

Article Information

Authors: Mario Esera, Warren Jiear
Service: Property & Development
Sector: Real Estate

Pulse gets Pummelled - Body Corporate Ordered to Pay Thousands to former Caretaker

Pulse [2016] QBCCMCmr 43 - A recurring theme of these alerts is that all Bodies Corporate have a statutory obligation to act reasonably. Usually, identifying what actions are or are not reasonable can sometimes be difficult to discern.

Pulse [2016] QBCCMCmr 43 - A recurring theme of these alerts is that all Bodies Corporate have a statutory obligation to act reasonably. Usually, identifying what actions are or are not reasonable can sometimes be difficult to discern. However, the starting point should always be complying with the relevant legislation. Unfortunately, in the case described below, it appears as if the Body Corporate for Pulse overlooked this fundamental starting point. As a result, they received one of the most scathing decisions in recent memory.

Background

On 12 June 2009, TDCCT Pty Ltd as Trustee for Banks Pulse Management (**BP Management**) was appointed the caretaker and letting agent for the Body Corporate for Pulse (**Body Corporate**) under the terms of a Letting and Caretaking Agreement (**Agreement**).

Between December 2009 and June 2012, BP Management received about \$17,000 in payments from the Body Corporate for carrying out services not included in the Agreement - namely periodic readings of water and electricity meters (**Meter Reading Services**).

On 20 March 2015, BP Management entered into a contract to sell the Agreement to Quan Realty (**Sale Agreement**).

On 25 March 2015, the Body Corporate wrote to BP Management claiming (amongst other things) that:

- the Meter Reading Services had been carried out without the authority of the Body Corporate, and
- BP Management owed a debt to the Body Corporate in the amount of about \$19,000 - being the payments they received for Meter Reading Services plus costs.

BP Management disputed that the Meter Reading Services had been carried out without the authority of the Body Corporate or that any debt was owed.

On or about May 2015, the Body Corporate indicated that it would only consent to the transfer to Quan Realty if (amongst other things) BP Management paid them, *"the outstanding utility service charges regarding the electricity and meter readings in the amount of \$12,000 plus GST"* (**Payment**).

Concerned that Quan Realty would terminate the Sale Agreement, BP Management made the Payment and the transfer was completed.

Afterwards, however, BP Management complained to the Commissioner for Body Corporate and Community Management (**Commissioner**).

On 5 February 2016, an Adjudicator for the Commissioner ordered that the Body Corporate:

- had acted unreasonably in withholding its consent to the transfer to Quan Realty

- had breached of section 120(6)(b) of the *Body Corporate and Community Management (Accommodation Module) Regulation 2008 (Accommodation Module)* by receiving the Payment as consideration for its consent to the transfer
- had breached the Code of Conduct by failing to act reasonably and fairly, and
- must return the Payment to BP Management within 30 days.

Compliance with the Legislation

As mentioned, the starting point for all Bodies Corporate should be compliance with all relevant legislation.

When a caretaking and/or letting agreement is sold, Section 120(6) of the Accommodation Module states that a body corporate must not:

- unreasonably withhold approval to a transfer, or
- require or receive a fee or other consideration for approving a transfer (other than reimbursement for expenses reasonably incurred by the body corporate in relation to the application for its approval).

Here, the Body Corporate accepted that Quan Realty was suitably qualified to replace BP Management as their caretaker and letting agent. Notwithstanding this, they withheld approval of the transfer unless BP Management made the Payment which was plainly not an expense reasonably incurred by the Body Corporate in relation to the transfer. Therefore, the Body Corporate breached not one but both limbs of Section 120(6) of the Accommodation Module.

In the words of the Adjudicator who heard this case:

"[54] The conduct by the Body Corporate towards BP Management was unreasonable in the extreme and I have sympathy for the dire situation the applicant was placed in whereby the Body Corporate advised him that the approval for the transfer would not be granted unless the debt was paid. I accept he agreed to pay whatever funds were necessary to ensure the sale of the management rights business went to completion".

Comments

As with many cases of this kind, the Body Corporate could have spared itself significant cost and embarrassment had it simply acted reasonably.

Here the Body Corporate should have dealt with the Meter Reading Services dispute when it first came to their attention, which was in about October 2012 (**Debt Dispute**). Had it dealt with the Debt Dispute at the time and in the proper way it probably would have been resolved long before the second sale agreement was entered into.

Instead, the Body Corporate waited until the second sale agreement was entered into and then used that as an opportunity to leverage payment in the Debt Dispute at the same time. Whilst one can understand their desire to resolve both the Debt Dispute and the transfer simultaneously, by proceeding in this way the Body Corporate effectively held BP Management to ransom. It knew that it had BP Management between a rock and a hard place because without the Body Corporate's approval to the transfer the second sale agreement would likely be terminated.

In the words of the Adjudicator:

"[52]... I understand the Body Corporate's frustration, if it believed that the applicant had been paid for services that he was not entitled to receive and were not approved by the committee, however, its conduct and methodology to recoup those funds, was not appropriate.

[53] Whether BP Management did or did not owe a debt to the Body Corporate, any subsequent minor debt matter is a civil matter and one that should have been dealt with separately in a court of competent jurisdiction, and apart from the consideration of consent relating to a transfer of management rights."

As a result, the Debt Dispute remains unresolved and the Body Corporate probably finds itself in the unfortunate position of having spent more on legal fees than the Debt Dispute is even worth.

Critical Lesson

The critical lesson for Bodies Corporate to take away from this case is that when making a decision, it must avoid taking into account external factors and focus instead on what should be properly considered in that decision alone. Doing otherwise could result in the decision being deemed "unreasonable" and, as a result, being set aside.

If you or your Body Corporate is concerned about whether a decision you have made or about to make is "reasonable" or

you simply wish to discuss the matters raised in this article, please contact our [property & development team](#).

For other articles on the importance of Bodies Corporate acting “reasonably” please see here:

[The price for being “unreasonable” - Body Corporate ordered to pay costs in management rights dispute](#)

[Probably the most expensive Balcony in Queensland - A warning to Bodies Corporate about acting Reasonably](#)