.

24. I was not asked to adjourn the issue to the trial of the action as the parties were both desirous of the issue being determined. On that basis the First Named Defendant went into evidence.

THE ORAL EVIDENCE

25. Two witnesses gave evidence for the Club on the 18th of July, 2023, one Mr. Mooney, President of the Club and one Ms. Corrigan, who had a role at material times in keeping club records and accepting subscriptions.

26. Mr. Mooney confirmed that he had been the President of the Club for 5 years and had been chairman for 20 years. He described the nature of the Club and the area in which it was located and said that it was an amateur sporting and community organisation, serving the community in an area of social disadvantage. He confirmed that by reason of the nature of the organisation the Club was not strict in relation to subscriptions and if someone does not pay subscriptions, they are not turned away. He confirmed that the Plaintiff had been a regular boxer but he did not pay his subscription fee all the time. He said he did not have any documentary evidence as to the Plaintiff's payment of subscriptions. He confirmed that being trained as a coach did not affect membership as every coach had to be a member. He added that the insurance covers members of the club which is why a person must be a member to be covered by insurance. He said that to participate in club activities, a person must be a member.

27. Mr. Mooney was vague when asked about the Club rules and said, "*the rules are whatever is contained in the IABA handbook*". He added that if a person comes into the Club, there are rules posted on the Club walls. He confirmed that there was no handbook. He confirmed that a person joins the Club by completing an application form and complying with a requirement to go to the GP for assessment of physical condition and confirmation as to whether they were fit to box. He was referred to the application form completed on the 30th of November 2006 by the Plaintiff. He said that while the form refers to a requirement to pay

subscriptions, this rule is not enforced. When pressed on the actual rules of membership Mr. Mooney stated that the rules for the Plaintiff were “*the same as everyone else that applies for membership.*” He reiterated that they rely on an application form and the membership process entails people coming in from the street and being shown around the club describing the process as very “*informal*”. He stated that some boxers in the Club have literacy issues and it is not the practice to sit down with prospective members and go through every single rule contained in the IABA Rules. Where a person is young then the Club seeks the guardian’s consent. He said that when prospective members are given medical clearance to participate in boxing, the member is gradually introduced to the Club’s activities and does not begin sparring from the beginning.

28. Mr. Mooney referred to the Roll of Members of the Club submitted each year to the IABA. When asked he said it was not present in court. He referred to a “*sign in*” book and to boxing cards for members which are kept on file as evidence of membership, but none were produced in Court. Whilst he acknowledged that the IABA Rules provided for the submission of a membership list he did not know whether these records had been sought for the purpose of the case. He said this was not his area.

29. His evidence was, however, that the Club would submit the names of members who were behind on membership subscriptions or not paying subscriptions to the IABA because they were flexible and lenient regarding the payment of subscriptions. Mr. Mooney confirmed that he had not checked the membership register for any particular year to see if the Plaintiff’s name was on it.

30. Mr. Mooney confirmed that the Plaintiff was known to him he as a boxer. He agreed that the Plaintiff had retired from boxing but was unsure of the exact date. Mr. Mooney was aware that the Plaintiff became a coach shortly after retiring from boxing but could not confirm the date. He said that the Club did not have written rules as to who could become a coach. He referred to the IABA requirement that a person wishing to become a coach must complete a course with the IABA. The role of the Club, as far as Mr. Mooney was concerned, was to send the application form to the IABA with a recommendation that a person would make a good coach. He confirmed that retiring as a boxer does not conclude membership of the Club as people stay involved in training, helping and in the social side of the Club.

31. Mr. Mooney agreed that you had to be a member of the Club to be insured in the Club but said he had no dealings with insurance. Nonetheless, his evidence was that the insurance provider did not require the Club to have a list of members paid up to date. He stressed that the importance of listing membership of the Club with the IABA was to ensure that boxers can compete and the weighing of boxers for competition is managed by the payment by the Club of fees to the IABA on behalf of the membership.

32. The second witness called on behalf of the Club was Ms. Corrigan. While no longer a member of the Club, she confirmed that her role had been to sit on the door, take subscriptions in, work on the membership forms and send-off completed forms for courses. She said that Philip Sutcliffe (the Club administrator/secretary) worked on the affiliation forms returned to IABA. She observed that this now is online, but it used to be done in hard copy at the material times. She remembered the Plaintiff as a member and confirmed her recollection that his payment of subscriptions was sporadic. She observed that the Club did not always pursue subscriptions and the Plaintiff's dad was a volunteer, so he often helped at the club. He had three children who joined the club but sometimes did not pay.

