VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

OWNERS CORPORATIONS LIST VCAT REFERENCE NO. OC117/2019

CATCHWORDS

Manager – application for revocation of appointment – lot owner's standing to make the application.

General meeting – short notice – its effect upon a resolution for the election of a committee.

Delegation of powers to chairperson – whether instrument of delegation was valid.

Authorising order – application to pursue the proceeding on behalf of the owners corporation – application refused. Contract of appointment of manager – clauses 2.2, 7.2, 7.8 in standard form.

Owners Corporations Act 2006 ss 14, 20, 21, 72(1), 119, 122.

APPLICANT	Julian Marcus
RESPONDENT	Turnbull Cook Body Corporate Management Pty Ltd ACN: 092 466 987
INTERESTED PARTY:	Owners Corporation No. RP 10968
WHERE HELD	Melbourne
BEFORE	Senior Member A. Vassie
HEARING TYPE	Hearing
DATE OF HEARING	22 August, 27 November 2019
DATE OF ORDER	10 March 2020
DATE OF REASONS	10 March 2020
CITATION	Marcus v Turnbull Cook Body Corporate Management Pty Ltd (Owners Corporations) [2020] VCAT 298

ORDER

1. Julian Marcus and Justin Marcus are appointed as members of the committee of Owners Corporation RP 10968.

2. The application for an order authorising Julian Marcus to prosecute this proceeding on behalf of Owners Corporation RP 10968 is refused.

3. Otherwise the proceeding is dismissed.

A. Vassie
Senior Member

APPEARANCES:

For Applicant	In person
For Respondent	Mr. D. Slattery, solicitor (day 1), Mr M. Tennant of Counsel (day 2)
For Interested Party:	No appearance

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REASONS

A Dispute Between Lot Owner and Manager

1. The applicant Julian Marcus is the owner of lot 6 on plan of subdivision RP 10968. The subdivided land consists of a three-storey apartment building at 2 McGrath Court, Richmond. He is a qualified lawyer but does not practise as such. His brother, Justin Marcus, is the owner of lot 5. Justin Marcus is a practising solicitor. Wherever in these reasons I refer to "Mr Marcus" I mean the applicant, Julian Marcus.

2. The respondent Turnbull Cook Body Corporate Management Pty Ltd ("Turnbull Cook") has been the manager of Owners Corporation RP 10968, which affects all the lots and common property in the subdivision, since 2009 except for one brief period in 2019; I shall refer below to the reason for that small gap in its period of management.

3. The owners corporation has been joined in the proceeding as an interested party. It has taken no part in the proceeding although its chairman, Graham Costello, was present during the first day of the two-day hearing of the proceeding. He did not give evidence, but made a statement that he was happy with Turnbull Cook's management of the owners corporation.

4. Mr Marcus is not happy with it. He asks the Tribunal for an order revoking Turnbull Cook's appointment as manager, and for various other orders. His brother Justin Marcus supports him in that regard. At the end of his Amended Points of Claim filed on 4 July 2019 Mr Marcus asked for 20 separate orders or declarations. I paraphrase them as follows:

   (a) Revocation of Turnbull Cook's appointment, and substitution of a new manager;

   (b) Appointment of himself and his brother Justin Marcus to the owners corporation's committee;

   (c) Revocation of the appointment of Mr Costello as chairman, and substitution of another temporary chairman;

   (d) Payment or reimbursement to the owners corporation of:

      (i) management fees charged in relation to a special levy for roof replacement and to attempted creation of a car parking spaces; and

      (ii) what the owners corporation had paid in legal fees.

(e) Prohibition of Turnbull Cook from seeking indemnity from the owners corporation for any amounts which Turnbull Cook is ordered to pay;

(f) Orders requiring Turnbull Cook to maintain adequate records, to maintain a proper owners corporation register and to submit a revised statement of account;

(g) Orders that otherwise regulate Turnbull Cook's conduct if it remains as manager.

5. Until the owners corporation executed one at or shortly after its annual general meeting on 11 February 2019, there had never been an executed written contract of appointment of Turnbull Cook as manager. The document executed on 11 February 2019 was a standard form Strata Community Australia contract of appointment. There was evidence that a similar standard form document had been present in Turnbull Cook's file for the owners corporation, unexecuted, since 2012.

6. Clause 7.2 of the standard form Strata Community Australia contract of appointment is a clause by which an owners corporation agrees to indemnify its manager against certain liabilities or expenses. In his Amended Points of Claim Mr Marcus had sought an order declaring that clause "void". Between the first hearing date and the adjourned and final hearing date he expressly abandoned the claim for that order. He did so after I had told him during that first day of the hearing that if he persisted with it the Tribunal would notify Strata Community Victoria of the claim and could hear that association if it wished to be heard.

7. The chairman Mr Costello controls Purling Pty Ltd, which owns 4 of the 9 lots. The lot owners are:

Lot 1	Lavie, Dominique
Lot 2	Purling Pty Ltd
Lot 3	Walia, Vinod and Jeanavieve
Lot 4	Purling Pty Ltd
Lot 5	Marcus, Justin
Lot 6	Marcus, Julian
Lot 7	Richardson, Jack and Fiona
Lot 8	Purling Pty Ltd
Lot 9	Purling Pty Ltd

It can be seen that Purling Pty Ltd and Ms Lavie together command a majority vote, which they have often exercised. Mr Marcus has got occasional, but not continuous, support from Mr and Mrs Walia, who live interstate, and has the support of his brother Justin. There has been no evidence about Mr or Mrs Richardson's views.

The Hearing

8. On the first day of the hearing, 22 August 2019, Mr Marcus was self-represented. Mr Slattery, solicitor, appeared for Turnbull Cook. There was no appearance for the owners corporation. Mr Marcus gave evidence, verifying the alleged facts in his Amended Points of Claim and expanding on them. He tendered and I received an arch folder of documents referred to in the Amended Points of Claim, and various other documents not previously discovered. Justin Marcus also gave evidence.

9. Mr Slattery said that he did not wish to cross-examine Mr Marcus or his brother but, before calling evidence, sought an adjournment so that he could get instructions about those documents which were not in the arch folder. I granted the adjournment.

10. The hearing resumed on 29 November 2019. Mr Tennant of Counsel appeared for Turnbull Cook. He said that he wished to cross-examine Mr Marcus and to tender a ring folder of documents, some of which Mr Marcus had not previously seen. Mr Marcus objected. I granted the application to cross-examine Mr Marcus. The Tribunal's statutory obligations are to act fairly and according to the substantial merits of the case[1] and to conduct each proceeding with as little formality and technicality as a proper consideration of the matters before it permits.[2] It would have been unfair not to allow Turnbull Cook to correct what may have been a forensic error and to deprive it of its basic right to cross-examine Mr Marcus. I also allowed Mr Tennant to tender the ring folder of documents after allowing Mr Marcus some time to look at them.

