ADJUDICATOR'S ORDER

Office of the Commissioner
for Body Corporate and Community Management

CITATION:	*The Hub Apartments* [2020] QBCCMCmr 653
PARTIES:	The Hub Rights Pty Ltd, former owner of Lot 12 (**applicant**)
	Body Corporate for The Hub Apartments (**respondent**)
SCHEME:	The Hub Apartments CTS 35519
JURISDICTION:	*Body Corporate and Community Management Act 1997* (Qld) (**Act**), sections 227(1)(b) and 229(3)(a)
	Body Corporate and Community Management (Accommodation Module) Regulation 2008 (**Accommodation Module**)
APPLICATION NO:	0941-2020
DECISION DATE:	23 December 2020
DECISION OF:	I Rosemann, Adjudicator
CATCHWORDS:	GENERAL MEETING RESOLUTION – whether a body corporate decision to terminate the caretaking and letting agreements was valid – COMMITTEE RESOLUTION – whether a committee decision to withhold remuneration under the caretaking agreement was valid – JURIDICTION – whether a departmental adjudicator has jurisdiction to determine the dispute – COSTS – whether the application is frivolous, vexatious, misconceived or without substance – whether costs should be awarded.
	Act, ss 94(2), 126, 229, 270; Accommodation Module, s 127

ORDERS MADE:

1. The application is **dismissed**.

I HEREBY CERTIFY this is a true copy of the order and reasons for decision.

Dated this day of 2020. _____

I Rosemann, Adjudicator

REASONS FOR DECISION

Overview

[1] This application is about the caretaking agreements. The applicant (**Hub Rights**) has been the caretaking service contractor (**caretaker**), under a caretaking agreement and a letting agreement (the **agreements**) dated 9 September 2006, and a deed of assignment dated 6 December 2012. When the application was lodged, the applicant was the owner of Lot 12.

[2] The committee proposed a motion (**Motion 11**) for consideration at the annual general meeting (**AGM**) of 31 August 2020. Motion 11 sought the termination of the agreements on the basis that the applicant was insolvent, in breach of the agreements. The motion passed with 16 votes in favour and 2 against.

[3] The body corporate issued the applicant with a termination notice on 21 July. At that time, there was a receiver and manager appointed by the applicant's financier. The applicant says the Act prevents the termination of a financed contract, even if the contractor is insolvent, if the financier has appointed a receiver and manager. Furthermore, the applicant denies it is insolvent. It says unpaid levies and the appointment of a receiver and manager do not evidence insolvency. The applicant further says the receivers and managers retired on 31 July and its financier has paid the outstanding levies. The applicant argues it is unreasonable for the body corporate to rely on the alleged insolvency to terminate the agreements.

[4] The applicant also refers to a decision (**Motion 8**) passed outside a committee meeting on 6 August 2020 to withhold remuneration under the caretaking agreement. The applicant says it is performing its duties and has continued to do so. It says there was no lawful reason for the committee to withhold remuneration and it is unreasonable to do so.

[5] The applicant sought an interim order to prevent a vote on AGM Motion 11 or that the motion not be implemented if it passed, and to require the body corporate to continue to pay it under the caretaking agreement. I ordered the body corporate not to implement Motion 11 if passed.

[6] The applicant now seeks final orders to void AGM Motion 11 and the disputed committee resolution. The question then is whether these decisions are invalid.

Preliminaries

[7] The Hub Apartments community titles scheme 3319 (**The Hub Apartments**) is a 55-lot scheme in Fortitude Valley. The community management statement (**CMS**) shows the Accommodation Module applies. The scheme is registered as Survey Plan 163647.

[8] This application was lodged on 11 August 2020 seeking interim orders. On 26 August 2020 I made the following interim order:

> Pending the final determination of this application, the Body Corporate for The Hub Apartments must not implement Motion 11, included on the agenda of the annual general meeting scheduled for 31 August 2020, if it is passed.

[9] The applicant now seeks the following final orders that:

(a) motion 11 to terminate the caretaking and letting agreements (Motion) to be considered at the annual general meeting to be held on 31 August 2020 (AGM), if purportedly passed at the AGM, is void; and
(b) motion 8 resolved by the committee by way of a vote outside of committee, the minutes for which are dated 6 August 2020, to withhold remuneration under the caretaking agreement is void.

