



Supreme Court
New South Wales

Case Name: The Owners Corporation – Strata Plan 64807 v BCS Strata Management Pty Ltd

Medium Neutral Citation: [2020] NSWSC 1040

Hearing Date(s): 7 August 2020

Date of Orders: 7 August 2020

Decision Date: 7 August 2020

Jurisdiction: Equity - Duty List

Before: Williams J

Decision: The Court does not have jurisdiction to determine the matters in prayers 2, 3, 4 and 5 of the Summons filed on 4 August 2020. The balance of the proceeding is transferred to the Consumer and Commercial Division of the NSW Civil and Administrative Tribunal.

Catchwords: COURTS AND TRIBUNALS – jurisdiction – jurisdiction of Supreme Court and NSW Civil and Administrative Tribunal – Civil and Administrative Tribunal Act 2013 (NSW), Sch 4, cl 5(3) – where proceeding commenced in NSW Civil and Administrative Tribunal (“NCAT”) concerning the validity of an annual general meeting called by the managing agent of a strata scheme – where another proceeding is subsequently commenced in the Supreme Court raising substantially the same issues – whether the Court has jurisdiction to hear and determine those issues in light of the previously commenced NCAT proceeding – no jurisdiction to hear and determine those issues

PRACTICE AND PROCEDURE – transfer – transfer from Supreme Court to NSW Civil and Administrative Tribunal (“NCAT”) – where prayer for relief in summons

claims an order for the managing agent of a strata scheme to deliver up to the chairman of the strata committee a list of owners and their contact details – where NCAT has jurisdiction to determine such claim – whether appropriate to transfer claim to NCAT for determination – proceeding transferred

Legislation Cited: Civil and Administrative Tribunal Act 2013 (NSW), ss 28, 39, Sch 4 clls 5 and 6
Evidence Act 1995 (NSW), s 136
Strata Schemes Management Act 2015 (NSW), ss 8, 24, 181, 188, 226, 232, 237, 238, 240, 241

Cases Cited: Steak Plains Olive Farm Pty Ltd v Australian Executor Trustees Ltd (2015) 18 BPR 35,471; [2015] NSWSC 289
The Owners – Strata Plan No. 54026 v Ternes [2019] NSWSC 1579

Category: Principal judgment

Parties: The Owners Corporation – Strata Plan 64807 (Plaintiff)
BCS Strata Management Pty Ltd (Defendant)

Representation: Counsel:
Mr P Beazley, solicitor (Plaintiff)
Mr D D Knoll AM (Defendant)

Solicitors:
Beazley Lawyers (Plaintiff)
Grace Lawyers (Defendant)

File Number(s): 2020/226984

Publication Restriction: N/A

JUDGMENT

- 1 This proceeding was listed for an urgent hearing on 7 August 2020 of the claims for relief in prayers 2, 3 and 4 of the Summons filed on 4 August 2020.
- 2 On 7 August 2020, I made orders dismissing the claims for relief in prayers 2 to 5 of the Summons for want of jurisdiction by reason of cl 5(3) of Schedule 4 of the *Civil and Administrative Tribunal Act 2013* (NSW) (the **CAT Act**) and transferring the balance of the proceeding to the NSW Civil and Administrative

Tribunal pursuant to cl 6(2) of Schedule 4 of the CAT Act. These are my reasons for those orders.

3 The plaintiff is a body corporate constituted by the owners of the lots in the strata scheme for registered Strata Plan No 64807, pursuant to s 8 of the *Strata Schemes Management Act 2015* (NSW) (the **Owners Corporation** and the **SSM Act**). There are approximately 304 lot owners.

4 The defendant is the strata managing agent appointed by the plaintiff in accordance with Part 4 of the SSM Act.

5 This proceeding was commenced by Summons filed on 4 August 2020.

6 The substantive relief sought in the Summons is:

“2. A declaration that the AGM of the Owners Corporation SP64807 scheduled to be held on 8 August 2020 has been validly cancelled; or in the alternative;

3. An order cancelling the AGM of the Owners Corporation SP64807 scheduled to be held on 8 August 2020.

4. The Defendant be ordered to notify all owners of the owners corporation of Strata Plan SP64807 of the cancellation of the Annual General Meeting which the defendant had called for 8 August 2020 at the Masonic Centre Sydney.

5. The Defendant pay the Plaintiff's Costs of calling the meeting.

6. The Defendant deliver up to the Chairman of the Strata Management committee of the Body Corporate SP64807 an unredacted current list of owners of the Body Corporate and all of their known contact details.”