33. Ms. Corrigan confirmed that she had filled out some aspects of the Plaintiff's application form for the coaching course and he had signed the form. She confirmed that you must become a member of the Club and IABA to participate in courses observing, "*otherwise what would be the point of paying for people to participate in a course - it would mean that they would be paying for random people*".

34. As for the status of coaches in the Club, Ms. Corrigan said that coaches are members of the Club and their reward for volunteering work is access to the Club's facilities. The quid pro quo for volunteering with the Club on Ms. Corrigan's evidence is that you are not required to pay subscriptions. She noted that her own children were allowed to participate for free because of her volunteering with the Club. Like Mr. Mooney, she confirmed that insurance for the Club is handled through the IABA.

35. Under cross-examination Ms. Corrigan agreed that she was partially involved in the process of preparing discovery in this case and had searched for records. Ms. Corrigan explained the lack of Club records with reference to GDPR saying that GDPR means that the Club cannot keep the documents after a certain amount of time. She said that due to GDPR

the Club had not retained Club Membership books, but she had contacted the IABA looking for records. She said there were hundreds of sign-in books and the Plaintiff had started as a member in the club in 2010 because she remembers he was in and out of the Club at that time. She said members come and go and often start a class but do not finish the year. In her search for records, she did not find any sign in records for the year concerned (2017).

36. Ms. Corrigan said in her evidence the only time the roll of membership is put together is when it goes to the IABA for affiliation. She said that the Club prepares a list of members, and this list goes to the IABA for records and insurance purposes, but copies are not retained at the Club. She said that there are *“loads of other people who maybe can’t afford the facilities of Club, are members but not insured and don’t go to IABA”* and whilst files are kept there is no list of members *per se*. She added that a new computer system called *“Blockworks”* has recently been introduced.

37. Ms. Corrigan confirmed that she had contacted the IABA looking for records as part of the discovery process but was unsure as to what she had requested. She recalled asking for the coaching application form but she did not seek the membership list because she was not clear what was required. She confirmed that she had not contacted the insurance company.

38. Ms. Corrigan relied on the fact that there is a photograph of the Plaintiff in a club tracksuit from 2017 to 2018 to confirm that he was a member at that time. She said she would presume that the Plaintiff was on the roll of members that was given to IABA. She said that the rules of the membership and subscriptions are found in the application form as it has a section at the bottom of the form in relation to the subscriptions.

39. When the hearing resumed on the 9th of November, 2023 following the making of discovery of records obtained from the IABA, two further witnesses were called. Mr. Sutcliffe, Head Coach and Club Secretary/Administrator at relevant times and Mr. Geraghty, National Development Manager with the IABA since 2018.

40. In his affidavit of discovery sworn in October, 2023 in which he explained the omission of the list of members to the IABA, Mr. Sutcliffe confirmed that it was his responsibility to submit the Club register to the IABA annually. He said:

“I accept that, as is clear from the documentation discovered herein, the full list of members names was not always furnished along with the annual affiliation form, and indeed on some occasions, no names were furnished at the time that the annual affiliation form was submitted. I say that no copies of these membership registered were retained by Crumlin Boxing Club.”

41. In his oral evidence, Mr. Sutcliffe confirmed that he knew the Plaintiff since he was a baby and that he was a long-standing member of the Club, first as a boxer and then as a junior coach. He confirmed that a person had to be a member of the Club to become a coach. Like other witnesses, he confirmed that the Club is not strict about the payment of subscriptions. He referred to photographs of the Plaintiff wearing the club tracksuit and tee-shirt over the years he participated as coach and agreed that the Plaintiff had received contributions towards expenses noting that he was unemployed at the time.

42. Presented with the records returned to the IABA he was asked why the names of some members were not included. He said there was *“not enough room on the page to put all names down”*, even though pages had been left blank and the possibility of enclosing extra pages was always open. He added *“sometimes they come in after you send in the affiliation form but they are still a member of the Club”*. Whilst he maintained that a person had to be a member to be a coach, he could not identify a written rule that requires this. He confirmed that a person is not allowed to coach unless they are a member because they must be affiliated to the IABA. He added that the Plaintiff was *“one of our very good coaches”* and he was a keyholder who was trusted to turn off the alarm. Mr. Sutcliffe confirmed that the Plaintiff applied to be a coach in November, 2015 but the Club practice is to train members informally before an application is made to the IABA for a coaching course. Accordingly, his evidence was that he believed that the Plaintiff was working with a coach before he did his course. Mr. Sutcliffe confirmed that in June, 2017, when the alleged assault occurred, the Plaintiff was a coach and was not boxing anymore.