Jurisdiction

[10] An adjudicator may make an order that is just and equitable in the circumstances to resolve a dispute about a claimed or anticipated contravention of the Act or the CMS, or the exercise of rights or powers or performance of duties under the Act or the CMS.[1]

[11] There are preliminary questions as to whether I have jurisdiction to determine this matter.[2]

[1] Section 276 of the Act

[12] Section 229 of the Act provides that the only remedy for a 'complex dispute' is resolution by a specialist adjudicator under chapter 6 of the Act, or by the Queensland Civil and Administrative Tribunal. As such, a complex dispute is not within the jurisdiction of a department adjudicator. A complex dispute is defined by reference to types of disputes in certain sections of the legislation.[3] One of these is in section 149B which provides for disputes about a claimed or anticipated contractual matter about the engagement of a person as a body corporate manager or caretaking service contractor; or the authorisation of a person as a letting agent. A 'contractual matter' is then defined in the Act as meaning:[4]

a. a contravention of the terms of the engagement or authorisation
b. the termination of the engagement or authorisation
c. the exercise of rights or powers under the terms of the agreement or authorisation, or
d. the performance of duties under the terms of the engagement or authorisation.

[13] If the Commissioner determines that the outcomes sought in an application are not within the jurisdiction of a dispute resolution officer, the Commissioner may reject the application.[5] Similarly, an adjudicator may dismiss an application if it appears to the adjudicator that they do not have jurisdiction to deal with the application.[6]

[14] Ostensibly, the first final order disputes the resolution to terminate the agreements and the second final order is about an alleged contravention of the terms of the agreements, being the terms about the remuneration of the caretaker. Accordingly, it is arguable the orders are about a claimed or anticipated contractual matter and therefore constitute a complex dispute.

[15] There is an alternative construction of the dispute. The applicant made the application, as amended, in its capacity as the owner of Lot 12, rather than as the caretaking service contractor. Further, the applicant purports to dispute the validity of AGM Motion 11 and the 6 August committee resolution largely on the basis that they are unreasonable. In that context, this dispute can (at least in part) be viewed as an owner disputing the validity of committee and general meeting motions on the basis that the committee and the body corporate must act reasonably in making decisions.[7] Although the distinction is fine, this is arguably different from a caretaker disputing the termination of their agreements or an alleged breach of the terms of the agreements relating to their remuneration.

[16] In deciding the interim orders, I was inclined to accept jurisdiction to determine this dispute, subject to submissions on this jurisdictional question in respect of the final orders. However, the circumstances have since changed. Lot 12 has now been sold and, as of 25 November 2020, the applicant is no longer the owner of Lot 12. The applicant does not dispute this.

[17] Section 227 of the Act defines a dispute by reference to the parties to the dispute. In applying in its capacity as a lot owner against the body corporate, this application fell within section 227(1)(b) of the Act. Section 239C of the Act provides for the continuation of an application if the standing of a party changes. If a party stops being a relevant person for an application before it is disposed of (for example, if a person who is a party in their capacity as a lot owner then ceases to be a lot owner), the application can proceed unless someone else is substituted as the relevant person. However, that does not prevent the Commissioner from rejecting the application under section 241 of the Act,[8] or an adjudicator dismissing the application under section 270 of the Act.[9]

[18] I would stress that this jurisdictional question is not about the status of the ownership or residence of Lot 12 under the agreements. Rather, it is about the capacity in which the applicant lodged this application and the nexus between the applicant and the dispute.

