

DISTRICT COURT OF SOUTH AUSTRALIA

(Civil: Minor Civil Review)

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WAMIJE INVESTMENTS PTY LTD v STRATA CORPORATION 1232 INC

[2021] SADC 4

Judgment of her Honour Judge Thomas

22 January 2021

REAL PROPERTY - STRATA AND RELATED TITLES - MANAGEMENT AND CONTROL - BODY CORPORATE: POWERS, DUTIES AND LIABILITIES

REAL PROPERTY - STRATA AND RELATED TITLES - MANAGEMENT AND CONTROL - RIGHTS AND OBLIGATIONS OF PROPRIETORS

PROCEDURE - CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS - COSTS - RECOVERY OF COSTS

A unit holder of a strata corporation, who was dissatisfied with the judgment of a Magistrate that included a debt claim for legal costs incurred in debt recovery action taken against the unit holder pursuant to a policy on levy arrears adopted by resolutions passed in general meetings, sought a review of the matter under s 38 of the *Magistrates Court Act 1991*. The unit holder on review:

- (1) denied liability to pay legal costs not in accordance with the *Magistrates Court (Civil) Rules 2013* costs scale for a minor civil action on grounds that do to so circumvented the applicable costs rules or that legal costs incurred in suing for damages are not damages as a matter of general principle;
- (2) challenged the validity of the resolutions passed in annual general meeting adopting the levy arrears policy;
- (3) challenged the reasonableness of the costs awarded as a debt;
- (4) claimed the costs awarded as a debt should be subject to a taxation; and
- (5) complained the unit holder had not been afforded procedural fairness at trial.

Held, dismissing the application for review and affirming the judgment of the Magistrate that the respondent strata corporation is entitled to be paid \$5,298.30 by the unit holder for legal costs incurred in debt recovery action for arrears under its levy arrears policy:

On Review from MAGISTRATES COURT OF SOUTH AUSTRALIA (MAGISTRATE SCHULZ)

Applicant: WAMIJE INVESTMENTS PTY LTD Director of Company: MR M PAWLYSHYN

Respondent: STRATA CORPORATION 1232 INC Other: DR A KUPA

Hearing Date/s: 11/12/2020, 14/12/2020

File No/s: CIV-20-001622

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- (1) Legal costs incurred over and above the costs scale were recoverable as a debt under s 27(5) of the *Strata Titles Act 1988*. The levy arrears policy levied a contribution against the unit holder for costs (including legal costs) associated with debt recovery action for levy arrears. Since the contribution levied was not proportional to unit entitlements, a unanimous resolution was required to bind the relevant unit holders under s 27(2) and (3) of the *Strata Titles Act 1988*.
- (2) Unanimous resolutions were passed at successive validly convened general meetings adopting and continuing the arrears levy policy thereby binding the unit holder.
- (3) The legal costs claimed as a debt were properly and reasonably incurred in the circumstances.
- (4) Consideration given as to the rights of the unit holder to a taxation under the *Legal Practitioners Act 1981* in the circumstances, and an order adjourning this review and ordering the unit holder to apply for a taxation in the Supreme Court not made.
- (5) No want of procedural fairness found in the hearing of the minor civil action.

Magistrates Court Act 1991 (SA) s 38; *Strata Titles Act 1988* (SA) s 3, s 19(3), s 27, s 33, s 41A(9)(g); *Legal Practitioners Act 1981* (SA) s 37 and s 43 of Schedule 3, referred to. *Matthews v Qasemy* [2020] SADC 175; *Gray v Sirtex Medical Limited* (2011) 193 FCR 1; *Proprietors Units Plan No 52 v Gold* (1993) 44 FCR 123; *Owners Corporation Units Plan 202 v Brudenall & Ors* [2015] ACAT 64, considered.

**WAMIJE INVESTMENTS PTY LTD v STRATA CORPORATION 1232
INC
[2021] SADC 4**

Introduction

1 This is a review under s 38(6) of the *Magistrates Court Act 1991* (SA) (the **Magistrates Court Act**) of a minor civil action. The Applicant, Wamije Investments Pty Ltd (**Wamije**), is dissatisfied with the Magistrate's judgment made on 24 June 2020 to the extent that it included a debt claim of \$5,298.30 for legal costs and disbursements incurred and paid by the Respondent, Strata Corporation No. 1232 Inc (the **Strata Corporation**) to its solicitors Mellor Olsson for debt recovery action taken against Wamije (the **Mellor Olsson Costs**) for unpaid levy contributions. The Magistrate also awarded an amount of \$1,278 for costs in accordance with the Costs Scale 2 for minor civil actions under the Third Schedule of the *Magistrates Court (Civil) Rules 2013*.

2 Wamije is the owner of Unit 4, 23 George Street, Torrens Park. The Strata Corporation is the body corporate created under the *Strata Titles Act 1988* (SA) (the **Strata Titles Act**) upon deposit of the strata plan for the seven units and common property on the land at 23 George Street, Torrens Park.

Application for Review

3 The provisions applicable to a minor civil review are set out in s 38(1) of the Magistrates Court Act as follows.

- (a) the trial will take the form of an inquiry by the Court into the matters in dispute between the parties rather than an adversarial contest between the parties;
- (b) the Court will itself elicit by inquiry from the parties and the witnesses, and by examination of evidentiary material produced to the Court, the issues in dispute and the facts necessary to decide those issues;
- (c) the Court may itself call and examine witnesses;
- (d) the parties are not bound by written pleadings;
- (e) the Court is not bound by the rules of evidence;
- (f) the Court must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

4 Sub-sections 38(6) and (7) of the Magistrates Court Act provide that in hearing and determining a review of a minor civil action, this Court may inform itself as it thinks fits and re-hear evidence taken by the Magistrate, and it must also act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms. Ultimately, on a review, this Court may affirm the judgment of the Magistrate or rescind it and substitute a judgment this Court considers appropriate. A decision of this Court on a review is final and not subject to appeal under s 38(8) of the Magistrates Court Act.

5 Accordingly, this Court is required to examine the inquisitorial process undertaken by the Magistrate and determine whether the judgment with which the applicant is dissatisfied should be affirmed or rescinded having regard to the overriding requirement to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms. This means proper regard is to be had to the substance of the claim whilst ensuring a fair trial, including by permitting the parties to have a proper opportunity to address the real issues in dispute. Given the nature and purpose of a minor civil review, I concur with his Honour Judge Burnett in *Matthews v Qasemy*¹ that the phrase “*equity, good conscience and the substantial merits of the case*” requires consideration of whether the Magistrate acted according to good sense and the natural justice of the matter and did whatever was necessary to achieve fairness between the parties in relation to their legal rights, eschewing legal or other technicalities.