11. Mr Tennant called evidence from two of Turnbull Cook's officers, Daniel Shields and James Hill. Most of the day-to-day management of the owners corporation was done by Mr Hill. Mr Marcus cross-examined both witnesses. At the end of the evidence I directed Turnbull Cook to file and serve a written submission, by way of final address, by 18 December 2019 and Mr Marcus to file and serve a written submission, by way of final address, by 17 January 2020. I reserved my decision.

12. On behalf of Turnbull Cook Mr Tennant filed and served a written submission of 57 pages. Mr Marcus's written submission in reply was of 97 pages. Some of it I have excluded from any consideration, for reasons I give below. Otherwise, I have considered both submissions.

13. Wherever in these reasons I refer to an Act, or to a section in an Act, the reference is to the *Owners Corporations Act 2006* unless I state otherwise.

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[1] *Victorian Civil and Administrative Tribunal Act 1998* s 97.
[2] Section 98(1)(d) of the same Act.

A Lot Owner's Standing

14. By s 119(1) of the Act an owners corporation may appoint a manager. By s 119(6) an owners corporation may revoke the appointment of a manager. An owners corporation does not need to obtain a Tribunal order for revocation of the manager's appointment, or to prove that the manager has been in breach of contract or in breach of a provision of the Act. It may simply decide to revoke the appointment and exercise its statutory right of revocation, even though by doing so it may itself be in breach of contract.

15. An individual lot owner like Mr Marcus has no contractual relationship with the manager; the contract, whether in writing or not, is between the owners corporation and the manager. And the individual lot owner has no statutory right to terminate or revoke the manager's appointment. The lot owner may, however, as Mr Marcus has done, apply to the Tribunal for an order revoking the appointment of the manager, which under s 165(i), (ii) the Tribunal has the power to do. But the Tribunal usually will not exercise that power unless the manager has been proved to have been in breach of s 122(1) of the Act, which provides:

> **122 Duties of manager**
>
> (1) A manager—
>
> (a) must act honestly and in good faith in the performance of the manager's functions; and
>
> (b) must exercise due care and diligence in the performance of the manager's functions; and
>
> (c) must not make improper use of the manager's position to gain, directly or indirectly, an advantage personally or for any other person.

The duties set out in s 122 are owed to each lot owner just as much as to the owners corporation.

16. By s 117 of the Act a member of an owners corporation committee has similar duties to those set out in s 122(1), and the Tribunal has the power to appoint, or revoke the appointment of, a chairperson or a committee member: s 165(h).

17. To achieve, therefore, orders of the kind that Mr Marcus seeks about the manager or the chairman Mr Costello, he must prove lack of honesty, lack of good faith, or lack of due care, or improper use of position.

18. The orders that he seeks for payment of reimbursement of money to the owners corporation, and for prohibiting Turnbull Cook from obtaining indemnity from the owners corporation, involve rights that the owners corporation would have under its contract with Turnbull Cook or restitutionary rights that the owners corporation may have. Mr Marcus personally has no such rights. He has applied, however, under s 163(1A) of the Act for an order under s 165(ba) of the Act authorising him to prosecute this proceeding on behalf of the owners corporation. I defer any consideration of that application until I have dealt with the merits, so far as Mr Marcus has presented them, of the claims that the owners corporation might have against Turnbull Cook.

19. I shall be dealing with the subjects in the Amended Points of Claim in a different sequence from that in which Mr Marcus presented them. After dealing with what he has said about three annual general meetings of the owners corporation I shall proceed in chronological sequence to the extent that that is possible.

Annual General Meeting: 2017

20. On 1 February 2017 Turnbull Cook gave to lot owners notice in writing of an annual general meeting to be held on 2 March 2017. The lot owners to whom the notice was sent were those whose names appeared in the owners corporation register maintained by Turnbull Cook.

21. On 3 February 2017 Mr Marcus settled his purchase of lot 6. On 8 February 2017 he sent an email to Turnbull Cook notifying it that he was the new owner of lot 6. Scott Taylor of Turnbull Cook acknowledged the message by an email on the same day in which he welcomed Mr Marcus. There were other email communications between them during February 2017. Mr Taylor did not tell Mr Marcus of the annual general meeting to be held on 2 March 2017 and Mr Marcus did not ask anything about an annual general meeting.

22. The meeting proceeded on 2 March 2017 without Mr Marcus having been notified of it, although notification had been given to his predecessor as owner of lot 6. Mr Costello and Ms Lavie attended the meeting. Mr Costello was proxy for Purling Pty Ltd. At the meeting the members elected Mr Costello as chairperson. On the same day, in apparent exercise of its power under s 11(2) of the Act, by instrument the owners corporation delegated to Mr Costello all of its powers and functions that it was permitted by law to delegate.

23. Mr Marcus argues that the meeting and resolutions passed at it were invalid because he was not given notice of the meeting. I reject that argument. The

requirements of s 72(1) of the Act were satisfied when on 1 February 2017 Turnbull Cook gave notice to all persons who were then lot owners according to the register. It is unfortunate that Turnbull Cook did not during February 2017 tell Mr Marcus about the meeting. Mr Shields gave evidence that

Turnbull Cook managed 430 separate owners corporations. It is understandable that Mr Taylor might not have readily brought to mind the date of this particular meeting when conversing with Mr Marcus by email. His omission to tell Mr Marcus of the date did not constitute any breach of a duty imposed by s 122 of the Act.

24. In his written submission Mr Marcus presented an argument that he had not covered in his Amended Points of Claim or mentioned during the hearing. The argument was that the delegation to Mr Costello was invalid because it was not properly executed and witnessed. The instrument of delegation[3] is a single page at the bottom of which is a notation "Page 2 of 2". If there was a first page it has not been produced. There is no prescribed form for an instrument of delegation. The owners corporation executed the document by affixing its common seal to it.

25. So far as it is presently relevant, s 21 of the Act provides:

> **21 Who must witness the use of the common seal?**
>
> (1) The use of the common seal on a document must be witnessed by at least 2 persons who are owners of separate lots and are members of the owners corporation.
>
> ……
>
> (3) If a lot owner is a corporation, a director of the corporation may witness the document on behalf of the corporation.
>
> (4) Each lot owner or director who witnesses the use of the common seal must record next to the seal that he or she has witnessed the use of the seal by—
>
> (a) signing his or her name; and
>
> (b) printing in full his or her name and address; and
>
> (c) stating that he or she is a lot owner or a director of the corporation that is a lot owner.