43. Mr. Sutcliffe was asked how the Club Secretary would confirm a person was a member when certifying membership for the purpose of the IABA coaching course. He considered there was no need to check any document in the Plaintiff’s case because he had been a member for years. When asked about the Club’s Roll of Members he conceded that the Club was *“not the best for keeping paperwork”*. His evidence was that even though the Plaintiff’s name did

not appear on the list of members sent to the IABA for 2015 or coaches sent in 2017, this did not mean he was not a member. When asked where the evidence was that the Plaintiff was insured as member if his name was not on the list submitted to the IABA, Mr. Sutcliffe was unsure. It was put to him that a coach is in a different position to a boxing member because he must be garda vetted and is no longer expected to pay subscriptions. Mr. Sutcliffe could not explain why the Plaintiff appeared on the list of members submitted to the IABA some years and not others other than to blame his paperwork and say that some people were better at paperwork.

44. For his part, Mr. Geraghty confirmed that the IABA rely on clubs to maintain membership records and to submit accurate information. At the time, however, the obligation to submit names was annual only and there was no obligation to update details during the year. His evidence was that the fact that a member's name did not appear on the list did not mean that they were necessarily uninsured, but the position would be queried by the insurance company. The practice was to contact the Club to ascertain if a person was a member and the response to this might be that a person had joined after the form was submitted and this would be communicated to the insurance company. The gist of Mr. Geraghty's evidence was that the failure to include a member's name on the roll of members returned to the IABA was not determinative of the question of whether a member was insured in the event of injury. He confirmed that the insurance company did not require the IABA to provide it with a list of members names but asked the IABA to confirm the position in this regard and the absence of a name from the list of members named as being on the Club's would result in further enquiry in the event that a claim is notified.

FINDINGS OF FACT

45. I find the following facts on the evidence heard:

- The Plaintiff applied to join the Club in 2006 and again in 2012 through the completion of an application and member's acknowledgement form.
- The Club does not have a written constitution or a rule book governing membership and the only rules are those contained on the application form or posted to the walls of the Club.

- On joining the Club, it was agreed by the Plaintiff and the Club through the terms of the signed application form and acknowledgement form that:
 - (a) A yearly membership fee applied (€50 in 2006 and €450 if over 17 years of age in 2012);
 - (b) Subscriptions were payable weekly before training commenced;
 - (c) Where a week was missed, double subscriptions must be paid the following week before training commenced;
 - (d) The Plaintiff also became a member of the IABA and agreed to abide by their rules;
 - (e) The Plaintiff agreed that on becoming a member of the Club/IABA, he waived his legal right to sue them where to do so would be incompatible with his membership;
 - (f) The Rules adopted by the IABA could be amended during the term of membership and would be complied with by the member;
 - (g) The member agreed to be seen by a doctor to be certified as fit to box before participating in boxing;
 - (h) A certificate from the doctor was required to be submitted with the Application form;
 - (i) Membership could be revoked or suspended for violation of any Safety Rules adopted by the IABA.
 - (j) Where a member was missing from the Club for 3 weeks without notifying a coach with a reason, the member would have to apply for membership again if he/she wished to resume training.
- It is not established that the Plaintiff paid an annual fee of €50 in 2006 or €450 in 2012 or that the annual fee was paid in any year.
- While to join the Club the application form notes that the Plaintiff was required to be certified as fit to box by his GP, no evidence that this occurred in the Plaintiff's case was given. It is not established that the Plaintiff ever complied with this requirement of membership. The GP's certificate which should be appended to his application form in both 2006 and 2012 was not produced.

- As a member of the IABA, the Club is required under the IABA Rules of Membership to submit its membership register and full roll of members to the IABA.
- The membership register was required to be kept up to date annually (rules 6(4) and (13) IABA Rules of Membership).
- Each club is required to maintain its own registration book in which the names and other relevant details of all club members are kept (Appendix 3 to the IABA Rules of Membership).
- The evidence regarding the maintenance of a Roll or Register of Members was confused, lacked clarity and was contradictory. I am satisfied that the Club did not, in fact, maintain a Roll or Register of Members contrary to the rules of membership of the IABA.
- Instead, I am satisfied that the Club operated a system of sign-in books and maintained files on each member and conflated these records in the evidence of some witnesses with a membership book or Roll of Members.
- There were many more files than there were current boxers or members such that the existence of a file or indeed a sign-in book did not reflect current membership.
- The Club did not submit its membership register and full roll of members to the IABA each year between 2011 and 2020 contrary to the requirements of the Rules of the IABA. Some years no names at all were returned.
- Although a record of subscriptions received was kept, no record of the Plaintiff paying subscriptions has been produced.
- The Plaintiff paid subscriptions sporadically when a boxer with the Club and before he became a coach. He never paid a subscription once he became a coach with the Club. The Plaintiff had not paid any subscription fee in several years at the time of the incident in 2017.
- As a matter of practice, the Club did not enforce the requirement that subscriptions be paid adopting a lenient and flexible practice. This lenient and flexible practice was not unique to the Plaintiff.
- As a matter of practice, persons who volunteered their time to the Club were not required to pay a subscription for themselves or their children but were still considered by the Club to be members and were afforded access to Club facilities.

