

Office of the Commissioner for Body Corporate and  
Community Management

# SCA (Qld) Webinar Series October 2016

*Recent – and interesting – adjudication orders*

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# Topics

- Quick adjudication refresher
- Interesting/noteworthy/unusual adjudication orders
- What does it all mean...

# Quick adjudication refresher

- On the papers
- On initiation of a party
- Parties have a chance to 'have their say'
- Results in a legally enforceable and appealable order
- Adjudicators are independent decision-makers

# Adjudication – musings...

- Notion of ‘precedent’ vs ‘on its merits’
- Adjudication made specific to circumstances and scheme
- Reliant on the ‘substance’ of submissions
- Subject to appeal processes

# Orders

## *Communication overload*



# Orders

- Tank Tower [2015] QBCCMCmr 322 (9 July 2015)
- BC v owner
- Seeking orders for 'nuisance' and/or by-law breach
- Respondent had been sending a large volume of correspondence on regular occasions to numerous people on the committee
- Applicant asserted the correspondence was repetitive, aggressive and threatening

# Orders

- Nuisance could not be made out; however, BC had a specific by-law about reasonable communication with committee
- Adjudicator said:

*“In sending emails to multiple persons, the respondent does not appear to understand that individual committee members have no capacity to unilaterally act or respond on behalf of the Body Corporate. Responses to correspondence, and action on issues raised, can generally only be determined by the Committee as a whole, for example through a formal committee meeting. The respondent’s demands for acknowledgement of correspondence and action within specified timeframes, are not mandated by the legislation and fail to recognise the statutory decision-making obligations”*

# Orders

- Adjudicator found a by-law breach
- Adjudicator modified restrictions proposed by the body corporate to be placed on respondent's communications
- BC not required to acknowledge communications and can disregard those that do not comply with restrictions
- *Importantly* - BC still required to act reasonably, e.g., in determining if communications repeat matters already raised

# Orders

## *Power of entry*



# Orders

- Arila Lodge [2016] QBCCMCmr 342 (21 July 2016)
- BC (and owner) v owner
- Seeking orders for '*emergency*' entry to respondent's lot to investigate water ingress to other lots and to mitigate damage – included other outcomes also (e.g., removal of a washing machine from common property)
- Application was made for emergency orders

# Orders

- Adjudicator considered the circumstances at play – found as follows:

*“In the absence of any contrary evidence from the respondent, I accept the conclusions of both Williams and Dyer as to the cause of the leak. I do not accept the unsubstantiated speculation from the respondent as to a potential pipe protruding into the ceiling of the Lot 2 bathroom.”*

*“As such these items are the responsibility of the lot owner to maintain. Accordingly I find that the leak emanating from Lot 3 has arisen from the failure of the owner of Lot 3 to properly maintain Lot 3.”*

*“Furthermore, I accept that the leak gives rise to emergency circumstances. In my view any water leak should be addressed promptly to avoid damage.”*

# Orders

- Considering the circumstances the adjudicator ordered:  
*“I **hereby order** that, providing that 24 hours written notice has been given by the Body Corporate for Arila Lodge to her email address (.....) and hand-delivered to Lot 3, the respondent (.....) must provide unobstructed access to Lot 3 to any persons authorised by the Body Corporate for Arila Lodge for as long as it is reasonably necessary to perform such work in or associated with the bathroom of Lot 3 and any utility infrastructure for that bathroom as is reasonably required to stop water leaking from Lot 3 to the lots below.”*
- Adjudicator also ordered that the Body Corporate was entitled to recover from the respondent the reasonable cost of carrying out work necessary to stop water leaking.

# Orders

## *Pets*



# Orders

- *Paradise Palms Leisure Villas [2016] QBCCMCmr 430*
- Owner v Body Corporate
- Seeking permission to keep 2 dogs
- Applicant had sought permission and the committee denied permission for both dogs
- Investigations were undertaken by the adjudicator as to the applicable pet by-law

# Orders

- It was found that the scheme did not have a pet by-law (at all) so permission was not required
- Application dismissed:

*“Given that there is no pet by-law, the applicant does not need the body corporate’s permission to keep pets on her lot. This requirement ordinarily only arises because most schemes have a by-law stating that pets are not permitted at the scheme without body corporate permission. Without such a by-law, there is no basis for me to make an order that the applicant is permitted to keep her dogs because there is no barrier to her doing so. That part of the application is dismissed.”*