[3] Page 25 of Turnbull Cook's folder of documents.

26. The document provided two spaces for "Witness 1" and "Witness 2" to sign and print their respective names and addresses. In the space for "Witness 1" Ms Lavie signed her name. Her name and address were typed, not printed in handwriting. "Witness 2" was left blank. But below a heading "Delegates' Declaration and Signature" Mr Costello signed and printed his name and gave a typewritten address, below a sentence which began "I hereby accept the delegated responsibilities on behalf of the owners corporation…"

27. Despite the first page, if there was one, being missing it is clear enough that the document was a delegation to Mr Costello, the chairperson, of the owners corporation's powers. Nevertheless the document was irregular in an important respect (the absence of a second witness; Mr Costello did not sign it as a witness) and in unimportant respects (typewritten, not printed, details). Moreover, the minutes of the 2017 annual general meeting did not include any resolution authorising the use of the common seal, as required by s 20 of the Act.

28. The Act does not provide for any consequences that would flow from a failure to comply with s 20 or s 21. The Act does not provide that any document is invalid as an instrument if those sections have not been complied with, or that an instrument of delegation is invalid if its common seal has not been used with the authority of a resolution. I think that the sections are directed towards desirable formality rather than towards validity. That view of the matter gets support from s 22, which provides for judicial notice of the common seal and a presumption that the seal was properly used unless the contrary is proved.

29. In my opinion there was a valid and effective delegation on 2 March 2017 of the owners corporation's powers to Mr Costello until the next meeting.

Annual General Meeting: 2018

30. Mr Marcus attended the annual general meeting held on 5 February 2018. All members attended, either in person or by proxy.

31. Three resolutions of significance were passed at the annual general meeting:

    (i) All owners were elected as members of the committee, and they resolved to delegate to the committee all of the owners corporation's powers. That was the end of the delegation to Mr Costello alone, and Mr Marcus became a committee member.

(ii) There was a resolution not to proceed with any lease or licence of common property for car parking. The significance of that matter will appear below.[4]

(iii) There was a resolution that there should be an executed contract of appointment of Turnbull Cook as manager. Mr Marcus did not give any evidence of having voted against the motion for that resolution. However, no contract of appointment was executed at the time.

32. Mr Marcus's complaint about the 2018 meeting is that, before it occurred, Mr Hill telephoned other members and urged them to attend the meeting, but did not telephone Mr Marcus or his brother. Mr Marcus's evidence about this was hearsay, based upon what other members had told him. He alleged that Mr Hill's conduct in that respect had exhibited bias against him. Mr Hill gave evidence that he had no recollection of having made such telephone calls. After the meeting Mr Marcus sent Mr Hill an email complaining about the alleged conduct. Mr Hill replied by email, stating only that the complaint was noted. The absence of any contemporaneous denial of the allegation leads me to find that Mr Marcus's evidence on the matter is probably correct. In not telephoning Mr Marcus too, Mr Hill was guilty of discourtesy but not of anything that amounted to unacceptable bias or breach of any of a manager's duties, in my opinion.

Annual General Meeting: 2019

33. On 29 January 2018 Turnbull Cook gave notice by email to all owners of an annual general meeting of the owners corporation to be held on 11 February 2019. At the time Mr Marcus was abroad. He pointed out by email in return that Turnbull Cook had not given 14 days' notice as required by s 72(1) of the Act. Turnbull Cook conceded that the notice was too short.

34. The meeting went ahead nevertheless. All members except Mr Marcus and Justin Marcus attended: Mr and Mrs Walia by teleconference, and the others either in person or by proxy. Although the minutes of the meeting made no reference to the fact, Mr Hill gave evidence, which I accept, that he told the attendees that the notice given had been too short and they all said that they were happy for the meeting to continue.

35. In the context of the proceeding there were three important resolutions that were passed at the meeting. First, there was an election of committee members: Mr Costello as chairperson, Ms Lavie, Mr Walia and Fiona Richardson. So no longer were Mr Marcus and Julian Marcus on the committee. Secondly, it was resolved that the owners corporation delegated to the committee all of the owners corporation's functions and powers. Thirdly, it was resolved that the owners corporation should execute a

[4] See paragraphs 53-57 below.

contract of appointment of Turnbull Cook as the manager. On either the same day or the following day (the document is dated 12 February 2019) the owners corporation executed a contract of appointment of Turnbull Cook as manager from 1 January 2019 to 30 December 2019. Mr Costello and Fiona Richardson signed as witnesses, this time in proper compliance with s 21 of the Act.

36. Mr Marcus argues that because too short a notice of it was given the annual general meeting for 2019 was invalidly held and all resolutions passed at it were invalid. The relief sought in his Amended Points of Claim, however, depends only upon invalidity of the resolutions about the committee and about the appointment of manager; sensibly, he has not asked the Tribunal to decide that everything done by or on behalf of the owners corporation since the meeting has been invalid.

37. Submitting that the failure to give 14 days' notice did not necessarily result in invalidity of the meeting or by resolutions passed at the meeting, Mr Tennant cited a passage from a leading High Court authority on statutory interpretation:[5]

> An act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it is depends upon whether there can be discerned a legislative purpose to invalidate any act that fails to comply with the condition. The existence of the purpose is ascertained by reference to the language of the statute, its subject matter and objects, and the consequences for the parties of holding void every act done in breach of the condition.

Mr Tennant submitted, correctly, that the Act does not provide for any consequence of too short notice having been given. There has been a decision of the Supreme Court of New South Wales[6] which included an observation that a failure to comply with a provision about notice can have consequences that are significant, or trifling, or something in between, so that it is difficult to see why the objects or purposes of the Act in question would be promised by holding that every decision, regardless of its importance or lack of importance, was invalid. The Tribunal has applied that decision[7] but has borne in mind that the New South Wales Act has some provisions that are not found in the Victorian Act (as Mr Marcus correctly stated in his written submission).

38. The resolutions about the contract of appointment and about the election of and delegation to committee members were about significant, not trifling,

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[5] *Project Blue Sky Inc v Australian Broadcasting Authority* (1988) CLR 335 at [91].
[6] *The Owners – Strata Plan No 57164 v Yau* [2016] NSWSC 1056, approved on appeal [2017] NSWCA 341, (2017) 96 NSWLR 587.
[7] For example, *Owners Corporation PS 407621Y v Grundl* [2017] VCAT 1550.

matters. The possibility that the short notice resulted in their invalidity is real.

