



Civil and Administrative Tribunal
New South Wales

Case Name: Perpetual Strata Management Pty Ltd v The Owners – Strata Plan no 97977

Medium Neutral Citation: [2020] NSWCATAP 228

Hearing Date(s): 27 October 2020

Date of Orders: 4 November 2020

Decision Date: 4 November 2020

Jurisdiction: Appeal Panel

Before: G Curtin SC, Senior Member
A Boxall, Senior Member

Decision: The appeal is dismissed.

Catchwords: LAND LAW – strata title – strata managing agent – fees– no evidence of work done for and reasonableness of fees charged – work for which fees charged included in annual base fee

Legislation Cited: Nil

Cases Cited: Moloney v Taylor [2016] NSWCA 199

Texts Cited: Nil

Category: Principal judgment

Parties: Perpetual Strata Management Pty Ltd (Appellant)
The Owners – Strata Plan no 97977 (Respondent)

Representation: Counsel:
J D Williams (Appellant)

Solicitors:
Swaab, Solicitors (Appellant)
A narwaz (Strata Committee Chairperson)

(Respondent)

File Number(s): AP 20/30975

Publication Restriction: Nil

Decision under appeal:

Court or Tribunal: Civil and Administrative Tribunal

Jurisdiction: Consumer and Commercial Division

Citation: N/A

Date of Decision: 17 June 2020

Before: C Campbell, General Member

File Number(s): GEN 19/56252

REASONS FOR DECISION

- 1 This is an appeal by a strata management company from an order that it repay to a body corporate the sum of \$9,300 which the appellant had deducted from funds owned by the respondent but held by the appellant. The \$9,300 was said to have been deducted as payment for services rendered, but were deducted in the absence of a signed, written strata management agency agreement between the appellant and the respondent.
- 2 For the reasons that follow we are of the opinion that the appeal should be dismissed.

Background

- 3 On 26 September 2018 the respondent entered into a written strata management agency agreement with Strata Expert Group Pty Ltd t/as Crown Strata ("Crown Strata"). This agreement was for a period of 12 months.
- 4 About five months later, on 28 February 2019, the appellant purchased 100% of the issued shares in Crown Strata.
- 5 A little under seven months later, on 21 September 2019, the respondent held an Annual General Meeting (the "AGM"). At that AGM a resolution was passed resolving to appoint the appellant as strata managing agent for the respondent

on the terms and conditions set out in a proposed strata management agency agreement, a copy of which was attached to the written notice given for the AGM.

- 6 Five days after the AGM, on 26 September 2019, the Crown Strata management agency agreement expired.
- 7 Subsequent to the AGM, and before 18 October 2019, the appellant and the respondent negotiated on a number of terms in the appellant's proposed strata management agency agreement but were unable to reach agreement.
- 8 On 18 October 2019 the respondent held a general meeting. It was referred to in the Tribunal as an EGM and we shall maintain that description for ease of reference.
- 9 At that EGM the respondent resolved by ordinary resolution to rescind the resolution made at the AGM to appoint the appellant as the strata managing agent. A further resolution was passed resolving to appoint a different company as the strata managing agent.
- 10 Five days later, on 23 October 2019, the appellant deducted from funds owned by the respondent but held by the appellant a sum of \$1,800 and a further sum of \$7,500.
- 11 In a document the appellant called an "itemised bill for professional fees and charges" the appellant said that:
 - (1) the \$1,800 was for "Fees Charged on 23 October 2019 Under Clause 1 of the Crown Strata Managing Agency Agreement"; and
 - (2) the \$7,500 was for "Fees Charged on 23 October 2019 Under Schedule B of the PSM Strata Management Agency Agreement".
- 12 The Tribunal described the itemised bill for professional fees and charges as a document which had little or no evidential value. The Tribunal said that it was a running description of work undertaken by the appellant but was unsubstantiated by any source documents.
- 13 Nevertheless, that bill described the work purportedly done (for which the payment of \$1800 was charged) as being the preparation of documents for the AGM and for the attendance at the AGM by two senior strata managers

employed by the appellant. This description of the work is important to the resolution of one issue on the appeal and is discussed later in these reasons.