Nature of the Minor Civil Action

6 The minor civil action the subject of this review involved a debt claim by the Strata Corporation against Wamije as the owner of Unit 4, for the arrears for unpaid contributions levied for the period 1 October 2018 to 2 June 2020, arrears notice fees, interest and the Mellor Olsson Costs in the amount of \$5,772.30.

7 This was the third² of three minor civil actions instituted by the Strata Corporation against Wamije for unpaid contributions levied by the Strata Corporation against all unit holders in proportion to their unit holding to raise funds for future expenditure. The contributions levied for non-recurrent (sinking fund) and recurrent (administration fund) expenditure were imposed by resolutions passed in annual general meetings under s 27 of the Strata Titles Act.

8 The Strata Corporation claimed the unpaid contributions and interest as a debt under s 27(5) of the Strata Titles Act. The arrears notice fees and Mellor Olsson Costs were claimed as debts under its Levy Arrears Policy as adopted and confirmed by resolutions passed in successive annual general meetings.

9 The first action³ was commenced in 2017 and judgment awarded in favour of the Strata Corporation in about February or March 2018. The legal costs incurred with the first action are not the subject of claim in this review, but are part of the background to the Strata Corporation’s ongoing problems with Wamije’s repeated failure to pay contributions due and owing to it that ultimately led to the Strata Corporation retaining solicitors and taking formal legal action against Wamije.

¹ [2020] SADC 175 at [10].

² AMCCI-19-3567.

³ AMCCI-17-4064.

10 On 18 February 2019, judgment in the second action⁴ was awarded in favour of the Strata Corporation for \$2,088.15 for outstanding contributions levied for the period 23 February 2018 to 19 September 2018. The judgment sum included costs awarded under the Magistrates Court Schedule 3 Costs Scale 2 fixed in the amount of \$304.

11 The third action the subject of this review was instituted on 6 September 2019. There were four components of the Strata Corporation's third claim in debt for \$9,983.99 against Wamije:

- (1) levies for the period 1 October 2018 to 2 June 2020 in the amount of \$3,790.27;
- (2) arrears notice fees of \$215 for four arrears notices sent to Wamije;
- (3) interest on arrears from 1 November 2018 to 18 May 2020 in the amount of \$206.42; and
- (4) \$5,772.30⁵ for Mellor Olsson Costs for work done between 8 October 2018 and 7 April 2020 to assist and advise the Strata Corporation on debt recovery action against Wamije for unpaid levies. These costs did not include the costs the subject of the award in the second action.

12 Ultimately, the Magistrate found that the Strata Corporation was entitled to recover \$8,019.99 as a debt from Wamije and assessed the amount owing as:

- (1) \$4,211.69 for contributions levied for the period 1 October 2018 to 2 June 2020, arrears notice fees and interest on arrears from 1 November 2018 to 18 May 2020; plus
- (2) \$5,298.30⁶ for Mellor Olsson Costs claimed as a debt pursuant to the Strata Corporation's Levy Arrears Policy as adopted and confirmed by resolutions passed in successive annual general meetings; less
- (3) the payment of \$1,490 made by Wamije to the Strata Corporation on the morning of the hearing.

13 The Magistrate awarded costs in favour of the Strata Corporation as the successful party in accordance with the Costs Scale 2 for minor civil actions under the Third Schedule of the *Magistrates Court (Civil) Rules 2013* and assessed the costs and fees payable as \$1,278.

14 The Magistrate addressed the issue of double-counting between the debt claim and the award for costs of the action. In assessing the amount of the debt recoverable for Mellor Olsson Costs as a debt under the Levy Arrears Policy, the Magistrate

⁴ AMCCI-18-3109 instituted on 17 September 2018.

⁵ A transcription error in the Third Amended Claim was identified and the amount of legal costs claimed confirmed during the hearing before the Magistrate at T40-41.

⁶ The balance after deducting the filing fee (\$153) and the solicitors fee (\$321) allowed as costs of the minor civil action as referred to below.

deducted the filing fee (\$153) and the solicitors fee (\$321) from the amount claimed on the face of the Third Amended Statement of Claim (as amended) because these costs were included in the costs awarded for the minor civil action (\$1,278) by the Magistrate under the scale as the costs of action. The trial listing fee for the minor civil action (\$644) was included in the Magistrate's assessment of costs in accordance with Costs Scale 2. It was not included in the Strata Corporation's debt claim under its Levy Arrears Policy.

Grounds of Review

15 The Notice of Review challenged the following orders:

Judgment Amount
Costs Order
Procedural fairness

16 The following grounds are relied on in the Notice of Review:

- 1 The costs awarded to the Applicant were not reasonable and in accordance with the court scale (minor [sic] Civil action procedural rules).
- 2 Costs claimed by the Applicant were subsequently changed at trial to damages, and hence claimed and awarded as indemnity costs against the Respondent.
- 3 The Applicants [sic] claim for costs should be subject to costs taxation by the court.
- 4 That the Appellant [sic] was not afforded Judicial fairness during the trial.

The Notice of Review sought the following orders:

- 1 That the Costs in this matter be in accordance with the Minor Civil Cost Scale (192.3) rules
- 2 Or that the costs sort [sic] as part of the Applicants [sic] claim be subject to a taxation by the court

17 It is evident from Wamije's Notice of Review that it does not challenge the decision of the Magistrate regarding levies, arrears notice fees and interest (\$4,211.69). Mr Pawlyshyn, the director of Wamije representing it at the hearing before me, confirmed that the scope of dissatisfaction with the Magistrate's judgment was confined to the amount of Mellor Olsson Costs (\$5,298.30) found to be owing as a debt under the Strata Corporation's Levy Arrears Policy.

The Trial before the Magistrate

18 There was a lengthy hearing before the Magistrate that took about 5 ½ hours. The Magistrate heard evidence from three witnesses: Dr Kupa, the Secretary of the Strata Corporation and the unit holder representing the Strata Corporation at trial; Ms Pearson, an employee of the current professional body corporate manager, Adelaide Strata & Community Management (the **Manager**), and Mr Pawlyshyn. The Magistrate

considered and relied on documentary evidence provided by the parties⁷ and ultimately considered it was not necessary to make any assessment of the credit of any witnesses.