7 On 4 August 2020, the Equity Duty Judge listed the matter for hearing of the relief sought in prayers 2, 3 and 4 of the Summons. At the hearing before me today, the plaintiff confirmed that it moves on prayers 2, 3 and 4 of the Summons on a final basis. The relief sought in prayer 5 appears to be an order that is consequential or ancillary to the relief sought in prayers 2, 3 and 4.

8 At the outset of the hearing, the Court raised the following questions with the parties:

(a) whether the Court has jurisdiction to hear some or all of the plaintiffs' claims for relief, having regard to a proceeding that was commenced in the NSW Civil and Administrative Tribunal (the **Tribunal**) on 3 August 2020 and the provisions of cl 5 of Sch 4 of the CAT Act; and

(b) whether, as the defendant had submitted in its written submissions dated 6 August 2020, the Court should transfer to

the Tribunal any claims for relief in respect of which the Court does have jurisdiction, pursuant to cl 6 of Sch 4 of the CAT Act.

9 The plaintiff adduced the following evidence subject to an order under s 136 of the *Evidence Act* 1995 (NSW) limiting its use to evidence of the issues raised for determination in this proceeding for the purpose of the Court determining whether it has jurisdiction in this proceeding:

- (a) an affidavit of Mr Ken Xue sworn on 4 August 2020 of 23 paragraphs, and Exhibits “A” to “N” of that affidavit (those exhibits were admitted as Exhibit 3); and
- (b) a further affidavit of Mr Xue sworn on 4 August 2020.

10 Mr Xue is a member of the strata committee of the Owners Corporation appointed pursuant to Part 3 of the SSM Act (the **Strata Committee**).

11 The defendant read an affidavit of Mr Stuart Denney sworn on 6 August 2020, and tendered Exhibit SD-1 to that affidavit (which was admitted as Exhibit 1), subject to the same limiting order that applied to the plaintiff’s evidence referred to above. Mr Denney is a licensed strata managing agent employed by the defendant.

12 The defendant also tendered a Notice of Order issued by the Tribunal to the Owners Corporation on 6 August 2020. This was admitted as Exhibit 2.

13 It is plain from the Summons, the SSM Act, the affidavits, and from written submissions provided by both parties on 6 August 2020, that the issues to determine the plaintiff’s claims for relief in prayers 2 to 5 the Summons are:

- (a) whether the strata managing agent had authority to issue the notice of Annual General Meeting to be held on 8 August 2020 (the **AGM**), either under the terms of the strata managing agent agreement between the plaintiff and the defendant or a specific authority given by or on behalf of the Strata Committee;
- (b) whether the Strata Committee validly resolved on 31 July 2020 to cancel the AGM and to commence this proceeding;
- (c) if the Strata Committee did not validly resolve to cancel the AGM, whether the AGM should be cancelled (or restrained from proceeding) having regard to the number of lot owners and restrictions on public gatherings in the context of the COVID-19 pandemic and the absence of any arrangements put in place for the meeting to be conducted electronically; and

- (d) whether the Strata Committee is entitled under s 181 of the SSM Act to have delivered up to it the strata roll maintained by the defendant as strata managing agent.
- 14 The affidavits read by both parties refer to various factions said to have emerged within the Owners Corporation and the Strata Committee, the urgency of resolving matters on the agenda at the proposed AGM concerning repairs to the building, fire safety and other matters as well as setting out the parties' opposing views concerning the manner in which the AGM should be conducted in the context of the COVID-19 pandemic. Presumably, the parties intended to rely on these matters as relevant to the exercise of the Court's discretion to grant the relief sought in prayers 2, 3 and 4 of the Summons, assuming that the Court had jurisdiction to grant such relief.
- 15 Exhibit 1 includes the Strata Scheme Interim Relief Application and attached documents filed in the Tribunal on 3 August 2020, which commenced the proceeding referred to above at [8(a)] (the **Tribunal Proceeding**). The date on which application was made to the Tribunal is not apparent from those documents, but the Notice of Order in Exhibit 2 states that the application was accepted by the Tribunal on 3 August 2020.
- 16 The applicants in the Tribunal Proceeding are three members of the Strata Committee who, the Court was informed, are also owners or occupiers of lots in the strata scheme.
- 17 The respondents to the Tribunal Proceeding are the Owners Corporation and three other members of the Strata Committee, including Mr Xue.
- 18 The defendant in this proceeding is not a party to the Tribunal Proceeding, although counsel for the defendant informed the Court that the defendant intends to appear at the first hearing in the Tribunal Proceeding at 1.15pm today, 7 August 2020 (at which time the application for interim orders is listed for hearing and the application for substantive orders is listed for directions).
- 19 Pursuant to Part 12 of the SSM Act and s 28 of the CAT Act, the Tribunal has jurisdiction in relation to disputes concerning strata schemes, including the following jurisdiction under s 232(1) of the SSM Act:

“The Tribunal may, on application by an interested person, original owner or building manager, make an order to settle a complaint or dispute about any of the following:

(a) the operation, administration or management of a strata scheme...”

20 Division 5 of Part 12 of the SSM Act contains general provisions relating to the Tribunal’s powers and orders.

21 Section 240 provides:

“The Tribunal may deal with an application for an order under a specified provision of this Act by making an order under a different provision of this Act if it considers it appropriate to do so.”

22 Section 241 provides:

“The Tribunal may order any person the subject of an application for an order to do or refrain from doing a specified act in relation to a strata scheme.”

23 As noted above, an application under s 232 of the SSM Act may be made by an “*interested person*”. Section 226 of the SSM Act defines “*interested person*” to mean:

“(a) the owners corporation;

(b) an officer of the owners corporation;

(c) a strata managing agent for the scheme;

(d) an owner of a lot in the scheme, a person having an estate or interest in a lot or an occupier of a lot;

(e) if the strata scheme is a leasehold strata scheme, the lessor of the scheme.”

24 The three applicants in the Tribunal Proceeding are “*interested persons*” within the meaning of s 226 of the SSM Act because they are owners or occupiers of lots in the strata scheme.

25 The interim orders sought in the Tribunal Proceeding include:

(a) an order under s 232 of the SSM Act declaring the Strata Committee meeting on 31 July 2020 invalid and an order under s 24 of the SSM Act declaring resolutions purportedly passed at that meeting invalid (as referred to above, that was the meeting or purported meeting at which the Strata Committee resolved or purported to resolve to cancel the AGM and to commence proceedings, although the resolution refers to commencement of a proceeding in the Tribunal rather than in this Court); and

(b) an order that the AGM currently scheduled for 8 August 2020 be instructed to proceed, subject to any change to the government

health and/or gathering restrictions *“as it has been legally called by the Secretary at a suitable venue, in accordance with the legislation and COVID restrictions, as confirmed by the Owners Corporation Lawyer and Strata Manager”*.

- 26 The substantive orders sought in the Tribunal Proceeding are orders under ss 237 and 238 of the SSM Act for the compulsory appointment of the defendant as managing agent and the removal of Mr Xue and certain other officers of the Strata Committee. Those orders are sought in the event that the AGM does not proceed on 8 August 2020, in which case the Owners Corporation will not have the opportunity to vote on that occasion on motions concerning the appointment of a strata managing agent and to elect officers of the Strata Committee in accordance with Part 3 of the SSM Act.
- 27 The documents filed with the Tribunal include a “detailed explanation” which complains that the Strata Committee is “dysfunctional” and refers to many of the matters that are referred to in evidence in this proceeding about factions said to have emerged within the Owners Corporation and the Strata Committee. The “detailed explanation” also refers to the urgency of addressing the repairs and fire safety issues referred to in the evidence in this proceeding and complaints that the Strata Committee has failed to address these issues. It is clear from the terms of the interim orders set out in [25] above that the current state of the COVID-19 pandemic in New South Wales is an issue that will be relevant to the interim relief application.
- 28 I have referred in [19]–[22] above to the Tribunal’s jurisdiction under s 232(1) and the nature of the relief that the Tribunal has power to grant.
- 29 The functions of the Tribunal under the SSM Act are allocated to the Consumer and Commercial Division of the Tribunal pursuant to s 16 and Schedule 4 to the CAT Act.
- 30 Clause 5(3) of Schedule 4 to the CAT Act provides:
- “If, at the time when an application was made to the Tribunal for the exercise of a Division function, no issue arising under the application as the subject of a dispute in proceedings pending before a court, a court has no jurisdiction to hear or determine such an issue.”

