

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

OWNERS CORPORATIONS LIST VCAT REFERENCE NO.OC2550/2015

CATCHWORDS

APPLICANT Kevin Mei

RESPONDENT Glenn Talbot

WHERE HELD VCAT 55 King Street, Melbourne

BEFORE Dr Rebecca Leshinsky, Member

HEARING TYPE Hearing

DATE OF HEARING 12 April 2016

DATE OF ORDER 12 April 2016

DATE OF REASONS 2 May 2016

CITATION Mei v Talbot (Owners Corporations) [2016] VCAT 679

ORDER

1. The proceeding is dismissed for the reasons given orally at the hearing.
2. No order as to costs.

Dr Rebecca Leshinsky
Member

APPEARANCES:

For Applicant Mr D. Brennan, Representative

For Respondents Mr D. Free, Solicitor

REASONS

1. Owners Corporation 649843C (“the OC”) affects land described in Plan of Subdivision 649843C.
2. The applicant and the respondent are both lot owners, OC committee members and sub-committee members.
3. At the hearing the applicant sought to withdraw from the proceedings.
4. The respondent opposed the application to withdraw from the proceedings and sought for the matter to be dismissed with costs based on submissions that there is no case to answer and that the proceeding should have been brought against the OC.
5. Substantial submissions and evidence for this matter were not heard save to say that it concerns the applicant seeking a copy of a deed from the respondent.
6. This deed was requested from the respondent on the basis that the applicant is a lot owner, committee member and investigative sub-committee member. The deed relates to the probity of transfer of the OC management contract from Eastern Flats to StrataPrime.
7. The respondent objected to the applicant making any submissions at the hearing regarding matters raised in the compulsory conference and I accept that to do so would be contrary to section 85 of the Victorian Civil and Administrative Tribunal Act 1998 (“VCAT Act”):

85 Evidence inadmissible

Evidence of anything said or done in the course of a compulsory conference is not admissible in any hearing before the Tribunal in the proceeding, except—

- (a) where all parties agree to the giving of the evidence; or
- (b) evidence of directions given at a compulsory conference or the reasons for those directions; or
- (c) evidence of anything said or done that is relevant to—
 - (i) a proceeding for an offence in relation to the giving of false or misleading information; or

(ii) a proceeding under section 137 (contempt); or

(iii) a proceeding in relation to an order made under section 87(b)(i).

8. From submissions and evidence put to the Tribunal, I accept that both parties have not behaved in the community spirit to be expected from lot owners who sit voluntarily on committees and sub-committees of the OC.
9. I accept that the respondent should have acted in a more inclusive manner.
10. On balance, I accept that the proceedings should have been brought against the OC but given the nature of the matter, greater co-operation between committee members, without the need for litigation, might be a more satisfactory process to uphold the community spirit of the OC.

ii. Accordingly, I dismiss the proceeding and rely on s [75\(1\)](#) of the [VCAT Act](#) :

s75 Summary dismissal of unjustified proceedings

(1) At any time, the Tribunal may make an order summarily dismissing or striking out all, or any part, of a proceeding that, in its opinion—

(a) is frivolous, vexatious, misconceived or lacking in substance; or

(b) is otherwise an abuse of process.

12. Having heard submissions in relation to the applicant's out of pocket expenses and the respondent's costs, I am satisfied that each party should bear their own costs which is the starting point for proceedings in this Tribunal pursuant to s. [109\(1\)](#) of the [VCAT Act](#) 1998.

Dr Rebecca Leshinsky
Member