- The Plaintiff ceased boxing sometime prior to 2015 and was not listed as a Club member on affiliation documentation submitted to the IABA between 2011 and 2016.
- The Plaintiff applied for a coaching course supported by the Club in November, 2015.
- The coaching course was open to members of the Club, but the Club did not certify that the Plaintiff was a member of the Club on his application form, which was signed by the Plaintiff himself only, despite the form envisaging confirmation of membership by the Club secretary.
- The Club did not check the Plaintiff's membership status according to their official records when supporting the Plaintiff's participation in the coaching course and did not sign his application form confirming that he was a member even though this was required by the terms of the form.
- The Plaintiff was not listed as a member of the Club on the Affiliation Form submitted to the IABA that year (2015) nor for several years previously which means that the IABA accepted the Plaintiff onto the coaching course without requiring confirmation of Club membership.
- Affiliation with the IABA is important for participation in events and for insurance purposes as insurance of Club members is organised through the IABA.
- Failure to include a member's name on the roll of members submitted to the IABA means that they may not be insured.
- The Plaintiff was not included as a named Club coach or member on affiliation records submitted to the IABA in either 2017 or 2018.
- The Plaintiff participated in Club events between 2014 and 2017 as apparent from photographs of him wearing the Club tracksuit and tee-shirt training young boxers or on outings with young boxers and others wearing the Club tracksuit or tee-shirt.
- The Plaintiff was included on the list of coaches submitted to the IABA in 2016 and 2019 but despite the fact that he was not included in other years no fresh application for membership coincides with his inclusion on the list in either 2016 or 2019. There is no evidence of continuous attendance at the Club in a manner which would have avoided the necessity for a fresh application in order to include his name in those years in circumstances where his membership had lapsed.

- Coaches at the Club are not remunerated but are afforded access to Club facilities free of charge.
- The Plaintiff received a contribution from the Club for his expenses while working as a coach.
- Not all coaches received a contribution to their expenses and payments were made to the Plaintiff because he was unemployed.
- The Plaintiff considered himself a member of the Club and was welcome to participate in Club activities.
- There is no written rule requiring a coach to be a member of the Club.
- The IABA require that coaches be listed by reference to the club they coach.
- Coaches' attendance with boxers at events is regulated through their registration with a club.
- The records show that the Plaintiff was included on the list submitted to the IABA only in 2016 and 2019. He was not listed between May, 2017 and May, 2019.
- In June, 2017, the Plaintiff went on a trip to Benidorm, Spain which was organised by members of the Club, for members of the Club. There is no evidence that Club membership status was a condition of participation in the trip or was checked for the purpose of the trip. Specifically, the Plaintiff's assailant was on the trip but the Club has completed its discovery on the basis that it does not hold records of membership in the three years prior to June, 2017. No evidence was offered in relation to who was eligible to participate in the trip in June 2017 and how this was policed.

LEGAL PRINCIPLES

46. In helpful submissions by counsel, I was referred to a series of cases including *Murphy v. Roche*, (Gannon J.), *Kirwan v Mackey* [1995] 1 JIC 1801 (Carney J.) *Walsh v. Butler* [1997] IEHC 9 (Morris J.), *Dunne v. Mahon* [2014] IESC 24 (Clarke J.), *McGoarty v. Kilcullen & Ors.* [2021] IEHC 679 (Hyland J.) and *Brady v. Moore & Scanlon* [2022] IEHC 420 (Stack J.).

47. It is clear from this caselaw that absent special circumstances a member of a club cannot sue his or her fellow members in relation to club activities. This principle was identified in *Murphy v Roche* [1987] 5 JIC 1504 at para. 17 as follows:

“By reason of the legal identification of the Plaintiff with the Defendants by virtue of their mutual membership of the Club the Plaintiff cannot maintain the present proceedings against the members of their Club or these particular members being the Defendants as trustees.”