- 31 This Court is a court to which cl 5(3) of Sch 4 applies: see cl 5(1) and (2) of Sch 4 and *Steak Plains Olive Farm Pty Ltd v Australian Executor Trustees Ltd* (2015) 18 BPR 35,471; [2015] NSWSC 289 at [93].
- 32 Clause 5(6) of Sch 4 provides:
- “For the purpose of subclause (3), an issue arises under an application made to the Tribunal for the exercise of a Division function only if the existence of the issue is shown in the applicant’s claim or is recorded in the record made by the Tribunal in accordance with this Act.”
- 33 As referred to above, this proceeding was commenced one day after the Tribunal Proceeding was commenced. It follows that, if or to the extent that the issues to be determined in this proceeding are the same as the issues shown in the applicants’ claim in the Tribunal, or recorded in the record made by the Tribunal, are the same, this Court has no jurisdiction to determine those issues in this proceeding.
- 34 In *Steak Plains Olive Farm Pty Ltd v Australian Executor Trustees Ltd (supra)*, White J (as his Honour then was) considered (at [91]–[106]) the proper approach to the characterisation of “*the issues arising under the application*” in proceedings before the Tribunal and the issues to be determined in concurrent proceedings in this Court for the purpose of applying cl 5(3) of Sch 4 of the CAT Act.
- 35 In that case, the issues arising under the defendant’s application in the Tribunal included whether the plaintiff was in breach of the lease and, if so, whether the defendant was entitled to an order for possession of the property. In the proceeding in the Court, the statement of claim did not raise an issue about whether the plaintiff was in breach of the lease. However, the plaintiff pleaded that, if the Tribunal proceeding was not transferred to the Court and if the Tribunal found that the plaintiff had breached the lease entitling the defendant to terminate the lease, then the plaintiff was entitled to an order for relief against forfeiture of the lease. The plaintiff sought an order for relief against forfeiture, a declaration that it was entitled to remain in possession and an order that the defendant be restrained from taking possession of the property.
- 36 White J characterised both proceedings as giving rise to the issue of whether the defendant was entitled to and should be granted possession of the

property. His Honour rejected the plaintiff's submission that the same issue did not arise in both proceedings because only the Court had jurisdiction to grant the equitable remedies sought by way of relief against forfeiture. His Honour said (at [104]–[105], emphasis added):

“104. **I think this is too narrow an approach to the definition of the relevant issue.** I accept that if the issue is characterised as being whether SPOF is entitled to equitable relief against forfeiture, that is a different issue from the issue that arises under AET's application in the Tribunal. On the other hand, if the issue is characterised as being whether an order for possession should be made in favour of AET if it establishes the alleged breaches, then that is the same issue as that which arises in the Supreme Court. For the reasons previously given, the Tribunal has power to determine whether an order for possession should not be made on the ground that SPOF is entitled to relief against forfeiture of the lease and the Tribunal could give appropriate statutory relief to give effect to a determination of that question. Whether SPOF should now be permitted to raise that ground of defence and to seek statutory relief having regard to the course taken to date in the Tribunal is a different question and would be a matter for the Tribunal to decide if an application were made by SPOF in the Tribunal. But the issue of whether AET should be given possession of the farm arises directly from the terms of its application, irrespective of the course taken by SPOF in the Tribunal.

105. In *Cohen-Hallaleh v Cyril Rosenbaum Synagogue Pty Ltd* Barrett J said (at [38]) that **the purpose of the relevant provisions is to avoid the risk of concurrent findings by the Tribunal and a court with respect to a particular issue.** This was approved by Sackville AJA in *Advance Earthmovers Pty Ltd v Fubew Pty Ltd* at [108]. **The characterisation of the issue should be made with that statutory purpose in mind. That purpose would not be advanced by the adoption of a narrow characterisation of the issue as being whether SPOF is entitled to equitable relief against forfeiture. In furthering the statutory purpose of cl 5, Parliament has provided, in effect, that if an issue arising under the application can be dealt with either by a court or the Tribunal, the issue should be determined by the court or tribunal in which proceedings are first commenced.”**

- 37 His Honour concluded that, by reason of cl 5(3) of Sch 4 of the CAT Act, the Court did not have jurisdiction to determining the issue of whether the defendant should or should not be given possession of the property. The claims for relief in the summons and statement of claim relating to that issue were dismissed accordingly.
- 38 In *The Owners – Strata Plan No. 54026 v Ternes* [2019] NSWSC 1579, proceedings in the Tribunal had been commenced prior to the commencement of proceedings in the Court. The Tribunal proceeding involved interim and final applications for orders appointing a strata managing agent on the basis of an alleged failure to deal properly with the repair of the property, payment of

maintenance and other service providers and the like. In addition, the applicants in the Tribunal proceeding sought orders declaring that certain resolutions passed at a general meeting of the owners corporation were invalid, or orders invalidating those resolutions, on the basis of the chairperson's conduct of that particular meeting.