39. In my opinion, the owners corporation did not need the authority of a resolution, valid or otherwise, passed at the 2019 annual general meeting to enable it to enter into the contract of appointment dated 12 February 2019. It had the authority already from the resolution passed at the 2018 annual general

meeting to execute a contract of appointment with Turnbull Cook, a resolution that was not limited to any period of time[8]. Nothing would be achieved by my deciding whether the resolution passed in 2019 was valid or invalid, so I do not decide it.

40. The resolution that elected a committee and delegated powers to the committee cannot be viewed in the same light. Its practical effect was to exclude Mr Marcus and Justin Marcus from the committee, they having been members of it during the previous year.

41. Turnbull Cook has submitted that I should find that Mr Marcus and Justin Marcus were ineligible to be committee members by virtue of s 103(7) of the Act because they were in arrears of fees due to the owners corporation at the time of the 2019 annual general meeting. The allegation that they were in arrears was not put to either of them and did not emerge until Mr Hill in the course of his re-examination made the allegation. He did not support it by reference to any document or record. That evidence was unsatisfactory and I do not accept it. The allegation has not been made out.

42. To the extent that it excluded Mr Marcus and Justin Marcus from membership of the committee, the resolution for election of the committee was invalid as a consequence of too short notice of the annual general meeting given to them. I defer for the time being the question of what order I should make in that regard.

Access to the Register

43. Part 9 Division 2 of the Act requires an owners corporation to maintain an owners corporation register and provides (in s 148) for what must be kept on the register. It must be kept "in a form that is readily accessible" (s 149). On request of a lot owner, the register must be made available to the lot owner for inspection at any reasonable time (s 150(1)). Likewise, on request, the records of the owners corporation must be made available to a lot owner for inspection, free of charge (s 146(1). Throughout its period of management Turnbull Cook has assumed the task of ensuring that the owners corporation has complied with those obligations.

[8] Minutes of the 2018 annual general meeting are part of document 1.6 in Mr Marcus's folder of documents.

44. On 30 March 2017 by appointment Mr Marcus attended Turnbull Cook's office to inspect the records. Before meeting him Mr Shields downloaded all of the documents of the owners corporation that were on Turnbull Cook's computer system onto a USB memory stick. He allowed Mr Marcus to use a computer terminal to access the information on the USB stick. Mr Marcus's evidence was that the documents be viewed had not been put into any understandable order, were an "incoherent and incomprehensible bundle"

    and did not include any of the information that s 148 required to be included. He left a note for Mr Shields asking him to provide a list of lot owners' names and addresses and a copy of any contract of appointment. As I understood the evidence, Turnbull Cook provided the list promptly, told Mr Marcus that the contract was not readily available but was in the Strata Community Australia standard form, and eventually provided him with a copy of the unexecuted contract that had been in its files since 2012.

45. There is no reason why an owners corporation manager cannot maintain a computerised record of documents belonging to or concerning the owners corporation, but it must do so in a way that makes the register readily accessible for a lot owner and makes the details required to be kept on the register readily identifiable. Mr Marcus's evidence on this subject, which I accept, demonstrates that in 2017 Turnbull Cook fell short of what was required. As Mr Marcus eventually got all of the information that he sought, I do not consider it appropriate for the Tribunal to do anything other than to record a demerit point, so to speak, against Turnbull Cook.

Special Levy for Roof Replacement

46. In June 2017 the owners corporation, through Turnbull Cook, imposed a special levy of $40,917.80 upon lot owners for replacement of the roof at 2 McGrath Court. The lot liability of lot owners being equal, each lot owner was levied for a share of the total. The levy was imposed following an inspection by a plumber on 28 April 2017 of a report of water entry into lot 8. Turnbull Cook obtained several quotations from plumbers for replacement of the roof. The plumber whose quotation was accepted had reported to Turnbull Cook that the roof metal was badly corroded and that the roof had an insufficient fall. Mr Costello, to whom the owners corporation's powers had been delegated as described above, instructed Turnbull Cook to accept the quotation and to raise the special levy.

47. Having received notice of the special levy, Mr Marcus raised objections. He queried why it was necessary to replace the roof instead of repairing it. He also asked why no special resolution for the works had been sought and obtained. The answer to that second query is that the levy was for an amount that was no more than twice the total amount of the current annual fees payable and so, by reason of s 24(4) of the Act, no special resolution was

required. Turnbull Cook answered the first query in correspondence sent to lot owners that stressed the poor condition of the roof. There was nothing unreasonable in Mr Costello's decision, on behalf of the owners corporation, to act upon tradesmen's advice by deciding to replace the roof and to raise a special levy, and nothing improper in Turnbull Cook acting in accordance with his instructions. During the hearing Mr Marcus conceded that he was not in a position to say what work on the roof should or should not have been done.

48. When the works were completed, the cost was less than the amount of the accepted quotation. Turnbull Cook informed the lot owners that the surplus would be held and used for other building improvements. Mr Marcus was dissatisfied and Justin Marcus refused to pay the amount levied upon him.

49. Eventually at the 2018 annual general meeting held on 5 February 2018, the members resolved to replace the special levy with another special levy notice based upon the actual cost of the roof replacement and to refund to all owners a share of the surplus funds raised.

50. One of Mr Marcus's complaints about how the special levy was raised is that the levy should have been, all along, for the actual cost of the works. That complaint is illogical. Ordinarily an owners corporation can responsibly engage a tradesperson to do work only if it is in funds to pay the person. To raise the funds it must levy the members. It cannot know the actual cost until the work is complete. It must levy on the basis of estimated cost, the estimate being given usually in the form of a quotation. Incurring a liability to pay for expensive works before being sure it had the funds in hand to make the payment would be irresponsible.

51. His other complaint was about an alleged lack of consultation. He was entitled to ask Turnbull Cook to explain the need for the special levy and the basis for its calculation, and it seems to me that Turnbull Cook did so. He was not entitled to demand the obtaining of his approval for the works. Mr Marcus appeared to lose sight of the fact of the delegation of powers to Mr Costello throughout 2017, entitling Mr Costello to make decisions.

52. Nothing about the role that it played in dealing with the special levy gives any support to the claim that Turnbull Cook breached its duties as a manager.