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[2] See sections 227, 228, 276 and Schedule 5 of the Act
[3] Schedule 6 of the Act
[4] Schedule 6 of the Act
[5] Section 241(1)(a) of the Act
[6] Section 270(1)(a) of the Act
[7] Section 94(2) and 100(5) of the Act
[8] For example, pursuant to section 241(1)(f) of the Act
[9] For example, pursuant to section 270(1)(e) of the Act

[19] I can see no reason why the applicant has a continuing interest in this dispute in its capacity as a lot owner. As such, on the basis on which the application was lodged (that is, by a lot owner) the orders sought do not appear to be relevant or required once the applicant is no longer a lot owner. The applicant clearly continues to have a dispute with the body corporate about the termination of the caretaking agreements and its remuneration. However, that dispute exists in the applicant's capacity as the caretaker rather than as a lot owner. The nature of the dispute by the applicant as a caretaker is a contractual matter that I am not able to determine.[10]

[20] Essentially, I consider there are two ways of viewing this application in the current circumstances. It either is a dispute between a lot owner and the body corporate about the validity of two body corporate decisions, which is no longer relevant or required because the applicant is no longer a lot owner. Alternatively, it is (despite the applicant applying as a lot owner), fundamentally a dispute between the caretaker and the body corporate about a contractual matter, in which case it is not a matter that I have jurisdiction to decide.

[21] On either view, I am satisfied the application should be dismissed. However, in the event that I am incorrect on that point, I will proceed to consider the merits of the application.

Procedural matters

[22] On receipt, the Commissioner sought clarification from the applicant on some aspects of the application.[11] The application was subsequently amended.[12]

[23] The Commissioner then referred the application to me to determine the interim orders sought.[13] In deciding the interim orders, I considered a submission from the committee.

[24] After the interim order was determined, the applicant added further material to its application.

[25] The Commissioner then invited submissions from the committee, body corporate manager and all owners.[14] Subsequently the applicant sought to add further information to its application. The Commissioner accepted the amendment on condition that the applicant circulated the material to the parties invited to make a submission. Further time was provided for parties to make submissions having regard to the amendments. At the request of the body corporate, the Commissioner later provided a short extension of time to make submissions.

[26] The only submission received was made on behalf of the body corporate. The applicant did not avail itself of the opportunity to inspect or respond to the submissions.[15]

[27] A dispute resolution recommendation was made referring the file to department adjudication.[16]

[28] I then investigated the dispute, including reviewing the application and submissions.[17]

Submissions

[29] The submissions made on behalf of the committee oppose the application and include:

a. AGM Motion 11 and committee Motion 8 are not void or voidable.

b. Under clause 9.1 of the caretaking agreement and clause 6.1 of the letting agreement, the body corporate can terminate the agreements if Hub Rights is insolvent. This right of termination is permitted by section 127(1)(c) of the Accommodation Module, by passing a general meeting resolution.

c. The applicant is insolvent, or may be presumed to be insolvent, including at the time that the resolutions were carried.

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[10] Section 270(1)(a) of the Act
[11] Section 241 of the Act
[12] Section 245 of the Act
[13] Section 247 of the Act
[14] Section 243 of the Act
[15] See sections 246 and 244 of the Act respectively
[16] Section 248 of the Act
[17] The investigative powers of an adjudicator are set out in section 271 of the Act

d. The application should be dismissed because the Queensland Civil and Administrative Tribunal should deal with it as a complex dispute.[18]

e. The application is frivolous, vexatious, misconceived or without substance. The applicant should pay it costs to the maximum of $2,000.[19]

f. At least part of the application relates to a debt dispute between the parties that should be dealt with in a court of competent jurisdiction.[20]

g. The agreements are financed contracts within the meaning of section 126 of the Act.

h. Hub Rights fell into arrears in respect of its levies for Lot 12 in July 2018.

i. In June 2019 Ernst & Young was appointed by the Office of Fair Trading as receiver of Hub Rights trust property under section 47(1) of the *Agents Financial Administration Act 2014 (Qld)*. To do so, the Chief Executive must be satisfied on reasonable grounds that defalcation of the trust account has or may have been committed.

j. The Commonwealth Bank of Australia (**CBA**) appointed receivers in June 2019. CBA notified the body corporate that Best Management Group (**BMG**) would perform the duties under the agreements, but did not seek or receive the consent required under section 126(4)(b) of the Act.

k. From June 2019 to 31 July 2020 BMG performed the duties under the agreements; the CBA's attempts to sell the agreements failed; Hub Rights failed to pay outstanding levies; and the body corporate received multiple owner complaints about non-payment of rental income collected under the letting appointments.