39 During the course of the Tribunal proceedings, the owners corporation sought a direction requiring the applicants to disclose contact details for lot owners for the purpose of the owners corporation informing lot owners about the proceedings.

40 In the proceeding commenced in this Court some months after the commencement of the Tribunal proceeding, the plaintiff sought orders under s 181 of the SSM Act requiring the defendants (two of whom were the applicants in the Tribunal proceeding) to produce a verified list of names, addresses and contact details for lot owners.

41 Parker J held (at [37]–[45]) that the Tribunal had jurisdiction under s 188 of the SSM Act to grant the relief sought in the proceeding that had been commenced in the Court. However, his Honour rejected the defendants' submission that the Tribunal's jurisdiction was exclusive, and that the Court did not have jurisdiction, by reason of cl 5(3) of Sch 4 of the SSM Act. After referring to the submission that there were similarities between the interlocutory direction referred to immediately above and the relief sought under s 181 of the SSM Act in the proceeding before the Court, his Honour said (at [43]–[44], emphasis added):

“43. ...there are significant differences. The purpose of these proceedings is to raise an issue about what information needs to be recorded on the strata roll for the owners represented by Sydney Campus. The state of the roll has a significance which extends well beyond the particular dispute which precipitated the application to NCAT. In my view, **the term “issues” in cl 5 is a reference to the substantive issues going to final relief in the NCAT application. The term refers to facts or legal propositions which must be established before the relief sought in the Tribunal can be granted.** This is reflected in Schedule 4, cl 5(6), which provides:

(6) For the purposes of subclause (3), an issue arises under an application made to the Tribunal for the exercise of a Division function only if the existence of the issue is shown in the applicant's claim or is recorded in the record made by the Tribunal in accordance with this Act.

44. In my opinion, **the mere making of an interlocutory application by one or other party to the NCAT proceedings cannot create an “issue” where none previously existed.** The “issues” raised by the application to NCAT are entirely distinct from the issues which arise before the Strata Corporation can obtain the relief sought in these proceedings.”

42 Reading his Honour’s judgment as a whole, it seems to me that the interlocutory application referred to in these paragraphs was the direction to which I have referred in [39] above. The substantive claims for interim and final relief in the Tribunal proceedings had earlier been described by his Honour in terms that I have summarised in [38]. I do not understand his Honour’s reasons to mean that, if relief is claimed in an application made in a proceeding in the Tribunal that is styled as an interim application rather than a final application, then the issues arising under that application are to be excluded from consideration for the purpose of cl 5(3) of Sch 4 to the CAT Act.

43 I note that s 39 of the CAT Act provides, for the purposes of the CAT Act, that an “*application*” to the Tribunal includes:

“... a complaint, referral or other mechanism (however expressed) by means of which enabling legislation provides for a matter to be brought to the attention of the Tribunal for a decision.”

44 Division 3 of Part 12 of the SSM Act provides for the making of applications to the Tribunal, without distinguishing between interim applications and final applications.

45 I respectfully agree with White J’s description of the object of cl 5(3) of Sch 4 to the CAT Act in *Steak Plains Olive Farm Pty Ltd v Australian Executor Trustees Ltd* at [105], and note that it would be inconsistent with that purpose if there could be concurrent proceedings in the Tribunal and the Court in respect of the same substantive issues, and a consequent risk of inconsistent findings concerning those issues, merely because the issues arose under a form of application to the Tribunal that was styled as an interim application. As I have said, I do not understand Parker J to have suggested in *The Owners – Strata Plan No. 54026 v Ternes (supra)* that cl 5(3) of Sch 4 should be construed or applied in this manner. On the contrary, his Honour identified (correctly, in my respectful opinion) the importance on focussing on the substance of the real legal and factual issues raised by the Tribunal proceeding and the Court proceeding in question.