19 The hearing before me proceeded in three parts over two days, and I heard further evidence from Dr Kupa, Mr Adrian Roach, an employee for 12 years of the Manager who had worked with the unit holders for the Strata Corporation for a large proportion of that time, and Ms Cosentino-Tassone, representing her mother, the owner of unit 7.

20 During the hearing before me, Wamije further articulated its complaints about the Magistrate's judgment concerning the Mellor Olsson Costs.

21 First, the Magistrate was in error in finding that the Mellor Olsson Costs were a debt, thereby in effect circumventing the civil court rules and the costs scale applicable to a minor civil claim.

22 Secondly, the hearing before the Magistrate was unfair because in Mr Pawlyshyn's opinion, and as he considers the transcript shows, the Magistrate instructed and coached the representative of the Strata Corporation as to how to claim Mellor Olsson Costs as damages or as a debt.

23 Thirdly, during the trial, Wamije was not given an opportunity to challenge the quantum of the Mellor Olsson Costs either as to duplication of work, a fair assessment of those costs or to explore the basis upon which the Mellor Olsson Costs included in the judgment amount should have been on a party/party or solicitor/client basis rather than as an indemnity.

Procedural Fairness

24 The substance of Wamije's second ground of review as per its Notice of Review is that there was a change to the basis of the Strata Corporation's claim for the Mellor Olsson Costs at trial and this was procedurally unfair.

25 If there was a breach of natural justice in this regard, I would consider this a breach of the Magistrate's obligation to conduct the minor civil action in accordance with equity, good conscience and the substantial merits of the case and then I would need to consider the consequences of any such failing. However, for the reasons set out below, I do not find any procedural unfairness in the conduct of the hearing before the Magistrate.

26 On review of the Strata Corporation's Second and Third Statements of Claim, it was clear that there had been no change in position at trial and that Wamije had been on notice of what ultimately is now the critical issue in this matter since the Strata Corporation filed its Second Statement of Claim on 19 May 2020⁸ and made a claim⁹

⁷ An 81-page indexed trial and tender book and a second trial and tender book of seven pages.

⁸ FDN 14.

⁹ Paragraph 7.

to be entitled to the Mellor Olsson Costs pursuant to motions approved at annual general meetings. The adoption of the Levy Arrears Policy at the 2018 and 2019 annual general meetings was expressly pleaded and the minutes of these meetings were included in the Trial and Tender Book.

27 As to the complaint that the Magistrate had unfairly instructed and coached the Strata Corporation and the transcript showed this, I find the transcript including those parts that Mr Pawlyshyn took me to did not evidence any unfairness or partisanship and merely reflected the inquisitorial nature of the hearing of a minor civil action. At the hearing before me I referred the parties to and note the explanation the Magistrate gave at the beginning of the trial as to the nature of a minor civil action. The parties were informed at the outset that the trial would proceed in the form of an inquiry by the court, rather than an adversarial contest and questions would be asked by the Magistrate of the parties and witnesses to determine the issues in dispute. I find that the Magistrate's explanation of the process for the trial was clear and the transcript shows that the trial was conducted fairly and in accordance with equity, good conscience and the substantial merits of the case without regard to technicalities. I reject this ground of complaint.

28 Wamije also complained that the Magistrate unfairly and incorrectly referred to and characterised the Strata Corporation's claim for the Mellor Olsson Costs as a claim for damages, which evolved into a claim for a debt.

29 At the hearing before me, Wamije relied on the proposition at general law that legal costs incurred in suing for damages for breach of contract are not included as damages as a result of the breach and referred to the decision of the Full Court of the Federal Court in *Gray v Sirtex Medical Limited*.¹⁰ Wamije contended further that the recovery of legal costs depends on the exercise of judicial discretion in accordance with the relevant rules of court and in this case, the Magistrate erred by permitting the recovery of the Mellor Olsson Costs as part of the judgment sum contrary to the relevant costs scale.

30 Wamije's contention that legal costs are not recoverable as damages for a breach of contract is correct as a matter of general principle. That however is not the basis of the Strata Corporation's claim or the Magistrate's decision in this case that the Mellor Olsson Costs were recoverable as a debt against Wamije under the Strata Corporation's Levy Arrears Policy as adopted in general meeting. Whilst the Magistrate initially may have confused matters at trial by referring to the Strata Corporation's claim for Mellor Olsson Costs as a claim for damages, in the end she corrected her language and referred to the basis of the Strata Corporation's claim as one in debt and her final ruling made that clear.

31 On this basis and for the following reasons, I find that Wamije was afforded procedural fairness in dealing with the Strata Corporation's claim for Mellor Olsson's Costs as a claim in debt under its Levy Arrears Policy.

¹⁰ (2011) 193 FCR 1.

32 As discussed above, the basis of the claim in debt was pleaded in the Second and Third Statements of Claim as arising under the Levy Arrears Policy adopted by resolutions passed at annual general meetings of the Strata Corporation. It is evident that Mr Pawlyshyn understood at trial that the basis of the claim in debt depended on whether Wamije was bound by the Levy Arrears Policy. His understanding was demonstrated by Wamije's (unsuccessful) contention that the Levy Arrears Policy was ineffective because the resolutions adopting it effectively amended the Articles of the Strata Corporation yet no resolutions had been certified in the prescribed manner and lodged with the Registrar-General in accordance with s 19(3) of the Strata Titles Act.

Substantive Complaints

33 At trial before the Magistrate, substantive dispute about whether the Levy Arrears Policy was effective and bound Wamije to pay the Mellor Olsson Costs as a debt involved consideration as to the resolutions adopting this policy at the 2018 and 2019 annual general meetings and whether those resolutions amended the Articles of the Strata Corporation.

34 I consider that the resolutions passed in general meeting adopting the Levy Arrears Policy did not amend the Articles of the Strata Corporation and affirm the Magistrate's rejection of Wamije's contentions and her reasoning in this regard. I concur that the requirements of s 19(3) of the Strata Corporation Act do not apply and have no bearing on this case.