l. The body corporate sought financial information from Hub Rights on 4 June, 21 July, 22 July, 29 July, 3 August and 7 August. This was not provided.

m. On 21 July it formed a view that Hub Rights was insolvent and it was entitled to terminate the agreements.

n. The receivers retired on 31 July.

o. As at 6 August the outstanding levies were $14,396.77; the body corporate had incurred $4,167.55 in recovery costs to recover the levies; and the body corporate had incurred $44,033.02 in other costs relating to the appointment of the receivers and alleged breaches of the agreements.

p. On 6 August the committee resolved to withhold payments to Hub Rights and put a motion to owners to terminate the agreements.

q. On 8 August the CBA notified ASIC that it had been appointed controller of Hub Rights under section 427(1B) the *Corporations Act 2001* in respect of Lot 12.

r. On 17 August it received payment of the outstanding levies from the CBA, but its costs remained outstanding.

s. On 18 August the body corporate conducted credit agency searches, which reported that Hub Rights was at severe risk of late payment; in financial distress; was the subject of various judgement for non-payment of debts; and owed money to other creditors.

t. On 31 August the termination was approved at the AGM.

u. On 2 September it asked the applicant to provide the requested financial information and show cause that the termination was invalid. This was not provided.

v. On 9 September it wrote to the applicant detailing various breaches of the agreements. The applicant did not comply with its directions or otherwise remedy the breaches.

[18] Section 149B of the Act
[19] Sections 270(1)(c), (3) and (4) of the Act
[20] Section 229A of the Act

w. On 11 September it made a proposal to the applicant to resolve this application. The applicant did not agree.

x. On 24 September the applicant commenced an appeal of the interim order.

y. On 21 October the applicant advised it had applied to the Magistrates Court.

z. On 22 October CBA advised it had taken possession of Lot 12 ahead of its sale.

aa. The term insolvency is not defined in the agreements. It cites the test for insolvency.[21]

bb. Based on all information that is publicly available, it is entitled to infer that the applicant is or is presumed insolvent. The applicant cannot pay all its debts when they are due, and has been unable to do so since at least June 2019. The CBA paid the levies owed by the applicant. Its recovery costs have not been paid. The applicant was under external administration from 21 June 2019 to 31 July 2020. The 'end of administration return' confirms the applicant has a nil balance in its bank accounts, meaning it has insufficient cash flow to pay its debts, and the only reason the applicant was not trading insolvent during the period was that a secured creditor provided funding. The 'annual administration return' confirms the applicant has no assets. The CBA entered into possession of Lot 12 to sell it as mortgagee. The status of the applicant with ASIC remains 'externally administered' due to the CBA being the controller since the receiver retired. Credit searches confirm the applicant is at severe risk of late payment, in financial distress, is the subject of judgements for non-payment of debts of $18,275, and owes other debts to creditors including the respondent. The applicant has been unable to provide timely and accurate written financial records despite written requests and this being a requirement of the *Corporations Act 2000*. The applicant has provided no direct evidence that it is solvent, despite the opportunity to do so.

cc. Under the deed of assignment, Ms Bridget Goodwin is the only approved person required and able to perform the duties on behalf of Hub Rights. If the applicant wishes to nominate a new approved person, it must do so in accordance with the agreements. In addition, under the agreements, Ms Goodwin must reside in a lot in the scheme.

dd. Since June 2019 the applicant has not performed the duties at all.

ee. The committee resolution of 6 August was reasonable. The applicant is insolvent or presumed insolvent. Since the receiver retired, Ms Goodwin has not performed the duties or sought approval for a new approved person and has not resided in a lot in the scheme. The applicant has apparently engaged Ms Hardip (Heidi) Kaur to perform some duties, but without the body corporate's approval. This is confirmed in the material the applicant filed with the Magistrates Court on 20 October.

ff. On that basis, there is no requirement on the body corporate to pay remuneration to the applicant, including at the time of the committee resolution.

gg. The applicant owes debts to the body corporate that exceeds the remuneration. At the time of these submissions the debt (recovery costs of $4,167.55 and other costs of $44,033.02) have not been paid.

hh. The application was not properly commenced as the applicant is making the application as the caretaker rather than as a lot owner.

ii. This application is a complex dispute relating to the engagement of the applicant as a caretaker and letting agent. As the application was commenced in the Commissioner's office, it may only be dealt with by a specialist adjudicator.

jj. The application contains false or misleading information and documentation, including by omission of all relevance correspondence. It asserts that the applicant failed to place all relevant material facts and matters before the adjudicator.