Car Parking Space: Line Marking and Licences

53. Before 13 August 2017 painted lines, delineating a car parking space, appeared on part of the common property. Who initiated the painting, and who paid for it, was not made clear in the evidence. It was done, apparently, for the benefit of Ms Lavie. Mr Marcus has alleged that Turnbull Cook organised it on its own initiative, but there was no evidence that it did. The

line marking occurred when the delegation of powers to Mr Costello was still operative, so, if he authorised the line marking, he was entitled to do so.

54. On 13 August 2017 Mr Marcus made and sent to Turnbull Cook a written complaint about the line marking, and asked that it be removed. In the complaint he correctly pointed out that the common property belongs to all lot owners beneficially as tenants in common. Part of the common property could be used exclusively by one lot owner only if there were to be a lease or licence

of it by the owners corporation to that lot owner, authorised by a special resolution of members (s 14 of the Act). Mr Costello, through Turnbull Cook, instructed solicitors to prepare a licence for the purpose, and the solicitors did so, at the owners corporation's cost. The evidence left unclear the amount of the cost, but Mr Marcus has accepted that it did not exceed $880.00.[9]

55. No licence was ever executed. At the 2018 annual general meeting the members decided not to proceed with any licence. Turnbull Cook, at its own expense, had the painted lines removed.

56. Turnbull Cook admits that it was in error in facilitating the painting of the lines and having solicitors draw a licence agreement without first having conducted a vote of members with a view to obtaining a special resolution. But Turnbull Cook did have Mr Costello's delegated authority to retain the solicitors. (Mr Marcus complains that Mr Shields wrongly told him by email that "the committee" had approved the retaining of solicitors; there was no committee in 2017; the correct information would have been that Mr Costello approved it, having had the delegated authority to do so.)

57. The outcome of the matter was that the owners corporation unnecessarily incurred an expense of $880.00 or less. If that was the fault of the manager the remedy is the owners corporation's not Mr Marcus's, but he has sought leave to make the claim on its behalf. As his lot liability is one-ninth of the total lot liability, the financial impact of the expense upon him is less than $100.00. I say that to introduce a sense of proportion, lacking until now, to this topic.

Windows; "By passing the Committee"; "Hard Ball"

58. In the first half of 2018 an issue arose about the condition of windows in the apartments on the lots. According to Mr Hill's evidence, timber in windows was rotting and he got approval from Mr Costello and Ms Lavie to obtain quotations for the replacement of all windows. He could not get agreement from the members about how the cost of replacement should be met. Mr Marcus expressed the view that only those members whose windows within

[9] Mr Marcus's written submission, page 48, paras 266—268.

their apartments were to be replaced should pay the cost of replacement of those windows but the cost of replacement of other windows within the common property should be borne by all members in proportion to their lot liability. The difficulty about accepting that view was that the plan of subdivision left room for argument about which windows were in common property and which were not.

59. Mr Hill referred the issue to Mr Slattery, the principal of Legal and Mediation Services, solicitors, for advice. He did so after getting the approval of Mr Costello and Ms Lavie, who were "the majority" of the committee (as he told Mr Marcus later) but he did not seek Mr Marcus's approval. Mr Hill's email dated 21 June 2018 to Mr Slattery, seeking his advice, included the following sentence:

> There is one who owns 4 units in the property and one other owner who are both onside to replace the windows. There are two solicitors who own one unit each and are playing hard ball on all issues in the building to the point (sic) they don't acknowledge there is majority vote between the owner above. Can you please draft up an email for use to forward to the committee in an effort to get them to make a decision based on quotations we have supplied them.

60. Mr Marcus has two complaints about Mr Hill's conduct in retaining Mr Slattery and about the email.

61. The first complaint derives from the fact that, after the 2018 annual general meeting and at the time that Mr Slattery's advice was sought, Mr Marcus was a member of the owners corporation's committee; indeed, all lot owners had become members of the committee. Mr Hill was wrong when he said that Mr Costello and Ms Lavie were the majority of the committee. They commanded two votes out of six at any committee meeting: numbers calculated on the basis that there must not be more than one member of a committee from any one lot (s 163(3) of the Act). On the other hand, at any meeting of members of the owners corporation they commanded five votes out of nine (there being one vote for each lot: s 91 of the Act). So for practical purposes it was sufficient for Mr Hill to get the approval of Mr Costello and Ms Lavie.

62. On 22 June 2018 Mr Slattery sent a letter of advice to Mr Hill that showed the complexity of the question of who should pay for replacement of the windows. Based on notations of boundaries in the plan of subdivision, Mr Slattery advised that walls abutting accessory lots were part of the owner's

lot but otherwise the boundary of a lot was the median of a wall; each lot owner should pay for replacement of a window in a wall that was part of the lot, and then pay half of the cost of a window in a wall where the median was the boundary, the other half being payable by the owners corporation. The advice seems to me to have been correct. If I understood Mr Hill's evidence correctly, the cost of the letter of advice was $400.00, a modest sum in the circumstances.

63. While Mr Marcus is entitled to say that Mr Hill ought to have consulted more widely before retaining Mr Slattery to give the advice, it is unrealistic to say that there was no need for the owners corporation to have sought the advice of a lawyer. It was faced with a situation in which Mr Marcus, himself a lawyer, was giving an opinion that the owners corporation should proceed with window replacement only if it allocated the cost in a way that he thought it should be allocated, but the majority of lot owners (Mr Costello's company and Ms Lavie) did not agree with him. In my view it was almost inevitable that the owners corporation should seek outside advice from another lawyer, whether or not Mr Marcus agreed to its doing so.

64. Mr Marcus's other complaint, which he has expressed at length, is about Mr Hill's phrase "hard ball." He says that it was insulting and has the potential "to besmirch a lot owner's reputation to a third party, especially a solicitor"[10] and also to damage his reputation as a lawyer. He goes on to say that Mr Hill's conduct in bypassing the committee (as he puts it) and in using insulting language in the email demonstrated a bias against him and the unfitness of Turnbull Cook to be the owners corporation's manager.

65. It would have been better for Mr Hill not to have used the phrase. However, Mr Marcus has over-reacted. Many solicitors would be only too pleased to be called "hard ball" players; others would not be pleased, but I doubt that they would be affronted. Mr Hill was entitled to regard Mr Marcus as being difficult to deal with and to say so. I do not accept that he displayed bias or partiality against Mr Marcus. Nothing that Turnbull Cook did, in the matter of seeking legal advice about the incidence of the cost of replacing windows, would justify a revocation of its appointment as manager.