35 I disagree however with the Magistrate's reasoning that the Levy Arrears Policy gave rise to a claim in debt against Wamije for the Mellor Olsson Costs because it was adopted by validly passed *ordinary* resolutions at the 2018 and 2019 annual general meetings.¹¹

36 For the reasons set out below, I find that for the Levy Arrears Policy to give rise to a legal obligation for Wamije to pay the Mellor Olsson Costs as a debt it was necessary for it to be adopted by the passing of a unanimous resolution at a validly convened general meeting in accordance with s 27(3) of the Strata Titles Act. If such a resolution was passed, the Mellor Olsson Costs would then have the character of a contribution payable by Wamije. If such contribution was unpaid, then, like many similar statutory provisions, it would be recoverable as a statutory debt from Wamije under s 27(5) of the Strata Titles Act.¹²

Levy Arrears Policy

37 In evidence, Mr Pawlyshyn accepted he was aware of the Levy Arrears Policy from 31 January 2014¹³ following receipt of it by email.

¹¹ Emphasis supplied.

¹² Eg s 48 of the *Unit Titles Act 1970* (ACT) and s 80 of the *Strata Schemes Management Act 1996* (NSW). See *Proprietors Units Plan No 52 v Gold* (1993) 44 FCR 123 at 127.

¹³ T65.33.

38 The minutes of the 2018 and 2019 annual general meetings¹⁴ recorded the carrying of a motion to adopt previous policies including the Levy Arrears Policy without dissent in substantively identical terms as follows:¹⁵

10. ADOPTION of POLICIES

a. Affirmation of previous policies;

Motion tabled;

The policies of the Corporation for ‘Disbursement Directions’, ‘Strata Directory’, ‘Contact Details’, ‘Financial Charges’, ‘Levy Arrears’, and ‘Notices to Owners’ are to continue without change.

Motion Carried

...

Levy Arrears

Following an overview of the procedures followed to collect overdue levies it was resolved that the following policies and procedures be adopted:

1. Interest on Overdue Levies
The Corporation will charge owners interest on all levies outstanding for in excess of 30 days. The rate is set at 15% per annum calculated daily.
2. Accounting Fees
Any cost incurred by the Corporation including but not limited to Management Agreement charges are to be recovered from the relevant unit owner.
3. Debt Collection
That the Body Corporate Manager is authorised to proceed on behalf of the Corporation with any necessary action, subject to item 5 including legal action, to recover all outstanding monies.
4. **Costs**
All related costs associated with the recovery of any outstanding monies will be recovered from the relevant unit owner as debt against the unit.¹⁶
5. Any arrears exceeding 75 days
The Body Corporate Manager will contact the Presiding Officer, or another Office Bearer, and confirm further directions regarding further action including legal action.

...

39 The Strata Corporation relies on the paragraph of the Levy Arrears Policy headed “Costs” as imposing an obligation on Wamiye as the relevant unit holder to pay all recovery costs associated with outstanding monies owed by it as a debt.

40 The commercial sense of the Levy Arrears Policy is that it is necessary for the unit holders to pay the contributions levied against them when due and payable so the Strata Corporation can meet expenses for the benefit of all unit holders. It would be unfair for the unit holders who have made their levy contribution payments by the due

¹⁴ Held on 7 February 2018 and 5 February and 3 December 2019.

¹⁵ Only the order of the paragraphs in the Levy Arrears Policy differed between the meeting held on 7 February 2018 and the two subsequent meetings relevant to the claim for the Mellor Olsson Costs incurred in that period. In the minutes of the latter two meetings, paragraph 5 (rather than 4) concerned “Costs”.

¹⁶ Emphasis supplied.

date to bear the costs of debt recovery action taken against a recalcitrant unit holder in arrears, including especially for the costs of legal action for arrears exceeding 75 days.

Relevant Provisions of the Strata Titles Act

41 By creating an obligation on unit holders to pay debt recovery costs for levy arrears, the Levy Arrears Policy raised funds by levying a contribution against the relevant unit holder only. The contribution so levied was therefore not proportional to that unit holder's unit entitlement.

42 The Strata Corporation's power to raise money is provided for in s 27 of the Strata Titles Act:

27—Power to raise money

- (1) A strata corporation may raise such funds (including reserve funds for future expenditure of a capital nature) as it thinks necessary.
- (2) For the purpose of raising funds the strata corporation may, by ordinary resolution, levy contributions against all unit holders.
- (3) The contributions—
 - (a) will be proportional to the unit entitlements of the various units; or
 - (b) will be determined on such other basis as the strata corporation decides by unanimous resolution.
- (4) A strata corporation may, by ordinary resolution—
 - (a) permit contributions to be paid in instalments specified in the resolution; and
 - (b) fix (in accordance with the regulations) interest payable in respect of a contribution, or an instalment of a contribution, that is in arrears.
- (5) The strata corporation may recover an unpaid contribution (and interest on any such contribution), as a debt, from the unit holder of the unit in respect of which the contribution is payable (whether or not that person was the unit holder when the liability arose).

...

43 Whilst the Strata Corporation may raise such funds as it thinks fit,¹⁷ and levy contributions against all unit holders by ordinary resolution,¹⁸ the contributions will be proportional to the unit entitlements of the various units¹⁹ **unless determined otherwise by unanimous resolution.**²⁰

44 The Strata Corporation may recover an unpaid contribution (and interest on any such contribution) as a debt from the unit holder of the unit in respect of which the contributions is payable.²¹

¹⁷ Sub-section 27(1).

¹⁸ Sub-section 27(2).

¹⁹ Sub-section 27(3)(a).

²⁰ Sub-section 27(3)(b); emphasis supplied.

²¹ Sub-section 27(5).

45 A “unanimous resolution” is defined in the Strata Titles Act to mean a “special resolution passed without any dissentient vote at a general meeting of the corporation”.²²

46 A *special resolution* is defined in the Strata Titles Act as follows:²³

special resolution in relation to a strata corporation means a resolution as to which the following conditions are satisfied;

- (a) at least 14 days' written notice, setting out the terms of the proposed resolution and any other information of a kind prescribed by regulation, is given to the unit holders;
- (b) —
 - (i) in the case of a strata corporation in which there are only 3 units and the owner of each unit is entitled to 1 vote in respect of his or her unit—the resolution is passed at a properly convened meeting of the strata corporation at which either no vote, or only 1 vote, is cast against the resolution; or
 - (ii) in any other case—the resolution is passed at a properly convened meeting of the strata corporation at which the number of votes (if any) cast against the resolution is 25% or less of the total number of votes that could be cast at a meeting at which all unit holders are present and entitled to vote.