- 14 The Tribunal accepted the appellant's submission that after it had purchased all of the shares in Crown Strata on 28 February 2019, the strata management services provided to the respondent were provided by the appellant (and not Crown Strata) and were "charged and carried out in accordance with the executed management agreement" the respondent had formally executed with Crown Strata. There is no appeal from that finding.
- 15 The Tribunal held that following the AGM on 21 September 2019 there was no signed strata management agency agreement entered into between the appellant and the respondent. The Tribunal rejected the appellant's submission that the appellant was undertaking work in accordance with the former agreement with Crown Strata. The Tribunal said that the agreement with Crown Strata ended after the resolution was passed at the AGM.
- 16 The Tribunal found that the respondent's claim against the appellant was a consumer claim (and therefore the Tribunal had jurisdiction to decide the dispute). There is no appeal from that finding.
- 17 The Tribunal said that the appellant continued to take payment for services after the expiration of the Crown Strata agreement. The Tribunal said that the respondent denied it was liable for the payment of those services as there was no enforceable contract between the parties after the AGM.
- 18 The Tribunal found that there was no contract between the parties for the provision of services by the appellant after 21 September 2019 and accordingly the respondent was not liable for the payment of services for which there was no contract. The Tribunal ordered the appellant to pay (or repay) the respondent the sum of \$9,300.

Grounds of Appeal

- 19 In its Notice of Appeal the appellant raised five grounds of appeal.
- 20 In a document titled "Amended Grounds of Appeal – Annexure A", sent to the Appeal Panel and the respondent late the night before or early in the morning of the day the appeal was heard, the appellant maintained the first three

grounds of appeal set out in its Notice of Appeal but deleted the then ground 4 (estoppel) and ground 5 (quantum meruit).

- 21 In the Amended Grounds of Appeal the appellant sought to add two further grounds in substitution for the previous grounds 4 and 5, namely:
- (1) The Tribunal erred in law by failing to find that the appellant was entitled to be paid the sum of \$1,800 which related to the services that had been performed by the appellant on 21 September 2019 in accordance with the Strata Management Agency Agreement which was entered into between the respondent and Crown Strata for a term of 1 year commencing on 26 September 2018 (“Ground 4”).
 - (2) The Tribunal erred in law by failing to find that the appellant was entitled to be paid the sum of \$2,630 which related to the services that had been performed by the appellant during the period 2 September 2019 to 26 September 2019 (excluding fees and expenses incurred in relation to the AGM on 21 September 2019) in accordance with the Strata Management Agency Agreement which was entered into between the respondent and Crown Strata for a term of 1 year commencing on 26 September 2018 (“Ground 5”).
- 22 At the hearing of the appeal the appellant abandoned grounds 1 – 3 of its appeal (which appeared in both its Notice of Appeal and, unaltered, in its Amended Grounds of Appeal).
- 23 The abandonment of those grounds left for determination the question whether leave should be granted to the appellant to amend its notice of appeal to include the two grounds we have set out at [21] above. The respondent opposed the granting of leave. We shall deal with each ground in turn.

Ground 4

- 24 The appellant submitted that leave should be granted to add Ground 4 because the substance of the ground, together with submissions in support of it, were included in the appellant’s counsel’s written submissions served on the respondent in September 2020 and that there was no prejudice to the respondent.
- 25 In support of this ground the appellant submitted that the Tribunal erred in that it made inconsistent findings. Having accepted the appellant’s submission that after it had purchased all of the shares in Crown Strata on 28 February 2019 the management services were provided by the appellant and were “charged and carried out in accordance with the executed management agreement” (at

[22] of the Tribunal's reasons), and noting the AGM was held on 21 September 2019, five days *before* the expiration of the Crown Strata agreement, it was inconsistent for the Tribunal to then find, at [27] of its reasons, that the respondent was not liable for the provision of services *after* 21 September 2019 because there was no contract between the appellant and the respondent.