[21] Barwick CJ in *Sandell v Porter* (1966) 115 CLR 666 at 670 – 671; *Welcome Homes Real Estate Pty Ltd v Ziade Investments Pty Ltd (in liq)* [2007] NSWCA 167

[30] The body corporate subsequently advised that Lot 12 had been sold. As the applicant was no longer an owner, it argued there was no longer a dispute between the applicant as a lot owner and the body corporate. It sought the dismissal of the application, with costs, or the cancellation of the interim order. I provided this submission to the applicant for comment. The applicant disputed the submission, apparently on the basis that Lot 12 is not attached to the agreements and the agreements do not require the applicant to own Lot 12, so the sale of Lot 12 did not affect the jurisdiction to decide the dispute. I have addressed that above.

[31] Although the applicant has not responded to the substantive submissions, the applicant's comments on the later submissions about the status of the application following the sale of Lot 12, and in other communications, indicate objections to the body corporate's conduct. The applicant refers to the body corporate failing to pay the applicant; attempting to prevent the applicant carrying out its normal work; adding additional and excessive charges onto its account; incurring spiralling legal fees to attack the applicant; and bullying it. It asserts that the argument that the applicant is insolvent has 'evaporated' and is 'irrelevant'.

Analysis

[32] The applicant seeks to invalidate AGM Motion 11 and the committee resolution of 6 August. The applicant's statement of grounds is limited and somewhat unclear. However, it appears the substantive legal basis for this application is that the body corporate acted unreasonably in making these decisions. To the extent that I have jurisdiction to determine this issue (as discussed above), I will consider the statutory obligation to act reasonably and the issues with the two resolutions.

[33] Much of the material submitted appears to relate to the broader issues between Hub Rights as caretaker and the body corporate, and are not directly relevant to the specific legal issues raised by the orders sought in this application. I have not had regard to the material submitted except where it is directly relevant to the legal issue about the two disputed resolutions. I have also not had regard to any contractual dispute between Hub Rights as caretaker and the body corporate, as that is clearly beyond my jurisdiction. It is for Hub Rights to consider what alternative avenues it has to pursue those and other issues of concern.

Reasonable decision-making

[34] A committee and body corporate must act reasonably in making a decision.[22] If satisfied that a body corporate or its committee has failed to act reasonably, an adjudicator is empowered to make an order overturning or amending a decision.[23]

[35] There has been much judicial consideration of the test for reasonableness in regard to body corporate decisions.[24] What is reasonable is a question of fact, based upon a consideration of all relevant matters in the circumstances of each case.[25] The question is not whether the decision was 'correct' but whether it is objectively reasonable.[26] A *'logical and understandable basis for the decision'* is a factor but does not necessarily mean the decision is reasonable as important matters may have been overlooked or discounted.[27] Reasonable decision-making *"…involves an evaluation of the known facts, circumstances and considerations that tend to have a rational bearing on the issue…"* and *"…requires that all relevant matters are taken into consideration and irrelevant ones are left out*".[28]

[36] The applicant bears the onus of establishing that the disputed decisions are unreasonable.

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[22] Pursuant to sections 94(2) and 100(5) of the Act

[23] For example, Item 24 of Schedule 5 of the Act

[24] See for example, *Albrecht* v *Ainsworth & Ors* [2015] QCA 220 and *Ainsworth & Ors* v *Albrecht & Anor* [2016] HCA 40

[25] *Waters* v *Public Transport Corporation* (173) CLR 349, pp 379, 383-384, 410-411, *Secretary, Department of Foreign Affairs and Trade* v *Styles* (1989) 88 ALR 621

[26] *Cwealth Bank of Australia* v *Human Rights & Equal Opportunity Commission* (1997) 150 ALR 1, pp34, 38

[27] *Cwealth Bank of Australia* v *Human Rights & Equal Opportunity Commission* (1997) 150 ALR 1, pp34, 38

[28] *Body Corporate for Beaches Surfers Paradise v Backshall* [2016] QCATA 177 at 43, citing *McKinnon* v *Department of Treasury* (2006) 228 CLR 423

AGM Motion 11

[37] Motion 11 proposes terminating the engagement of Hub Rights on the basis that it is insolvent, in breach of Clause 9.1.4 and 6.1.4 respectively of the agreements. Motion 11 further authorises the body corporate to take all reasonable steps to give effect to the termination and to engage lawyers to represent it if the termination is disputed.