47 A general meeting may be convened by the giving of written notice of the day, time and place of the meeting to all unit holders at least 14 days before the date of the meeting.²⁴ The notice must set out the agenda and include the text of any unanimous or special resolutions to be moved at the meeting.²⁵

48 Accordingly, in this case there are three conditions that must be satisfied for the passing of a unanimous resolution at a validly convened general meeting:²⁶

1. at least 14 days' written notice must be given to all unit holders;²⁷
2. the notice of meeting must set out the agenda for the meeting and include the terms and text of any resolution proposed;²⁸ and
3. the resolution must be passed without any dissentient vote.²⁹

Validity of Unanimous Resolutions Challenged

49 Since the Mellor Olsson Costs were incurred between 8 October 2018 and 7 April 2020, the Strata Corporation's entitlement to enforce the terms of the Levy

²² Section 3.

²³ Ibid.

²⁴ Sub-section 33(3).

²⁵ Sub-section 33(4b).

²⁶ It was common ground that there was a quorum present at each general meeting, satisfying the requirements of s 33(5).

²⁷ Sub-section 33(3) and s 3 definition of “*unanimous resolution*”.

²⁸ Sections 3 and 33(4a) and (4b)(a).

²⁹ Section 3 definition of “*unanimous resolution*”.

Arrears Policy against Wamije in this case relies on the validity of the unanimous resolutions passed at the 2018 and 2019 annual general meetings.

50 However, Mr Pawlyshyn did not concede the validity of any of the resolutions passing the Levy Arrears Policy and affirming its continuation without change from the previously adopted policy since its first adoption in 2014. This put in issue the conduct of the Strata Corporation's general meetings from 2014 to 2019.

51 The notices and agendas of annual general meetings were not before the Magistrate at trial, nor were the minutes of general meetings prior to 2018. Dr Kupa told me that the relevant notices of meeting and minutes were prepared by the Manager whose services were engaged in early 2014 due to the difficulties in getting bills paid and the resignation of the previous manager, Mr Parini, the owner of units 1, 3, 5 and 6. Dr Kupa and other unit holders present in Court on the first day said they had received all notices of general meeting and generally all attended save Mr Pawlyshyn, who had only attended two early meetings by telephone. Further, the Levy Arrears Policy was prepared by the Manager and adopted without dissent at the 2014 and successive annual general meetings. This was consistent with the minutes of the three annual general meetings held in 2018 and 2019 in the Trial and Tender Book referred to above.

52 Mr Pawlyshyn was not prepared to accept the other unit holders' assertions that proper written notice of any annual general meeting adopting the Levy Arrears Policy had been given to Wamije, nor that the Strata Corporation had in fact paid the Mellor Olsson Costs in the absence of documentary proof.

53 I therefore adjourned the hearing for the parties to revisit their records and provide the Court and each other with any further documents they wished to rely upon.

54 In the adjournment, Mr Roach provided the parties and the Court with notices including agendas for the annual general meetings from 2014 to 2019, minutes for general meetings from 2014 to 2017, related correspondence, proof of payment of the Mellor Olsson's Costs and correspondence logs for the distribution of the 2014 and 2015 notices. Dr Kupa also provided some further documents: the welcome letter she received as a unit holder in January 2014 advising that as an owner she may access the body corporate record on the Manager's website and the notices and minutes for the 2013 and 2014 general meetings.

Proof of Payment

55 Mellor Olsson's tax invoices and the Manager's statements of account to Wamije showing that the Mellor Olsson Costs were invoiced to Wamije as debt recovery charges were included in the Trial and Tender Book.

56 To prove payment of the Mellor Olsson Costs as invoiced, the Manager provided a printout from the Mellor Olsson debtors ledger for the Strata Corporation's file for debt recovery action against Wamije. I am satisfied on the documentary evidence that

the costs claimed were paid and were costs associated with the recovery from Wamije of outstanding monies for overdue levies as per the Levy Arrears Policy.

14 Days' Written Notice

57 It is clear on the face of each of the notices of annual general meeting that at least 14 days' written notice had been given for each annual general meeting that was held between 2014 and 2019, thereby satisfying this condition for the valid passing of a unanimous resolution within the meaning of the Strata Titles Act.

2014 Adoption of Levy Arrears Policy

58 The agenda in the notice (**2014 Notice**) for the 2014 annual general meeting (**2014 AGM**) set out in Item 10 "Adoption of Policies", the text of the proposed resolutions to adopt various policies including the full terms of the "Levy Arrears Process" as follows.³⁰

Levy Arrears Process

To resolve to adopt the following policies and procedure for the collection of overdue levies;

1. Interest on Overdue Levies
The Corporation will charge owners interest on all levies outstanding for in excess of 30 days. The rate is set at 15% per annum calculated daily.
1. Accounting Fees
In accordance with the Management Agreement owners are to be charged an accounting fee set by the Body Corporate Manager if a reminder notice and/or debt collection notice is sent to an owner or their agent.
2. Debt Collection
That the Body Corporate Manager is authorised to proceed on behalf of the Corporation with any necessary action, including legal action, to recover all outstanding monies.
3. Costs
All related costs associated with the recovery of any outstanding monies will be the responsibility of the relevant unit owner and as such will be recovered from that unit owner.
4. Any arrears exceeding 75 days; the Body Corporate Manager will contact the Presiding Officer or failing them another Office Bearer, and confirm further directions as per 3.

Vote; YES / NO / Abstain

59 I find the 2014 Notice satisfied further of the conditions necessary for the valid passing of a unanimous resolution at the 2014 AGM.

60 The minutes of the 2014 AGM record that representatives of all unit holders except Wamije attended the meeting. For item 10 of business and the adoption of the Levy Arrears Policy, the minutes record that the motion to adopt the policies and procedures for the collection of overdue levies was carried with six votes for and none against. I find that there was no dissentient vote at the general meeting to the resolution passing the Levy Arrears Policy, thereby satisfying this final condition for the valid passing of a unanimous resolution.

³⁰ There were two paragraphs numbered 1.

61 The minutes of the 2014 AGM were confirmed and accepted as a true and accurate record at the extraordinary general meeting held on 26 June 2014 (**2014 EGM**) attended by all unit holders including Mr Pawlyshyn by conference call for Wamije, except Dr Kupa. Mr Pawlyshyn made no objection to the Levy Arrears Policy or to the confirmation of the minutes of the 2014 AGM according to the minutes.

62 Mr Pawlyshyn denies receiving the 2014 Notice for Wamije.

63 At the resumed hearing, Mr Pawlyshyn said he had searched his records and could not find either a letter or email sending him the 2014 Notice and submitted that the further documents provided by the Manager did not prove that the 2014 Notice had ever been sent to Wamije. For the reasons set out below, I do not accept Mr Pawlyshyn's submission or his evidence.

