Article Information

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A Very Expensive Typo – Body Corporate pays dearly for Drafting Defect

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Disputes between Bodies Corporate and their caretakers are not uncommon. Typically they are resolved promptly and inexpensively. Unfortunately, that was not the case for the Body Corporate for The Rocks Resort. Their dispute with their caretaker started in 2010 and continued over several years, culminating in a trial heard over ten days between 19 June 2014 and 30 October 2014. The result? The Body Corporate lost. Why? They used the word "within" when they should have used the words "not less than".

Peterson Management Services Pty Ltd v Body Corporate for The Rocks Resort [2015] QCAT 255 (21 May 2015)

Background

Since about 12 September 2003, Peterson Management Services Pty Ltd (**Peterson Management**) has been the caretaker for the Body Corporate for The Rocks Resort Community Titles Scheme 9435 (**Body Corporate**).

Between 18 June 2010 and 7 October 2010, the Body Corporate issued eight (8) remedial action notices to Peterson Management (**Notices**) claiming that they had (amongst other things) failed to:

- maintain the common property
- remove rubbish
- attend Committee Meetings.

On 22 December 2010, Peterson Management applied to the Queensland Civil and Administrative Tribunal seeking (amongst other things) declarations that each of the Notices were invalid.

Many years later, the Application went to trial and was heard over ten days between 19 June 2014 and 30 October 2014.

On 21 May 2015, the Tribunal delivered its decision. It declared that each of the Notices were invalid and of no effect because they did not comply with the mandatory requirements of section 129(4)(c) of the *Body Corporate And Community Management (Accommodation Module) Regulation 2008*.

The Typo

Remedial action notices must comply with certain mandatory requirements. One of the mandatory requirements is that:

- the person given the notice must carry out the duties or remedy the contraventions identified in the notice within the period stated (**Deadline**), and
- the Deadline must be "not less than" 14 days after the notice is given to the person.

Unfortunately, in this case the Deadline contained in the Notices was "within" 14 days of being given to Peterson Management – rather than "not less than" 14 days.

The Body Corporate argued that the expression "within 14 days" was the same as "not less than 14 days". The Tribunal rejected this argument, declaring instead that:

- a requirement to rectify the matters in the Notices "within 14 days" was contrary to the requirements of section 129(4)(c) of the Accommodation Module
- none of the Notices were remedial action notices within the meaning of section 129 of the Accommodation Module; and
- each of the Notices were invalid and of no effect.

Lessons for other Bodies Corporate

The first and simplest lesson for Bodies Corporate is that, when issuing remedial action notices, make sure that they comply with all formal requirements. Had that occurred here, the Body Corporate may have been spared the embarrassment of being struck down because of a typo.

The second and more significant lesson, however, is the importance of acting reasonably.

All Bodies Corporate have a statutory duty to act reasonably – which includes when making or not making a decision. Here, the Body Corporate made two critical decisions. First, they decided to dispute Peterson Management's Application. During the years between when the Application was made and when the trial started, it is estimated that the Body Corporate spent hundreds of thousands of legal fees.

The second decision the Body Corporate made was to represent itself at trial. That decision was just as important as it may explain why the trial took 10 days and may, in turn, actually increase the risk of costs orders being made against the Body Corporate. So far, no final orders have been made. But if the Tribunal is satisfied that interests of justice require it to make costs orders in favour of Peterson Management, then it would not be unreasonable to speculate that the Body Corporate could be ordered to pay costs which are estimated to be in excess of $300,000.

As a result, assuming an expenditure on the part of the Body Corporate of $300,000.00, this failed exercise could end up costing the Body Corporate and its members in excess of $600,000. What does the Body Corporate have to show for it? Nothing.

So were the decisions of the Body Corporate reasonable?

It is clear that the relationship between Peterson Management and the Committee for the Body Corporate had deteriorated dramatically over the years. One of the Notices alleged that Peterson Management had defamed the Committee. Another alleged that Peterson Management had acted in an abusive or aggressive manner to the Committee. During the course of the proceedings, there were numerous applications and the Tribunal mentioned that "no complaint has been left unturned". Reading between the lines, it seems that, as the relationship had soured, the Committee wanted to get rid of Peterson Management and were prepared to do and spend whatever it took to achieve that goal.

Unfortunately, it wasn't only the Committee who paid for those decisions – rather it was every lot owner at The Rocks Resort. It can be difficult, particularly where there is conflict, for members of Committees to remain impartial and objective. Had the Committee reminded themselves of their duty to act reasonably, they may have spared themselves and their members a lot of unnecessary costs, stress and embarrassment.

If your Body Corporate is engaged in a management rights dispute or simply wants to discuss the matters raised in this article, please contact either Warren Jiear or Mario Esera.