DG Building & Maintenance Services

66. In early 2017, before Mr Marcus became a lot owner, Turnbull Cook had engaged DG Building & Maintenance Services to perform some maintenance work for the owners corporation at 2 McGrath Court Richmond. For some reason DG Building & Maintenance Services did not render an invoice for its

[10] Points of Claim, paragraph 2(c)(ix).

work until 4 September 2018.[11] According to the invoice the work involved replacement of damaged letter boxes, repairing a latch on a gate and replacing a sign. The amount charged in the invoice was $2,904.00. There must have been an earlier invoice that I have not seen, because on 14 August 2018 Mr Hill sent an email to all committee members, including Mr Marcus, asking them to approve payment.

67. Mr Marcus has alleged that the invoice should not have been paid because the work that the contractor was engaged to do had not been completed, as Mr Hill ought to have known because he had made a site inspection on 13 August 2018. In his evidence Mr Marcus stated that awnings had not been replaced. The invoice, however, did not make a claim for payment for replacement of awnings. Because a quotation that DG Building & Maintenance Services had submitted had included several alternative proposals, one of which included the replacement of awnings, Mr Marcus may have jumped to the conclusion that its task had included the replacement of awnings. There was no other evidence in support of the claim that Turnbull Cook had allowed the owners corporation to pay for incomplete work. The allegation was not made out.

Dispute Resolution Procedure

68. The prescribed model rules[12] for owners corporations applied to Owners Corporation RP 10968, it having made no special rules of its own. Model rule 7 set out a grievance procedure applicable to disputes between (amongst others) a lot owner and a manager. The rule provided for a party making a complaint to prepare a written statement in the approved form, for the owners corporation to be notified of the dispute, and for the parties to the dispute to meet within 14 days and discuss the matter in dispute.

69. On 13 August 2017 Mr Marcus made two formal written complaints, one about the line marking on common property and the other about the special levy for roof replacement. On 28 August 2018 he made another formal written complaint, this time about the retaining of Mr Slattery to give advice about how the cost of replacing windows should be borne. Although in 2017 Turnbull Cook did not arrange for any meeting as required by the rule, it did contact Mr Marcus by email to ask him to advise of a suitable time for him to attend a meeting at its office.[13] No meeting was arranged, probably because Mr Marcus escalated the matter by a complaint to Consumer Affairs Victoria, to which Turnbull Cook responded in writing on 1 September

[11] Document 2.7 attached to the Amended Points of Claim.
[12] The model rules in force at all time material to this proceeding were those prescribed in Schedule 2 to the *Owners Corporation Regulations 2008*.
[13] Respondent's folder of documents p 82.

2017.[14] No meeting was arranged after the 28 August 2018 complaint; there is no evidence of any attempt by Turnbull Cook to arrange one.

70. Mr Marcus is correct to say that Turnbull Cook did not comply with model rule 7. In my opinion, however, in view of the history of the whole range of disputes as played out during the hearing of this proceeding, any meeting arranged in compliance with the rule would have been a waste of time and effort. The non-compliance did not amount to a breach by Turnbull Cook of any of its duties under s 122 of the Act.

New Roof Leak

71. In December 2017 Mr Marcus reported to Turnbull Cook a water leak into his apartment, and on 8 December 2017 by email asked Mr Hill, or a plumber, to contact him to arrange a time for a plumber to investigate.[15] By the time of the annual general meeting on 5 February 2018 Mr Marcus and the plumber had not been able to arrange a mutually suitable time for the plumber to investigate. The matter was raised at the meeting. On 8 February 2018 Mr Hill by email gave Mr Marcus the telephone number of Roofline, the company that had replaced the roof during the previous year, and asked him to contact Roofline to arrange an on-site meeting.[16]

72. Mr Marcus has complained about the email on 8 February 2018, saying that the Roofline representative only had to inspect the roof, not to inspect inside any apartment, and that Mr Hill ought to have dealt with the matter himself. By failing to do so, he claimed, Mr Hill caused Turnbull Cook to breach its duties as manager. There was no evidence about whether the inspection ever took place or, if it did, what was the result of it.

73. There is nothing in this point at all. Mr Hill did what most owners corporation managers would have done, which was to suggest to Mr Marcus, an owner-occupier, the quickest and most efficient way of arranging the investigation of the leak, namely, direct contact between Mr Marcus and the tradesman to make suitable arrangements rather than through Mr Hill as an intermediary. That is what Mr Marcus had volunteered to do by his email of 8 December 2017 and I see no reason why he could not have done it in February 2018. I reject this allegation against Turnbull Cook.

"Overcharging"

74. Following a directions hearing in this proceeding on 24 April 2019 there was a discussion between Mr Marcus and "another lot owner" (so Mr Marcus said in his evidence; he did not identify that other lot owner) about possible settlement of the proceeding. Mr Marcus said that if Turnbull Cook's

[14] Respondent's folder of documents pp 78 - 81.
[15] Attachment 3.1 to the Points of Claim.
[16] Attachment 3.2 to the Points of Claim.

appointment were to be terminated and if it were to charge a reasonable exit fee upon termination he would withdraw the proceeding.

75. On 20 May 2019 Turnbull Cook sent to all lot owners an email which set out the charges that Turnbull Cook would make if its contract of appointment was terminated as at 30 June 2019.[17] The charges totalled $3,860.00. The email asserted that Turnbull Cook was entitled to charge at an hourly rate or (in one instance) as a fixed rate in accordance with clause 2.2 of the standard Strata Community Australia contract. Details of the charges were:

Attendance to provide inspection of any records of the OC	1 hour	$ 200.00
Review of Complaints (September 2017) (Roof)	2 hours	$ 400.00
Carpark Lease Ballot (not charged)	2 hours	$ 400.00
Review of Complaint (CAV)	5 hours	$1,000.00
Review of Points of Claim (to date)	3 hours	$ 600.00
Attendance to VCAT	3 hours	$ 600.00
Transfer of Account in the event of Termination	Ref 2.2	$ 600.00
Total		$3,860.00

76. On the following day, 21 May 2019, Mr Costello on behalf of the owners corporation, by email to Turnbull Cook, terminated its appointment. On 28 May 2019 Turnbull Cook invoiced the owners corporation for all the charges set out above, except for the termination fee of $600.00.

77. Presumably because he considered that the charges were not reasonable, Mr Marcus did not withdraw the proceeding. So the owners corporation re—appointed Turnbull Cook as manager.

78. Mr Marcus is asking me to decide, first, that the charging of excessive fees is a reason for the Tribunal to revoke the appointment of Turnbull Cook as manager, and secondly, to order Turnbull Cook to repay those fees to the owners corporation.