64 The documents before me were kept by the Manager as statutory records. The Manager is a professional strata corporation manager and the records produced evidenced a systematic and orderly record keeping and meeting management process. Mr Roach told me that the copies of notices and minutes were taken from the register kept by the Manager for the Strata Corporation as a standard record keeping practice. The emails and letters were printed from the Manager's document management system. Additional hard copy records are archived offsite but those had not been able to be searched in the time available over the weekend between the hearing days. For the 2014 and 2015 annual general meetings, I was told that the covering letters enclosing the notice and agenda for annual general meetings addressed to Mr Peter Parini (the first unit holder) were proformas of the letters sent to all unit holders, whilst from 2016 to 2019 the covering letters before me were copies of the actual letters addressed and sent to Wamije or Mr Michael Pawlyshyn for Wamije.

65 The Manager's records showed that that whilst a soft copy of a covering letter or an email to Wamije or Mr Pawlyshyn for the 2014 or 2015 notices had not been found, a printout of a "letters sent log" included "letters" described as "AGM Notice EMAIL" and "2014 AGM Agenda" for all unit holders including one denoted as "PAWLYSHYN MR MICHAEL" with a "Date Sent" of "10/01/14". Mr Roach also provided the unit holder contact details as advised to the Manager in December 2013 and verified that the details for Wamije and Mr Pawlyshyn were correct.

66 Mr Roach described in evidence the Manager's standard practice for the preparation of notices and minutes that involved the completion and signing of an internal checklist for each notice of meeting, which is kept in the statutory register for the Strata Corporation to record this process. Mr Roach produced to the parties and the Court the checklists for the 2014 and 2015 notices of annual general meeting, both of which were signed by both Mr Roach and his assistant. The 2014 checklist included a handwritten notation for "AGM Notice printed" of "x7" indicating that a notice had been printed for all seven unit holders including Wamije. The tick box for "Meeting Notices Posted with Date sent & Signed by Reception" was ticked, initialled

and dated “10.1.14”, consistent with the date on the soft copy of the proforma covering letter addressed to Mr Parini.

67 The recorded postal and email details for Wamije (unit 4) were confirmed as correct by Mr Pawlyshyn and emails with Mr Pawlyshyn (both before and after the 2014 annual general meeting referring to the change of manager, a proposed meeting, preferred method of receiving notices and correspondence, the minutes and the arrears and debt recovery process) were produced.

68 Mr Pawlyshyn told me he did not receive the 2014 Notice by letter or email and he had searched all his letters and emails and could not find it. However, Mr Pawlyshyn also told me that he does not keep a specific file for correspondence with the Manager. Given the passage of time, I do not consider Mr Pawlyshyn’s inability to locate a copy of the 2014 Notice in his records more than six years later determinative of the matter. In this regard, I note the email correspondence between December 2013 and 31 January 2014 shows that Mr Pawlyshyn did not complain that he had not received the 2014 Notice when he was given the minutes of the meeting a short time later and informed that the Levy Arrears Policy adopted at the meeting would apply to Wamije if the then outstanding levy arrears were not paid within 30 days of the due date. Mr Pawlyshyn’s conduct in this regard is consistent with him having received the 2014 Notice. It is relevant that no complaint about the receipt of the 2014 Notice was raised until the hearing before me was substantially underway.

69 I am satisfied the evidence shows that the 2014 Notice was posted by the Manager to all unit holders including Wamije and this explains why it was not found in Mr Pawlyshyn’s email records. I find it was on the balance of probabilities received by Mr Pawlyshyn for Wamije and has since been lost or destroyed or overlooked in Mr Pawlyshyn’s searches. I reject Mr Pawlyshyn’s submission that the notice checklist does not verify that the 2014 Notice was posted to him. I accept Mr Roach’s evidence that the checklist was part of the Manager’s standard procedure for giving notice of annual general meetings and find that there is no basis to reject it as not being a genuine and contemporaneous record as Mr Pawlyshyn put to me.

70 Accordingly, I find that the 2014 resolution to adopt the Levy Arrears Policy was passed at a validly convened general meeting by a unanimous resolution within the meaning of the Strata Titles Act and therefore validly levied a contribution against unit holders on a disproportionate basis to their unit entitlement for any debt collection or recovery costs as per the Levy Arrears Policy.

2015 to 2019 Adoption of the Levy Arrears Policy

71 The Levy Arrears Policy was an item of business in the notice (**2015 Notice**) and agenda for the 2015 annual general meeting (**2015 AGM**) under the heading “Adoption of Policies”. The proposed resolution was set out in the 2015 Notice as “*Review of Approvals & Policies from the previous AGM held on Wednesday 29/01/14*”, including and naming the Levy Arrears Policy.

72 Mr Pawlyshyn submitted that the 2015 Notice (and subsequent notices) was invalid because it did not set out in full the text of the Levy Arrears Policy, unlike the 2014 Notice.

73 Whilst the 2015 Notice did not set out the full text of the Levy Arrears Policy passed at the 2014 AGM, the 2015 Notice did set out in the agenda the terms and text of the proposed resolution to be moved at the meeting as required by s 33(4b)(a) of the Strata Titles Act. It was sufficient for the proposed resolution to refer to the Levy Arrears Policy by reference to what was approved at the previous AGM. I do not consider it relevant that the minutes record the motion carried in different terms by incorporating the full text of the Levy Arrears Policy, rather than incorporating those terms by reference. I rely by analogy on the reasoning in *Owners Corporation Units Plan 202 v Brudenall & Ors*³¹ that failure to record in the minutes words denoting the kind of resolution passed does not change the legal effect of the voting passing the motion as a unanimous resolution. I therefore find that this condition for the passing of a valid unanimous resolution within the meaning of s 3 of the Strata Titles Act was satisfied by the 2015 Notice.

74 The minutes of the 2015 AGM record that the motion to adopt the Levy Arrears Policy from the previous annual general meeting was carried. The minutes do not record any dissent to that motion. As previously noted, in evidence Mr Pawlyshyn accepted both that he was aware of the Levy Arrears Policy from 31 January 2014³² and he did not object to the adoption of the policy at the 2015 AGM he attended on behalf of Wamije.³³ Mr Pawlyshyn's evidence is consistent with him as Wamije's representative being on proper notice of the motion proposed to be discussed and the subject of decision at the 2015 AGM.