48. In other words, because a club has no separate legal identity from that of its members (it is an unincorporated association), a member suing the club by means of an action against the club’s trustees or committee members as representatives of the members is in law suing herself. There was no issue in *Murphy v. Roche*, however, as to whether the Plaintiff was in fact a member of the club and this fact was admitted in that case.

49. Similarly, in *Kirwan v. Mackey* [1995] 1 JIC 1801, a case involving the accidental shooting of a member of a gun club by another member of the gun club, no issue arose as to whether Mr. Kirwan was a member of the club. It was accepted for the purpose of the preliminary issue that the Plaintiff had been a member for over twelve years of the Callan and District Gun Club. In *Kirwan*, Carney J. followed *Murphy v. Roche* and held that the proceedings were not maintainable against the officers, committee and trustees of the club by a club member. As recorded in the judgment, at the time material to the accident, the club had thirty-nine members who each paid a subscription of £20 per annum. The club was unincorporated and unregistered. It had Rules and issued a membership card. It held an Annual General Meeting at which officers were elected. The officers were honorary and they engaged in little activity. The club had neither property nor premises. The club negotiated with local farmers permission for its members to shoot over the farmers lands. It arranged insurance through the National Association of Regional Game Councils and every shooting member of the club was required to be insured.

50. It is noteworthy having regard to the fact that in the boxing context insurance is arranged through the IABA, that in *Kirwan* it is recorded in the judgment that the game hunting compensation fund of the National Association of Regional Game Councils, if appropriate insurance was in place, indemnified a member of the club against liability at law for injuries caused by such member when engaged on shooting activities. Such indemnity extended to include injury caused by one member of the club to another. In the particular circumstances of *Kirwan* the second named defendant had been a member of the club but he had allowed his

membership to lapse. On the material date he was no longer a member of the club and was accordingly not insured or indemnified by the Game Hunting Compensation Fund of the National Association of Regional Game Councils. The claim for compensation arising from the shooting injury was not covered by insurance because the second named defendant's membership had lapsed.

51. In *Walsh v Butler* [1997] IEHC 9, a case heavily relied upon by the Plaintiff, the defendant argued that the plaintiff was not entitled to seek recovery of damages against a rugby club on the basis that he was a member of the club. The plaintiff alleged that he had been injured while playing rugby for the club. The club had no constitution or rules until 1979. In 1979 rules were adopted. Those rules provided members were to be elected and that, as team members, they were required to pay an annual subscription. In the year 1989/90 the plaintiff took over as team captain of the first team. He had paid his subscription in the year 1988/89. There was no evidence that he paid for the year 1989/90. The accident happened in spring 1990.

52. The plaintiff argued that the procedure provided for in the rules for the election of members was never employed in his case and therefore, although everyone concerned regarded him as a member of the club, he was not in the legal sense a member of the club. He further argued that even if he was a member of the club up to 1988/89, since there was no evidence he paid his subscription, at the time he received his injury he was no longer a member of the club as his membership had lapsed in accordance with the rules.

53. The defendants argued that the plaintiff was estopped by his own conduct from making the point he was not a member of the club as he had held himself out to be such a member. It was further argued it was within the capacity of all members of the club to agree to accept a member into the club without the necessity for following the formal procedure provided for by the rules. Morris J. considered whether, by participating in the full activities of the club, the plaintiff acquired membership of the club but concluded that he did not and could not because of the terms of the relevant rule. This clearly stated that all members, including juvenile members, had to be elected by the general committee and this was the only route by which a person could join the club. Further, he noted that even if payment of the plaintiff's subscription could have been construed as rendering him a member of the club, his failure to pay after that date meant that in accordance with the rules his membership lapsed. Accordingly, he

concluded that if the plaintiff had ever been a member of the club, he was not a member on the date of the accident.

54. In rejecting the argument that the plaintiff should be treated as having been admitted into membership although the procedure set out in the rules providing for election of members had not been followed, Morris J. observed:

“24. To hold otherwise would give rise to a situation where the Committee of the Club would have lost all control over affairs of the Club. Members could be assumed into the Club and shed from the Club without the knowledge of the General Committee. The contractual relationship as between members regulated by their acceptance of the General Committee as the regulating authority would be varied without their approval and consent.”