79. The contract of appointment that the owners corporation executed on 12 February 2019, in the standard Strata Community Australia form, divided fees that Turnbull Cook was entitled to charge into three sections. The first clause 2.1 set out an annual fixed fee and listed the services to which the fee applied: keeping a bank account in the name of the owners corporation, arranging public liability insurance, organising annual general meetings, sending fee notices, and other services that would enable the owners corporation to meet its basic statutory obligations. The second, clause 2.2, set out "additional services paid by hourly rate or fixed fee." That is the

[17] Respondent's folder of documents pp 138 – 139.

clause relied upon to support the rest of the charges that Turnbull Cook claimed in its email to lot owners dated 20 May 2019. The third, clause 2.3, for "disbursement fees", is not presently relevant.

80. Two of the charges - $600.00 for "Review of Points of Claim", and $600.00 for "Attendance to VCAT" – are in the nature of steps in the defence of this proceeding, and warrant separate consideration, which I give below.

81. As the first four of the charges relate to things done before 12 February 2019 when the owners corporation executed a contract of appointment for the first time, the question arises how Turnbull Cook is entitled to charge at all for "additional services" performed before that date. In my opinion, any member of the owners corporation knows, or ought to know, that if the manager performs any services that are not covered by the annual fee because they are in addition to enabling the owners corporation to perform its basic statutory obligations, it is performing those services in circumstances in which it would expect to be paid a reasonable fee for them. Often a manager will not charge anything beyond the annual fee unless the volume of correspondence with which it has to engage with the members, or with one of them, is inordinate. The volume of correspondence with Mr Marcus with which Turnbull Cook had to deal was inordinate. It was entitled to charge a reasonable fee for dealing with it. There is no reason to suppose that a charge of $200.00 per hour is not reasonable. It was the rate to which the owners corporation agreed in the 2019 contract of appointment.

82. To the first charge of $200.00 for providing inspection of records, Mr Marcus objects that by virtue of s 146 and s 150 of the Act he was entitled to inspect records free of charge. So he was; but the charge of $200.00 is for a service rendered to the owners corporation not to him. On the evidence of what Mr Shields did on the day of Mr Marcus's inspection, the charge was proper. Otherwise the evidence has not enabled me to say whether Turnbull Cook spent the number of hours set out in its list of charges in respect of each item on the list, although I make the observation that as no ballot for a car park lease or licence was conducted (as I understood the evidence) there is a doubt about whether the charge of $400.00 is justified. On the evidence I am not in a position to decide, and I do not decide, that any of the charges was excessive.

Charges for Defending the Proceeding

83. Turnbull Cook's charges of $600.00 for "Review of Points of Claim" and of $600.00 for "Attendance at VCAT" relate to things that Turnbull Cook did after the contract of appointment dated 12 February 2019 was executed. Its entitlement to recover such charges therefore depends upon construction of the contract of appointment.

84. In his written submission on behalf of Turnbull Cook Mr Tennant argued that two items in clause 2.2 of the contract of appointment were the source of Turnbull Cook's entitlement at the rate of $200.00 per hour. One of the items is "Attendance to VCAT." The other is "Liaison….with….Lawyers….in relation to work or matters affecting the Owners Corporation". Neither of those items expressly covers the case of review or perusal of Points of Claim. Moreover, the two charges relate to things done in defence of a proceeding against Turnbull Cook by a lot owner; not to things done for the owners corporation. I do not accept the argument that clause 2.2 is the source of entitlement to make the two charges.

85. As Mr Marcus apprehended in his Amended Points of Claim (in paragraph 7(g)) another possible source of the entitlement is clause 7 of the contract of appointment, headed "Indemnities". By clause 7.2, the owners corporation "hereby … indemnifies the Manager and holds the Manager harmless against all …. expenses (including without limitation reasonable legal costs….) … in relation to or arising indirectly out of the performance or non-performance by the Manager … or otherwise from any causes of action including negligence …. except to the extent that such loss is caused by or contributed to by the Manager's dishonesty or fraud". Clause 7.8 provides that the owners corporation must indemnify Turnbull Cook for "all reasonable costs reasonably incurred by the Manager … in consequence of the manager being a party to any proceeding relating to the Owners Corporation".

86. The exception in clause 7.2 does not apply. There has been no proof of any dishonesty or fraud on the part of Turnbull Cook, let alone any dishonesty or fraud that caused or contributed to the two "expenses" in question.

87. Nevertheless, clause 7.2 raises difficulties of construction. The present proceeding is not an appropriate one for a decision about them. The clause seems primarily to be directed towards liabilities that might be incurred from claims made by third parties external to the owners corporation. The question in this proceeding is whether clause 7.2 requires the owners corporation to indemnify Turnbull Cook against the incurring of legal costs in defending a claim against Turnbull Cook by a lot owner. Because of the view I take about the application of clause 7.8 I do not attempt to answer the question.

88. In my view the two charges of $600.00 each are justified by the terms of clause 7.8 because they are reasonable costs reasonably incurred in consequence of Turnbull Cook being a party to a proceeding relating to an owners corporation. It does not follow, however, that other costs incurred by Turnbull Cook in defending that proceeding are necessarily "reasonable costs reasonably incurred." My decision is about only the two items claimed.

89. In his Amended Points of Claim Mr Marcus referred to s 168(2) of the Act, which empowers VCAT to make an order prohibiting a manager from seeking or enforcing an indemnity from the owners corporation or any other party. That section has no application to legal costs incurred by a manager, only to "an order…relating to payment of money by a manager." So it has no application in this proceeding.

Applicant's Written Submission

90. While much of Mr Marcus's 97-page written submission was a legitimate reply to Turnbull Cook's written submission, the submission went well beyond a legitimate reply, attempting to introduce claims and allegations that had not been raised in any way before or during the hearing. To a party who is a qualified lawyer I should not need to say that the Tribunal's decision must be given on the basis of claims made and evidence given during the hearing.

91. There was one matter that Mr Marcus raised for the first time in his written submission but I have considered and decided above. That was the contention that the purported instrument of delegation of powers to Mr Costello in 2017 was ineffective. It depended upon issues of law and upon the construction of the instrument, not upon any oral evidence. I could and did decide it without hearing from Turnbull Cook. Otherwise I have given no consideration to any of the other new matters that Mr Marcus attempted to introduce in his written submission. These matters included:

    (a) "The respondent has not produced any written proxy [from Purling Pty Ltd] for Graham Costello for the 2017 year."[18] But no issue about a proxy was made in the Amended Points of Claim or during the hearing; the need for Turnbull Cook to produce a written proxy did not arise.