75 Mr Pawlyshyn did not press his submission that Wamije had not received notice of the 2015 AGM after it was pointed out to him that the minutes showed that he had attended this meeting via conference call, despite his contrary recollection that he did not attend any meetings.

76 I find the Levy Arrears policy was adopted without change by the passing of a valid unanimous resolution at the 2015 AGM regarding the requirement for no dissentient vote.

77 Each subsequent notice of annual general meeting from 2016 to 2019 included the same item of business for continued adoption of the Levy Arrears Policy and the terms and text of the proposed resolution in the same form:

10. Adoption of Policies

a. **Affirmation of previous policies;**

- To resolve that: the policies of the Corporation for 'Disbursement Directions', 'Strata Directory', 'Contact details', 'Financial Changes',

³¹ [2015] ACAT 64 at [62]-[65].

³² T65.33.

³³ T66.21.

‘Levy Arrears’,³⁴ and ‘Notices to Owners’ are to continue without change.

Vote; YES / NO / Abstain

Mr Pawlyshyn’s complaint that the notices of meeting for the 2016 to 2019 annual general meetings were also invalid because they did not set out the full text of Levy Arrears Policy lacks merit. Section 33(4b)(a) of the Strata Titles Act requires the agenda to include the text of the proposed resolution to be moved at the meeting, not the text of the policies the subject of the proposed resolution. As can be clearly seen above, the notices and agendas did in fact include the text of the proposed resolution.

78 The minutes for each annual general meeting show that the motion to continue the previous Levy Arrears Policy without change was carried at each meeting without any dissent being recorded, setting out the full terms of the Arrears Levy Policy.

79 Mr Pawlyshyn then submitted that no motion was ever formally put at the 2015 annual general meeting (or at any subsequent annual general meeting.) He said the Levy Arrears Policy was merely carried over and affirmed without being voted on and the minutes of the meetings recording the passing of resolutions by “motion carried” show that there was no voting, and if the minutes were to read as indicating that there was voting, they are not a true and accurate record of the business of the meeting.

80 Dr Kupa gave evidence that she attended all but the 2014 EGM, that all meetings since 2014 have been conducted formally and at every general meeting she has attended there has been a formal motion put and carried to adopt the policies of which all unit holders are aware. Ms Cosentino-Tassone gave evidence that she attended many annual general meetings including in 2015 as proxy and representative of her mother, and she did not agree with Mr Pawlyshyn’s evidence that there was no motion formally tabled or voted on in relation to policies. Ms Cosentino-Tassone said that at every meeting the Manager went through the agenda, explained everything and there was opportunity to agree or disagree and vote on the policies including the Levy Arrears Policy. Mr Roach gave evidence that he chaired the 2014 and 2015 annual general meetings and that he scrupulously followed the agenda, item by item. Regarding the adoption of the Levy Arrears Policy, he read the full motion to the meeting, explained it and then asked those present to indicate whether they voted in favour of adopting it. Mr Roach confirmed that “motion carried” meant the resolution was passed and any dissent would have been recorded in the minutes as standard practice.

81 I accept the evidence of Dr Kupa, Ms Cosentino-Tassone and Mr Roach in preference to Mr Pawlyshyn’s evidence as to what occurred at the 2015 AGM. Mr Pawlyshyn’s recollection of the meeting is not reliable. At first, he said he had not attended any meetings and then when shown the minutes of the 2015 AGM recording his participation, he said he did not have any recollection of attending that or any other

³⁴ Emphasis supplied.

meeting and that he certainly would have remembered a conference call.³⁵ Mr Pawlyshyn's recollection about his attendance at meetings was also inconsistent with the minutes of the 2014 EGM recording his participation at that meeting by telephone.

82 Since Mr Pawlyshyn did not attend any further general meetings, he cannot give evidence as to what transpired at those meetings. I accept the evidence of Dr Kupa, Ms Cosentino-Tassone and Mr Roach that general meetings were conducted formally and resolutions regarding the Levy Arrears Policy were put at each meeting in accordance with the notices of meeting and agendas and voted on as is recorded in the minutes. I am not persuaded by Mr Pawlyshyn's submission that the minutes should be read as merely affirming the carrying over of policies without any motion being put or voting occurring. I therefore find that unanimous resolutions were passed in validly convened general meetings formally adopting the Levy Arrears Policy on the terms of resolutions set out in agendas that were dispatched by the Manager and received by all unit holders with at least 14 days' written notice without any dissentient vote.

83 Mr Pawlyshyn submitted that it was necessary for the notices and agendas of general meetings to state that the resolution was proposed to be passed as a unanimous resolution to be validly passed as such. I reject this submission. The relevant provisions of the Strata Titles Act require the notice and agenda to include the terms and text of any unanimous or special resolutions to be moved at a meeting, not that the text include a statement as to whether the resolution is proposed to be passed as a special or unanimous resolution.³⁶ Applying the presumption in statutory construction "*expressio unius est exclusio alterius*", meaning that expressly mentioning one thing would exclude another thing, I find that the Strata Titles Act does not require written notice of the kind of resolution to be given as a condition of the passing of a unanimous resolution.

84 Accordingly, I find that each of the 2015 to 2019 resolutions to affirm and continue the Levy Arrears Policy without change were passed by a valid unanimous resolution within the meaning of the Strata Titles Act and therefore validly levied a contribution against any unit holder on a disproportionate basis to their unit entitlement for any debt collection or recovery costs in accordance with the Levy Arrears Policy.

85 I find further that the Mellor Olsson Costs were validly levied as a contribution and a debt against Wamije pursuant to the Strata Corporation's Levy Arrears Policy in accordance with sub-ss 27(3) and (5) of the Strata Titles Act by the passing of valid unanimous resolutions at the 2018 and 2019 annual general meetings.

³⁵ T44.

³⁶ By contrast s 3.7 of Schedule 3 of the *Unit Titles (Management) Act 2011* (ACT) provides that if a motion is to be moved requiring unopposed or unanimous resolution, the text of the motion and *the kind of the resolution* must be stated in the notice of meeting.