55. Both sides rely on the decision of Clarke J. for the Supreme Court in *Dunne v. Mahon* [2014] IESC 24. Describing the nature of a club, Clarke J. in *Dunne* observed:

“5.1 It is clear that the principal legal basis for the existence of a club is a contract between all of the members for the time being (see Walsh v Butler [1997] 2 I.L.R.M. 81; Conservative and Unionist Central Office v Burrell [1982] 1 W.L.R. 522). As an unincorporated association of individuals, a club has no separate legal personality (Sandymount and Merrion Residents Association v An Bord Pleanala & ors [2013] IESC 51; Feeney v. McManus [1937] I.R. 23). However, that is not to say that a club does not have some form of legal existence. So long as the contract between its members stays in being, then it can reasonably be said that a club continues to exist.”

56. In overturning the High Court where it had been found that the rules could be amended by implication through practice, Clarke J. observed as follows:

“6.3 The starting point of any analysis has to be that, prima facie, the rules, representing as they do a contract between all of the members, cannot be altered except by agreement of all those members or in accordance with a specific provision in the rules allowing for such amendment. That is the position which applies in respect of any

ordinary contract. A multi-party commercial arrangement cannot be altered without the agreement of all parties affected. The fact that it might make sense that a majority (or perhaps a large majority) could change the contract does not mean that such is legally possible unless the parties have agreed to an amendment mechanism. When people join a club they are committing both their efforts (whether great or small) and their resources (whether great or small) to the club on the basis of the rules as they then exist. They are entitled to have those rules applied and not to have the rules changed without their agreement (or in accordance with an amendment procedure which is to be found in the rules and to which they must be taken to have signed up by joining a club with such an amendment procedure).

6.4 Even if it might be taken to be prudent for any club to have an amendment procedure, it does not seem to me to follow that a court should imply one if it is not to be found in the rules. In the context of established errors in contracts, it is clear that a court can, in accordance with the "text in context" method of interpretation, properly interpret a contract in a way which acknowledges an obvious error but only where it is equally obvious as to what should have been in the contract concerned had the relevant error not taken place (Moorview Developments & ors v. First Active plc & ors [2010] IEHC 275)".

57. For their part the Defendants rely upon the dicta of Clarke J. in *Dunne*, specifically his observation at para. 5.5 as follows:

"5.5 ... On the other hand, there is authority for the proposition that the rules of a club should not be approached with the same degree of rigour. In In re GKN Bolts & Nuts Ltd Sports and Social Club [1982] 1 W.L.R. 774 at p. 776, Megarry V.-C. observed:

"In such cases, the court usually has to take a broad sword to the problems, and eschew an unduly meticulous examination of the rules and resolutions. I am not, of course, saying that these should be ignored; but usually there is a considerable degree of informality in the conduct of the affairs of such clubs, and I think that the courts have to be ready to allow general concepts of reasonableness, fairness and common sense to be given more than their usual weight when confronted by claims to the contrary which appear to be based on any strict interpretation and rigid application of the letter of the rules. In other words, allowance must be made for some play in the joints."

58. More recently and more relevantly given that membership was in issue, in *McGroarty*, Hyland J. found, following a review of the case-law above, that the club's acceptance of a payment by the plaintiff (such payment being less than the subscription amount) after the termination date did not alter the fact that his membership had been terminated. In that case the plaintiff was a scratch golfer who lost his index finger in carrying out maintenance work at the club premises. The plaintiff argued that he was not a member of the club by reason of the non-payment of his subscription by the 31st of January, which triggered an automatic termination of his membership under the club constitution. The defendants argued he was a member and made three alternative arguments in this respect – that the constitution, correctly interpreted, does not require the payment of the subscription by the 31st of January; that if it does, then that rule was altered by the practice in the club; or if it was not so altered, that the club had waived the requirement for payment by the 31st of January in the relevant year. The evidence in the case was to the effect that the plaintiff considered himself a member and represented the club competitively during the relevant period but had not paid his subscriptions up to date. The club gave evidence that this rule that subscriptions be paid by the 31st of January of the relevant year was not strictly enforced by the club, and that several other individuals in the club would have been in breach of this rule. Evidence was given that a member had never had their membership terminated for not paying their subscription.

59. Hyland J. concluded that the constitution of the club, properly interpreted, required that a member's subscription was to be paid by the 31st of January each year, failing which membership was deemed to be terminated. She acknowledged that the practice of the club was to ignore this rule and to treat persons, including the plaintiff, as members even where the subscription had not been paid. Indeed, in that case, the plaintiff entered club competitions and represented the club on teams playing interclub tournaments, although he had paid only a small part of his subscription by the 31st of January, 2015.