    (b) The submission noted that "the Tribunal make an order that the respondent refund to the [Owners Corporation] all management fees from 2019 AGM until the termination of the contract".[19] In an appendix to the submission Mr Marcus made a list of 193 separate fees which totalled $7,580.45. The length of the hearing would have been increased considerably if he had introduced the claim before or during the hearing, but he had not.

    (c) A challenge to charges made "to recover the special levy" for the replacement of windows, totalling $1,840.05. The charges he listed

[18] Written submission, paragraph 35.
[19] Written submission, paragraph 245.

were for reminder notices and for debt recovery[20]. I infer that Turnbull Cook had included those charges in fee notices addressed to Mr Marcus on behalf of the owners corporation requiring payment to be made to the owners corporation. It is not a claim that he can make against Turnbull Cook; he could make it against the owners corporation only. The owners corporation is not and could not be a respondent in this proceeding. If he were to attempt to make out the claim in this proceeding, Mr Marcus

> would be acting inconsistently, attempting to walk both sides of the street; he cannot in the same proceeding apply for an order authorising him to pursue the proceeding "on behalf of" the owners corporation, as applicant, and apply for an order against it as a respondent. It is not for that reason that I refuse to consider the matter. I refuse to consider it because it was never raised before or during the hearing. I see no reason why Mr Marcus could not begin a fresh proceeding, against the owners corporation, to pursue this claim, should he see fit to do so.

(d) Multiple claims of $250.00 each for civil penalties against Turnbull Cook, apparently under s 166 of the Act. That section does not assist him because it applies only in the case of a determination that a person has failed to comply with a rule of the owners corporation. Obligations to comply with the rules are imposed only upon lot owners and occupiers, not upon owners corporation managers. Moreover, Turnbull Cook had no notice of a claim for civil penalties.

92. Mr Marcus attached to his written submission various documents. Some appeared to be non-contentious: photographs of the roof, for instance, I could not understand the relevance of others. At all events I was not assisted by the documents but they did no harm.

Manager: No revocation of Appointment

93. Mr Marcus has made several references to the Strata Community Australia (Victoria) Code of Professional Conduct, alleging that things that Turnbull Cook did or failed to do amounted to breaches of the code. The Code has no statutory or regulatory force. It is merely a guide to how owners corporation managers should conduct themselves. The issue is whether anything that Turnbull Cook did or failed to do amounted to a breach of its duties imposed on it by s 122 of the Act. Any breach of those duties would almost certainly be a non-compliance with the Code also, but the converse is not necessarily true.

[20] Written submission, paragraphs 406 – 408.

94. In the foregoing reasons I have noted a number of matters about which there could be criticism of Turnbull Cook's conduct from time to time. I list them in what I consider is the order of importance:

    (i) Giving too short a notice for the annual general meeting in 2019.

    (ii) The owners corporation register and records were not as accessible as they should have been at the time of Mr Marcus's inspection in March 2017.

    (iii) On the owners corporation's behalf it engaged solicitors to prepare a draft licence agreement before seeking a special resolution.

    (iv) It did not put in train the dispute resolution procedure following Mr Marcus's formal complaints.

    (v) Using the "hard ball" phrase about Mr Marcus in an email to Mr Slattery.

    (vi) Not giving Mr Marcus a courtesy call to remind him of the 2018 annual general meeting.

95. None of the above matters, whether taken individually or as a whole, comes anywhere near the type of conduct that could be regarded as a breach of any of the duties which s 122 of the Act imposes upon a manager. Perhaps an exception is the first: giving too short a notice for a meeting could be considered to be evidence of a lack of care. Even if it is, it was a single lapse, not part of pattern of conduct that would justify the revocation of Turnbull Cook's appointment as manager. I refuse Mr Marcus's application for an order for revocation of the appointment.

96. Mr Marcus sought orders for the regulation of Turnbull Cook's conduct in future: he sought orders requiring it to keep adequate records to maintain a proper owners corporation register and to submit a revised statement of account. So far as I can tell, the request for a revised statement of account is simply another way of saying that there should be money refunded to the owners corporation. I shall deal with that when I consider the application for an order authorising him to prosecute this proceeding on behalf of the owners corporation. Otherwise, nothing is gained by the Tribunal making orders requiring Turnbull Cook to obey the law. It has that obligation anyway, without the Tribunal saying that it has. It is not appropriate for the Tribunal to attempt to supervise or police the way that a manager carries out its functions. I refuse the application for such orders.

The Committee and the Chairperson

97. I have decided that the resolution at the 2019 annual general meeting for election of the owners corporation's committee, insofar as Mr Marcus and Justin Marcus were excluded, was invalid.

98. In that respect I consider that they have suffered an injustice that ought to be remedied. I make an order under s 165(1)(h)(iii) of the Act appointing them as members of the owners corporation's committee. I appreciate that my making of such an order creates a risk of escalated disputation between them and other committee members, and between them and Turnbull Cook. Yet that was a risk that the other members undertook when in 2018 there was a resolution that all members of the owners corporation should be members of the committee. Despite my order, at the next general meeting of the owners corporation may resolve as to who should or should not be committee members.

99. There has been no evidence of any personal failing on Mr Costello's part that might justify any revocation of his appointment as chairperson of the owners corporation. I refuse Mr Marcus's application for an order for revocation.

An Authorising Order?

100. Mr Marcus has applied under s 163(1A) of the Act for an order under s 165(1)(ab) authorising him to have instituted and prosecuted this proceeding on behalf of the owners corporation to claim from Turnbull Cook the repayment of sums that Turnbull Cook has received from it.

101. For reasons I have given above the only arguable claims that the owners corporation might have against Turnbull Cook are for recovery of:

    (a) the sum, no greater than $880.00, paid to a solicitor for the drafting of a licence agreement, and

    (b) $440.00 being the cost of the preparations for a ballot.

102. In the overall scheme of things those sums are small and their financial impact upon members of the owners corporations has been small. There has been no evidence of any support from any other member except Justin Marcus for the idea of recovery of those sums from Turnbull Cook. I consider that Mr Marcus's application for an authorising order reflects a personal grievance that he has and does not have any likely benefit for the owners corporation. I refuse the application for the authorising order.

Outcome

103. The only positive order that Mr Marcus achieves is the order appointing him and his brother to the committee. Otherwise the proceeding is dismissed.

A. Vassie
Senior Member

10 March 2020