Taxation and Reasonableness

86 Since the basis of the Strata Corporation's entitlement to the Mellor Olsson Costs derives from the valid adoption of the Levy Arrears Policy by the passing of unanimous resolutions at validly convened general meetings in accordance with s 27 of the Strata Titles Act, and not the exercise of the Court's discretion to award costs in proceedings, the cost rules³⁷ are not applicable. Accordingly, the quantum of the Mellor Olsson Costs is not determined by the applicable Magistrates Court costs scale and I reject Wamije's contentions in this regard. Provided the Mellor Olsson Costs meet the character of costs associated with the recovery of outstanding monies due by Wamije, the total amount of those costs are recoverable as a debt once those costs are ascertained.³⁸

87 Mr Pawlyshyn submitted that by permitting the Strata Corporation to recover legal costs under the Arrears Policy, the Magistrates costs rules were circumvented and Wamije exposed to higher costs than the applicable scale.

88 I have considered the issue and find there is no intention manifested in either the Magistrates Court or the Strata Titles Acts that would preclude or limit the recovery of legal costs in the character of an unpaid contribution as a debt under s 27(5) of the Strata Titles Act. Notably, s 41A(9)(g) of the Strata Titles Act provides that a court may make orders as to costs in respect of an application concerning strata corporation disputes. The limitations on costs under s 38(6) of the Magistrates Court Act and the costs rules are discretionary.

89 Wamije contends in its Notice of Review that the Mellor Olsson Costs should be subject to a taxation.

90 Wamije is correct in asserting that a unit holder liable to pay legal costs as a debt under s 27 of the Strata Titles Act is entitled to have those costs taxed. Any person under a legal obligation to pay legal costs who is not the client of the law practice providing the legal services is entitled to apply to the Supreme Court for the taxation of legal costs under s 37 of Schedule 3 to the *Legal Practitioners Act 1981* (the **LP Act**) in accordance with Rule 262 of the *Uniform Civil Rules 2020*.³⁹ That right is lost however once a judgment has been given for a specified sum.

91 Further, such application must be made within six months after the bill was given or request for payment was made. In this case, the Strata Corporation statements show that requests for payment of the Mellor Olsson Legal Costs were made from 11 April 2019 to 18 May 2020. The Mellor Olsson invoices are variously dated from 6 March 2019 to April 2020, yet Wamije did not exercise its rights to make any application for a taxation. Nor did Mr Pawlyshyn take the point at the hearing before the Magistrate or foreshadow any application for taxation which he has only done now in this review.

³⁷ Now addressed for all civil courts in Chapter 16 of the *Uniform Civil Rules 2020*.

³⁸ *Proprietors Units Plan No 52 v Gold* (1993) 44 FCR 123.

³⁹ Whilst the LP Act refers to an adjudication consistent with the previous court rules, I refer to a taxation for simplicity consistent with the current court rules.

92 By the time of the hearing before the Magistrate, Wamije was out of time to make an application for taxation for all but the last Mellor Olsson invoice. If before judgment Wamije had made an application for a taxation of the Mellor Olsson Costs out of time, it would have needed to justify the reason for delay and show why it was just and fair for the application to be dealt with after the six-month period.

93 I note that this Court may order Wamije to apply for a taxation and adjourn this review until the taxation in the Supreme Court has been completed pursuant to s 43 of Schedule 3 of the LP Act. However, I decline to make such an order because I concur with the Magistrate's finding that the Mellor Olsson Costs were fair and reasonable in all the relevant circumstances and I do not consider such an order would accord with equity, good conscience and the merits of this case for the following reasons.

94 First, any taxation in this case would involve the assessment of the legal costs paid based on a complete indemnity against the costs incurred by the Strata Corporation *except* to the extent any costs were shown by Wamije to have been unreasonably incurred. The Levy Arrears Policy provides for an indemnity for all costs associated with arrears recovery action. There is no basis to apply the concepts of party/party or solicitor/client costs here.

95 Secondly, I have reviewed the Mellor Olsson invoices and the description of the work done and rates charged to assist and advise the Strata Corporation in relation to its debt recovery actions against Wamije for levy arrears and considered the complaints made by Mr Pawlyshyn about the reasonableness of the charges. I concur with the Magistrate that it was reasonable for the Strata Corporation to engage solicitors in the circumstances of the difficulties arising from Wamije's repeated failures to pay contributions due and owing and seek assistance to deal with the various and somewhat complex arguments raised by Mr Pawlyshyn to avoid Wamije's obligations to pay contributions and deal with the litigation process. I further concur that the hourly rate charged was reasonable for a commercial matter of this nature and in my view the items charged were appropriate in terms of the work done and the amount charged.

96 Thirdly, the amount claimed before the Magistrate was only some of the total legal costs incurred in taking debt recovery action against Wamije and a reasonable discount was extended on the last and most substantial bill. In the circumstances, Wamije would likely have difficulty in discharging its onus to show that any of the costs incurred were unreasonably incurred or that total quantum was unfair or unreasonable in all the circumstances.

97 Finally, I consider that the quantum of the Mellor Olsson Costs in issue (\$5,298.30) does not justify the further time and cost of a taxation in the circumstances of this case. The quantum of the costs incurred reflects the adversarial position taken by Mr Pawlyshyn for Wamije throughout his long-standing disputes with the Strata Corporation over his persistent refusal to pay overdue contributions levied equally against all unit holders. As is evident from my review of the Magistrates Court file, Mr Pawlyshyn's tactic throughout those proceedings (and this review) has been to

have the Strata Corporation justify its claim and to seek more time to investigate matters. At the outset, the claim was a relatively straightforward claim for the arrears of unpaid levy contributions. The defence of the claim for unpaid levy contributions was unmeritorious throughout. Indeed, Wamije's failure to pay \$3,000 of the remaining balance of the unchallenged judgment sum until just before this hearing on 9 December 2020 was particularly unreasonable in the circumstances, noting Mr Pawlyshyn's undertaking to this Court on 28 August 2020 to do so within 14 days was not complied with.

98 For completeness, I note these are matters that would have informed the Supreme Court's discretion against permitting any application for a taxation to be made out of time if one had been made before judgment was given by the Magistrate.

Conclusion

99 I dismiss Wamije's application for review. I affirm the Magistrate's judgment that the Strata Corporation is entitled to be paid the amount of \$5,298.30 by Wamije for the Mellor Olsson Costs as a debt pursuant to its Levy Arrears Policy. Since the Levy Arrears Policy was adopted and continued without change from the previously adopted policy by the passing of unanimous resolutions at the validly convened 2018 and 2019 annual general meetings, the Mellor Olsson Costs sought to be recovered from Wamije were unpaid contributions recoverable as a debt under s 27(5) of the Strata Titles Act.

Costs of this Review

100 I make no order as to the costs of this review in accordance with the general position.