60. Following the decision in *Dunne & Ors v Mahon & O'Connor* [2014] IESC 24, Hyland J. concluded that these facts notwithstanding the rules of clubs could not be taken to be altered by implication, including by the practice of a club, in circumstances where those rules represent a contract between all of the members and where the members commit their efforts and resources to the club on the basis of the rules as they exist at the time of joinder. She added in rejecting the reliance placed on practice over the terms of the rule:

“Further, it is worth observing that any such approach would have serious consequences for the club. To accept this argument would mean that the way of ascertaining the rules on subscriptions in the club would be to identify current practice. Current practice may vary from member to member, from year to year, and from committee to committee. There would be an entire lack of certainty as to the rules of the club in relation to subscription payments and members would be left in a position of complete uncertainty as to their rights and obligations in this regard. It would also undermine the club’s ability to enforce its extant rules on subscriptions, thus preventing it from restricting non-paying members from playing in competitions, from using the facilities of the club, and from excluding them for non-payment. This would clearly be a highly unsatisfactory situation for the club.”

61. Hyland J. found that there was no evidence that the club had reinstated the plaintiff after his membership was terminated, or that this payment was a reinstatement payment. Nor was there any evidence of a waiver by the club of its requirements in relation to payment of the subscription. Accordingly, she found that the plaintiff was not a member of the club at the relevant date and is therefore entitled to recover as against the defendants.

62. Finally, most recently, in *Brady v. Moore & Scanlon* [2022] IEHC 420 the court was again concerned with a case in which it was not disputed that the Plaintiff was a member of the club. It is recorded in the judgment that this fact was conceded by the Plaintiff. At para. 41 of her judgment, however, Stack J. articulates the social utility of the legal rule that a member of a club cannot maintain proceedings against the club as follows:

“41. Imposition of a duty of care in these circumstances would result in a chilling effect on a wide range of social and leisure pursuits, enjoyed by a very large proportion of the population.”

APPLICATION OF LEGAL PRINCIPLES

63. The question in this case of whether the Plaintiff was a member of the Club in June 2017 falls to be determined on the facts established through the evidence adduced regarding membership of the Club. As the primary legal basis for the existence of a club is a mutual

contract between all the members for the time being, it follows that the nature of the legal status of a club and actions taken by its members in the context of their membership requires an analysis of that contract. Given that the issue of membership is contested in this case, the decisions in *Walsh* and *McGroarty* are the most relevant in identifying the principles to be applied when membership status is in question. The contract is ordinarily found in the rules but, unlike the situation in *Walsh* and *McGroarty* and other cases considered above, the Club did not have a constitution or a rule book for members. This makes the task of identifying the applicable rules and interpreting them more difficult in this case.

64. As established in evidence in this case, the written rules are silent regarding crucial issues such as the consequence of non-payment of subscriptions for membership status (unlike *Walsh* or *McGroarty* where it appears that non-payment of subscription caused the membership to lapse) or one's status when working as a coach with the Club having ceased participating as a boxer. Whatever about the difficulties in construing the terms of the contract in this case arising from the lack of a written rule on important issues, matters are compounded by the fact that the few clear rules which existed were not enforced in a clear or consistent manner.

65. Despite the absence of a constitution or a rule book and the absence of written rules on respect of important issues, some basic rules were communicated to members on joining. These rules were contained on the application form as acknowledged when signing the acknowledgement form. Membership of the Club also automatically led to membership of the IABA as a condition of joining. The application and acknowledgment forms clearly incorporated the rules of the IABA governing membership into the membership contract. While the IABA Rules were directed in the main to the membership of clubs of the IABA, they also imposed clear obligations regarding the maintenance of club records as to membership. I am satisfied that these records were important for participation in boxing events and for insurance which was organised through the IABA. I have found as a fact that the Club did not maintain a Register or Roll of Members despite the obligation on it to do so under its IABA affiliation and as a term of its agreement with members. The sign-in books referred to by several of the witnesses, and not produced in evidence or discovered as evidence of membership, are not in any event a register or roll of members. Insurance and participation in boxing events are organised through the IABA and affiliation with the IABA through Club membership is clearly an important component of membership. In this context it stretches credibility that if the Plaintiff were really a member of the Club at all material times, as it

contends, that between 2011 and 2020 his name appeared on the list submitted to the IABA only twice, namely 2016-2017 and 2019-2020. In these circumstances the absence of any application for membership in either 2016 or 2019 to coincide with the inclusion of his name on the list in those years is telling. Importantly, the Plaintiff's name did not appear on the list of members or coaches submitted in May, 2017, in the month prior to the alleged assault.