[38] The explanatory note for the motion says the body corporate may terminate the agreements if Hub Rights is insolvent. It said Hub Rights had been insolvent since June 2019 as it had been unable to pay its debts. It detailed the appointment of the receivers and managers, and that CBA was going to sell Lot 12 as mortgagee exercising power of sale. It said that on 21 July 2020 it advised CBA, the receivers, and Hub Rights that it was going to terminate the engagement of Hub Rights because Hub Rights was insolvent. It said that as of 27 July the outstanding levies owed on Lot 12 were $12,082.20 and the body corporate had demanded that Hub Rights pay the costs it had incurred in relation to the external administration, being $44,033.02. The explanatory note said the levies and demand had not been paid and the committee considered it had no reasonable alternative but to proceed with the termination.

[39] The applicant says it is not insolvent, and the unpaid levies and appointment of a receiver are not evidence of insolvency. It further says the receiver was not appointed due to a breach of a financial covenant, the receiver retired as of 31 July, and CBA has paid the outstanding levies.

[40] In essence, a person or a company is insolvent if they cannot pay their debts when they fall due. I consider that it is clearly beyond the scope of my jurisdiction to consider if the applicant is or ever was insolvent, or if any purported insolvency was a valid basis to terminate the agreements. However, I do consider there is a question as to whether it was reasonable for the body corporate to pass AGM Motion 11 based on the purported insolvency if the applicant is not insolvent or there is no reasonable basis to conclude that the applicant is insolvent. If there is no valid legal basis to terminate the agreements, passing and implementing a resolution to terminate could expose the body corporate to significant legal consequences. Moreover, if the applicant had been insolvent prior to the AGM, but the insolvency was resolved by the time of the AGM, arguably it would not be reasonable to terminate when the alleged breach of the agreements had been remediated.[29]

[41] When lodging the application, the applicant indicated it was solvent. The body corporate gave details as to the basis on which it inferred that the applicant was insolvent. Since the interim order was decided, the parties have provided more information, which I have reviewed.

[42] The body corporate set out in detail the basis for its view that the applicant was and is insolvent and previously put this to the applicant. Despite the body corporate's repeated requests for financial information, the applicant has not provided any evidence it is solvent or any detail to refute the body corporate's claims about its financial position. Whether or not it had any legal obligation to provide financial information to the body corporate, it would have been prudent for the applicant to do so to resolve the body corporate's concerns. Given the circumstances, particularly in light of the matters put to the applicant by the body corporate, I do not consider the body corporate was obliged to rely on the applicant's bare assertions that it was solvent.

[43] It does not appear that receivers and managers were appointed for the applicant due to any financial breach by the applicant and the levies owing on Lot 12 were paid by the CBA before the AGM (albeit after the AGM notice was issued). Although the applicant appears to dispute the legal costs the body corporate has claimed against it, and the body corporate's failure to remunerate it, it has not established that it is solvent or would be solvent but for those disputed claims.[30] Moreover, there are other reasons for the body corporate's conclusion that the applicant is insolvent. Having regard to all the submitted material and the scant comments of the applicant, I am unable to understand the applicant's recent assertion that the claim that it is insolvent has 'evaporated' and is 'irrelevant'.

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[29] *Body Corporate for the Reserve CTS 31561 v Trojan Resorts Pty Ltd* [2017] QCATA 53

[30] It is beyond the scope of this application and my jurisdiction for me to make any determination on the validity of either of these matters.