- Main point to note: don’t assume what the by-laws are – check the registered scheme by-laws as included on the CMS

# Orders

## Nuisance



# Orders

- *Latona [2016] QBCCMCmr 421*
- Body Corporate v Owner
- Interim order sought:

*“That the owner of Lot 4 not create unreasonable noise or create a nuisance pending determination of the application.”*
- Final order sought:

*“That the owner of Lot 4 comply with by-law 1 Noise by not screaming abuse at other residents and the neighbouring residents.”*
- Dispute based on a noise by-law and section 167 of the Act

# Orders

- Limited circumstances i.e. must be occupier of a lot and is using the lot or common property in a way that is causing a nuisance, hazard, etc.
- Cannot be used for emails, phone calls, etc.
- Adjudicator issued an interim order:

***“I hereby order** that, pending a final determination of this application, the owner and occupier of Lot 4, (.....), must not cause any loud noise or engage in any threatening or abusive behaviour on her lot or the common property which is likely to interfere unreasonably with the use and enjoyment of other lots or the common property.”*

# Orders

- Adjudicator found:

*“I am satisfied that the Body Corporate has raised a genuine legal question about whether the respondent is behaving in a manner that is in breach of By-law 1 and section 167 of the Act. In the circumstances, I consider it is appropriate to make an interim order directing the respondent not to engage in offending conduct pending the determination of the final order.*

*I encourage the respondent to take this matter seriously and to show consideration for the other residents of Latona. She should be aware that it is an offence to contravene the order of an adjudicator, including an interim order. That offence can attract a penalty of over \$48,000. The Body Corporate can take action in the Magistrates Court to enforce this interim order.*

*If any resident has concerns about their personal safety or threatening behaviour, the appropriate course of action may be to contact the Queensland Police Service or seek advice about obtaining a Peace and Good Behaviour Order. “*

- Matter now referred to department conciliation.

# Orders

*Early payment discounts*



# Orders

- “*Seabreeze Estate*” CTS (order not yet on Austlii)
- Owner v body corporate
- Final order seeking a reinstatement of discounts for on-time (and early) payment of levies
- Consideration was given to the ‘reasonableness’ of the committee’s decisions about applying discounts

# Orders

- Owner argued that due to emergency medical situation, he:
  - Did not have access to devices which had reminders programmed for him to pay levies;
  - Would have been unable to do so at the time anyway, due to hospitalisation;
  - Was also unable to immediately after due dates, due to recuperation and medication; thus
  - The committee should have exercised its discretion re: discounts; and
  - Should also not be liable for “*arrears notice fee*” which showed on subsequent notices.

# Orders

- Adjudicator found:

*“It was obviously not possible for him to foresee the medical emergency that affected him from 29 July to 12 August 2015 inclusive. I do not see that this is an objectively reasonable basis for the committee to refuse to recognise that this medical emergency constituted special reasons for allowing a discount pursuant to section 145(6) of the Standard Module. “*

AND

*“I am not satisfied that it is reasonable for the committee to ignore section 145(6) of the Standard Module and refuse to recognise special reasons on the basis that doing so creates a stronger incentive for on-time payment”*

AND, in relation to an argument from the body corporate about setting precedent:

*“The committee cannot possibly be objectively considering all relevant circumstances if it has pre-determined its position on every application for recognition of special reasons before it has been made. The committee is obliged to consider each case on its individual merits.”*

# Orders

- Adjudicator found, in relation to reasonableness:  
*“I do not consider that any of the grounds advanced by the committee for refusing to reinstate the applicant’s lost discount are objectively reasonable. I also consider it relevant that the only time that the applicant has paid his contributions late is in this instance, and he has extensive documentation to substantiate that he was seriously ill and incapacitated during the period that payment was due.”*
- Points to note:
  - Applicant supplied statement from doctor and hospital records to support his case, BUT adjudicator did not order costs of obtaining those be reimbursed
  - Committee/BC must consider each case on its merits

# In conclusion

- Commissioner's Office:
  - 1800 060 119 (Freecall)
  - [www.qld.gov.au/bodycorporatequestion](http://www.qld.gov.au/bodycorporatequestion)
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