66. Furthermore, it was accepted by the Club in evidence that there are formalities pertaining to work as a coach with the Club arising under the IABA Rules including a requirement to be Garda vetted because of work with underage children. The maintenance of records and control of who is and is not a coach with the Club at any given time in this regard is clearly of importance from a child safeguarding perspective. Laxity in this regard is not acceptable. The inability of the Club to produce records to show that a coach was registered and affiliated through its Club with the IABA for insurance purposes and was garda vetted is not a matter of incidental importance but is be core to the contract of membership. The absence of these records is not consistent with a finding that the Plaintiff was indeed a member of the Club.

67. There is no evidence that the Plaintiff ever complied with the requirement to submit doctor's certification of fitness to box or paid an annual subscription, both seeming conditions of joining as a member in the first instance. If he ever met the Club's requirements for membership, which has not been established, the evidence shows that on its own case the Club did not honour its duties under its contract with members whose participation in events and insurance cover stood to be affected by affiliation with the IABA. Members signing up to the Club also signed up to membership of the IABA and agreed to waive their entitlement to sue the Club and the IABA as a condition of membership but this was in circumstances where they were signing up also to compliance with the Rules of the IABA which Rules required inclusion on a list of members who were thereby entitled to participate in IABA events and insured to do so.

68. In my view, a failure to include a person's name on records submitted to the IABA is not consistent with membership status being accorded to that person as the waiver of the right to sue the Club and the IABA given in the acknowledgement form completed on joining only applied in circumstances where membership of the IABA (and therefore insurance cover) was

assured together with membership of the Club. I have concluded that it is not open, as a matter of contract and having regard to the terms agreed through the application and acknowledgement form, to have one without the other. There is no evidence of compliance with those elements of the rules which would tend to establish the Plaintiff's status as a member of the Club in this case be it the inclusion of his name on the Roll of Members, the payment by the Plaintiff of subscriptions, doctor's certification of fitness to box or Garda vetting in the case of a club coach. Where a person is not recorded as a member of the Club and similarly not recorded as a member of the IABA, the unavoidable conclusion is that membership status was not accorded to that person.

CONCLUSION

69. It was clear on the evidence in this case that the Club is committed to working to teach skills to its membership and to making its facilities accessible to the socially disadvantaged community it serves. It is weak on paperwork and on agreeing and applying rules which, whilst understandable given the nature of the volunteer effort, is problematic. The words of Stack J. in *Brady v. Moore & Scanlon* are recalled. Exposure to risk of suit by voluntary associations and clubs runs counter to the considerations underpinning the general principle that members cannot sue themselves and permitting suit is likely to have a chilling effect on good work being done by a very large proportion of the population. Such chilling effect is a regrettable consequence of my decision in this case.

70. I recognise that onerous requirements in relation to developing clear rules and applying them as between a club and its membership are also likely to have a chilling effect. Nonetheless, an organisation which offers membership on terms which enables participation in organised sporting events and activities, especially where those events and activities entail risk for participants, many of whom are children, and arranges insurance cover for members as an incident of membership, is required to have rules as to membership to allow for certainty as to who its members are. These rules do not require to be elaborate, but they should be clear. Where a club does not have clear rules of membership and does not apply them, then it loses control over its membership. In losing control over its membership it does not properly protect those with whom it engages giving rise to a different set of considerations. These

considerations weigh every bit as heavily as the objective of promoting community, social and voluntary endeavour.

71. The chilling effect of exposure to suit for clubs and associations is best avoided or minimised through clear rules of membership and adherence to those rules. There were few clear rules of membership in this case, but there is no evidence that those rules, such as they were, were complied with by either the Club or the Plaintiff. The fact that the Plaintiff considered himself a member, behaved like a member, was treated by the Club as if he were a member and initially pleaded that he was a member (and has not yet formally applied to amend his pleadings), does not change the fact that he was not accorded the legal status of member because he was not entered on a register of members, did not enjoy all the benefits of membership (such as insurance cover or insurance cover which was not questionable) or discharge the obligations of membership (such as paying fees and submitting to medical certification as a condition of participation) in accordance with the rules. Accordingly, I cannot conclude that the Plaintiff was a member of the Club in June, 2017.

72. It will be a matter for the judge hearing this action to decide whether any liability arises on the part of the Club for the injuries sustained by the Plaintiff on a trip away in an assault by a non-party to these proceedings who, it appears, may also not have been a member of the Club at the time but was on the same trip but the Club is not protected from suit by reason of the Plaintiff's membership as his status as a member has not been established.