- 46 At the hearing on 7 August 2020, neither party disputed the characterisation of the substance of the issues raised as set out in [13]–[14] and [25]–[27] above. In my view, the analysis there set out reveals that the substance of the factual and legal issues arising under the application in the Tribunal Proceeding are the same as the issues raised for determination by the prayers for relief in paragraphs 2 to 5 of the Summons filed in this proceeding, and I accept the defendant’s submission to that effect.
- 47 That is to say, both proceedings raise the issues of whether the defendant had authority to issue the notice of AGM in the first place and, if so, whether the Strata Committee has validly resolved to cancel that meeting. As I understood the plaintiff’s oral submissions, the plaintiff’s claim for an order cancelling the AGM in prayer 3 of the Summons is based on a contention that the authority delegated to the defendant under the strata agency agreement does not extend to arranging meetings without instructions from the Strata Committee to do so and/or that, as a matter of contract, the defendant is required to cancel the meeting in accordance with the Strata Committee’s instructions to do so. Those matters are contentions that the plaintiff will no doubt raise in the Tribunal Proceeding in resisting the applicants’ claim for an order that the AGM proceed on 8 August 2020. The Tribunal’s statutory powers to grant relief includes the power under s 241, referred to above, to make orders requiring any person who is the subject of an application to do, or refrain from doing, a specified act.
- 48 The plaintiff submitted that the Tribunal Proceeding and the Court proceeding are different because the defendant is not a party to the Tribunal Proceeding. However, the plaintiff acknowledged that the focus is on whether the issues are the same, and that maintaining the two proceedings concurrently would give rise to difficulties. For the reasons already identified above, I agree that the application of cl 5(3) of Sch 4 to the CAT Act is governed by the substance of the issues rather than the identity of the parties. Of course, there may be instances where a difference in the parties in two sets of proceedings may mean that the substance of the issues is also different. However, that is not this case. The Tribunal’s determination of the issues raised in the Tribunal Proceeding will bind the Owners Corporation, and the Strata Committee of the

Owners Corporation. As counsel for the defendant acknowledged, the defendant is an agent who must act in accordance with directions given by its principal.

- 49 As White J referred to in *Steak Plains Olive Farm Pty Ltd v Australian Executor Trustees Ltd (supra)* at [95]–[101], there is some uncertainty about what constitutes the “*record made by the Tribunal*” in cl 5(3) of Sch 4 to the CAT Act. However, for the reasons given immediately above, it is not necessary to resolve that issue in this case, because the issues shown in the application filed in the Tribunal Proceeding are the same as the issues that would need to be determined in order to dispose of the plaintiff’s claims for relief in prayers 2, 3 and 4 (and also the consequential or ancillary claim in prayer 5) of the Summons filed in this proceeding.
- 50 For all of the reasons above, the Court does not have jurisdiction to determine the issues raised by the claims for relief in prayers 2 to 5 of the Summons, by reason of cl 5(3) of Sch 4 to the CAT Act. Those claims for relief should therefore be dismissed.
- 51 As the defendant submitted, the issue raised by prayer 6 of the Summons does not arise in the Tribunal Proceeding: see [13]–[14] and [25]–[27] above. The Court does have jurisdiction to determine the claim for relief in prayer 6. However, that claim relates to the matters that are the subject of the Tribunal Proceeding in which the Tribunal has the jurisdiction referred to above, and the Tribunal also has power under ss 181 and 188 of the SSM Act to grant relief of the kind sought in prayer 6. The balance of the proceeding in this Court (that is, the claim for relief in prayer 6) should therefore be transferred to the Tribunal pursuant to cl 6(2) of Sch 4 to the CAT Act to be continued before the Tribunal as if the claim in prayer 6 had been instituted in the Tribunal.
- 52 When it commenced the proceeding in this Court on 4 August 2020, the plaintiff was not aware that the Tribunal Proceeding had been commenced one day earlier. Although the defendant’s written submissions dated 6 August 2020 raised the question of whether the whole of the proceeding should be transferred to the Tribunal, neither party identified the question of whether the Court lacked jurisdiction to hear and determine the majority of the claims for

relief in this proceeding. That issue was identified by the Court at the outset of the hearing this morning. In those circumstances, I consider that it is appropriate to make no order as to the costs of this proceeding.

53 For all of the above reasons, I made the following orders at the conclusion of the hearing:

- (1) Order that prayers 2, 3, 4 and 5 of the Summons filed on 4 August 2020 are dismissed for want of jurisdiction.
- (2) Order pursuant to *Civil and Administrative Tribunal Act 2013 (NSW)*, Sch 4, cl 6(2) that the balance of these proceedings (being the claim for relief in prayer 6 of the Summons filed on 4 August 2020) be transferred to the Consumer and Commercial Division of the NSW Civil and Administrative Tribunal.
- (3) Make no order as to costs.

Amendments

08 August 2020 - Corrected minor typographical errors.

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