[44] On balance, I am satisfied there is evidence on which the body corporate could reasonably conclude the applicant is insolvent (whether in fact it is), and was at the time of the AGM. More fundamentally for present purposes, I am not satisfied the applicant has established that it was not reasonable for the body corporate to decide to pass AGM Motion 11. I stress this is separate to the question of whether the body corporate could terminate the caretaking agreements under the terms of those agreements, about which I make no comment.

[45] The applicant referred to section 126(2) of the Act, which prevents the termination of financed contracts if a financier has appointed a person as receiver and manager. Given that the receiver retired on 31 July, I can see no reason why that section prevents the termination of the agreements after that date.

[46] Furthermore, I am not satisfied the applicant has provided argument or sufficient evidence as to any other potential defects in the conduct of the AGM or the AGM notice.

Committee resolution

[47] By Motion 8, the committee resolved on 6 August to instruct the body corporate manager to withhold payments to Hub Rights with respect to the monthly contractual payments outlined in the caretaker agreement. The motion gave no indication of the reason for the decision.

[48] The applicant says it is performing its duties and has continued to do so despite the dispute. It says there is no lawful basis for the committee to withhold remuneration and it is unreasonable.

[49] To the extent that this issue is about an alleged breach of the contractual obligation to remunerate the caretaker, the issue is a contractual matter that is beyond my jurisdiction to determine. However, if the committee has no valid legal basis to withhold payments that the body corporate is required to pay under the agreements, it is arguable that the decision to pass Motion 6 would be unreasonable.

[50] However, having regard to the information subsequently submitted, I am not satisfied the applicant has established that it was not reasonable in the circumstances at the time for the committee to resolve to pass Motion 8. Without commenting on the veracity of its claims, there is evidence that the committee reasonably believed the applicant was in breach of the agreements, including that it was not performing the duties in accordance with the agreements, and owed the body corporate more than the amount of any remuneration.

[51] I note that the applicant objects to the committee's expenditure on legal fees. However, it has not established that this expenditure has not been validly authorised by the body corporate, or that this issue affects the validity of either of the disputed resolutions.

Costs

[52] The body corporate has sought an order that the application be dismissed under section 270(1)(c) of the Act with costs awarded to the body corporate.

[53] That section provides that an adjudicator may dismiss an application if satisfied that the application is frivolous, vexatious, misconceived or without substance. If an application is dismissed on that basis, an adjudicator can award costs of up to $2,000 incurred by the respondent in defending an application without merit.

[54] The application has been unsuccessful, on both merit and jurisdiction. I have concerns about the haphazard and poorly articulated manner in which the applicant has conducted this dispute. Comments in the submitted material indicate the applicant entirely misconstrued the meaning and effect of the interim order made on 26 August. It is also concerning that the applicant failed to assist itself by responding to appropriate requests for information from the body corporate, and ostensibly reasonable proposals to advance this dispute.

[55] Notwithstanding that, the applicant originally identified an arguable legal question; the substantive issue is very significant for the applicant; and the applicant was not legally represented since the application was lodged. In that context, on this occasion, I am not satisfied that it would be appropriate to dismiss the application under section 270(1)(c) of the Act. On that basis, an order for costs is not warranted.

Conclusion

[56] The applicant lodged this application as a lot owner. I consider the applicant no longer has a dispute with the body corporate in its capacity as the owner of Lot 12, since the sale of Lot 12. The applicant clearly has a continuing interest in the substantive issues in its capacity as the caretaker. However, the applicant did not bring this application in its capacity as the caretaker. Moreover, the nature of the dispute between the caretaker and the body corporate is a contractual matter that a department adjudicator does not have jurisdiction to determine.

[57] In any event, if this was a dispute that I was able to determine, I consider the application should be dismissed on its merits. Based on the submitted material, I am not satisfied the applicant has ultimately discharged its onus of proof that the body corporate failed to act reasonably in deciding AGM Motion 11 and the committee resolution of 6 August. I am similarly not satisfied that the applicant has properly articulated any other legal basis (within the jurisdiction of a department adjudicator) to invalidate either resolution.

[58] It follows that I have dismissed the application.

[59] With finalisation of the application for final orders, the interim order made on 26 August lapses. As such, the body corporate is at liberty to rely on and implement AGM Motion 11.