- 26 We agree with the appellant's submission that these findings are inconsistent and that the Tribunal therefore erred in law, but we would dismiss the appeal on this ground because the conclusion of the Tribunal was correct even though its reasons for arriving at that conclusion were in error. Our reasons for that conclusion are as follows.
- 27 The appellant relied on entries in the itemised bill for professional fees and charges as evidence establishing the basis for and reasonableness of the charge of \$1,800, and also relied on part of the transcript in which, so the appellant submitted, a concession as to liability for the \$1,800 was made by the respondent.
- 28 As noted at [12] above, the Tribunal regarded the bill as having little or no evidential value. In context, the Tribunal was conveying it had no evidential value. This is borne out by the Tribunal's subsequent enquiry (at transcript p.32 ff) of the appellant's representative as to where the source documents were, and where was the monthly statement (which was how the appellant and Crown Strata billed the respondent) which included those items. The appellant's representative said he did not know where they were. If they existed, they were not tendered in evidence. Therefore, there was no evidence supporting this claimed charge.
- 29 The relevant part of the transcript the appellant submitted contained the concession is as follows::

“TRIBUnal: Just so I'm clear, so I'm just making note of this. The applicant (respondent to the appeal) concedes the charges made prior to AGM, is that right?

RESPOndent: The AGM, yes, yes.

TRIBUnal: And that's those two amounts which is \$434 and \$1,571, yeah?

RESPONDent: Even though they were in the name of Perpetual, I accept, you know, they had a problem with the computer system which is not consistent with (indistinct) but we'll concede, we'll accept that, yes, because there was an agreement in place.

TRIBUnal: So that's the \$1,571.67?

RESPONDent: Yes.

APPELLAnt: And then the charge of \$1,800 on the 23rd is also a charge under the Crown contract.

TRIBUnal: 23 May?

APPELLAnt: October.

TRIBUnal: That's a different argument, that's in the - this is the contentious period, Mr Drew, if I can put it that way.

APPELLAnt: Yeah, I understand that, member ...”

- 30 A fair reading of the transcript leads to the conclusion that the respondent was conceding two different amounts to the \$1,800, being the amounts of \$434 and \$1,571. They are separate and distinct items in the appellant’s itemised bill and were described as amounts charged on 27 May and 3 June 2019 respectively (rather than 23 October 2019 which was the charged date for the \$1,800 sum). The \$1,800 sum was identified as being in the “contentious period”.
- 31 In our opinion, no concession was made by the respondent in relation to the claimed sum of \$1,800.
- 32 There is a further problem for the appellant. The lack of any concession as to the \$1,800 was well placed. As we noted earlier at [13] above, the charge of \$1,800 was purportedly for work done in relation to the AGM, and done under the terms of the Crown Strata agreement.
- 33 As the respondent submitted, the Crown Strata management agency agreement provided, in the Services Schedule, that charges for “arranging and undertaking administrative duties in relation to meetings, including attending those meetings” was included in the “Base Fee (as to the annual general meeting and one other general meeting per year)” payable to Crown Strata. That Base Fee was a flat fee of \$15,000 per annum including GST.
- 34 This submission, in substance, conveys what would be conveyed in a Notice of Contention in the NSW Court of Appeal and we should treat it similarly in this appeal as we are required to conduct appeals with minimum formality and to

reach decisions according to the substantive merits of the case, and not by reference to legal form or technicalities - *Moloney v Taylor* [2016] NSWCA 199 per the Court at [30].

35 In response, the appellant submitted that it was entitled to charge for the preparation of documents for, and attendance at, the AGM under the item “Any other matter” set out in the Services Schedule. We do not agree. The clear words of the Services Schedule convey that charges in relation to AGMs are included in the Base Fee, and there was no dispute the charges related to the AGM held on 21 September 2019.

36 As the matter was fully argued, and no prejudice was occasioned to the respondent, we grant leave to the appellant to add ground 4 to its appeal but would dismiss that ground.

Ground 5

37 The appellant fairly and properly conceded that no earlier notice had been given to the respondent in relation to Ground 5.

38 The respondent submitted that it had had an inadequate opportunity to consider Ground 5 and prepare submissions in opposition to it, and an inadequate opportunity for the respondent’s representative to speak to fellow members of the strata committee about it.

39 In our opinion the respondent is prejudiced by the late notification of this ground and we accordingly refuse leave to add ground 5 to the appellant’s grounds of appeal.

Orders

(1) The appeal is dismissed.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar

any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.