

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**CIVIL DIVISION****OWNERS CORPORATIONS LIST**VCAT REFERENCE NO. **OC821/2014****CATCHWORDS**Fee recovery application: whether fees levied in accordance with the *Owners Corporations Act 2006*.

APPLICANT	Owners Corporation 411216
RESPONDENT	Rudi Stepan
WHERE HELD	Melbourne
BEFORE	Member L Rowland
HEARING TYPE	Fee Recovery Hearing
DATE OF HEARING	10 February 2015
DATE OF ORDER AND REASONS	10 February 2015
CITATION	Owners Corporation 411216 v Stepan (Owners Corporations) [2015] VCAT 252

ORDER**The Tribunal orders and directs:**

The respondent must pay the applicant \$2289.80 for levies and interest to the date of the final fee notice (the date being 13 February 2014); and \$1,132.30 for costs (\$132.30 for reimbursement of fees paid by the applicant and \$250 for each Tribunal attendance required by the Owners Corporation manager), a total of \$3,422.10.

L Rowland
Member

APPEARANCES:

For Applicant	Mr Gregoriou, Owners Corporation manager
For Respondent	Mr Stepan in person

REASONS

Background

- 1 The owners corporation claims fees and interest from Mr Stepan as set out in the final fee notice to him dated 13 February 2014 and totalling \$2289.80. Mr Stepan disputes the fees on a technicality. He says that the fees have not been levied in accordance with the *Owners Corporations Act 2006* (the Act) and therefore there is no debt.
- 2 The owners corporation relates to an older style 8 unit development in South Yarra. Each lot owner has equal lot liability and entitlement. The OC claims that as at the date of hearing Mr Stepan owes more than \$8,000 in owners corporation fees, although the claim only relates to the amount shown on the final fee notice dated 13 February 2014. Mr Stepan has not made a payment of owners corporation fees since January 2012. Mr Stepan said that he has not paid any fees because the maintenance undertaken by the owners corporation has not been to a proper standard. That reason is not a defence to the owners corporation's claim for fees.
- 3 Mr Stepan's failure to pay owners corporations fees together with the costs of recovering the outstanding fees has seriously undermined the ability of the owners corporation to carry out its essential functions including much needed maintenance. The failure of one lot owner to pay fees over a long period of time in a small owners corporation has a crippling effect on the other lot owners and the owners corporation.

Final fee notice

- 4 The Act sets out a regime for the recovery of owners corporation fees. Firstly, the owners corporation must send to the lot owner a fee notice in the prescribed form, followed not earlier than 28 days later by a final fee notice in the prescribed form. No issue was taken with any of these requirements under the Act. Having examined the material submitted in the affidavit of documents sworn 5 September 2014 I am satisfied that the fee notice and final fee notices comply with and have been sent to Mr Stepan in accordance with the requirements of the Act.
- 5 Mr Stepan contended that the fees were not levied in accordance with the Act. Sections 23 and 24 of the Act set out the owners corporation's power to levy fees. Those sections are as follows:

23 Owners corporation may levy fees

- (1) An owners corporation may set annual fees to cover-
 - (a) general administration; and
 - (b) maintenance and repairs; and
 - (c) insurance; and
 - (d) other recurrent obligations of the owners corporation.
- (2) If the owners corporation has an approved maintenance plan
- (3) The fees set must be based on lot liability.
- (4) The owners corporation may determine the times for payment of fees.

24 Extraordinary fees

- (1) An owners corporation may levy special fees and charges designed to cover extraordinary items of expenditure.
- (2) The fees set must be based on lot liability.
- (2A) ...
- (3) The owners corporation may determine the times for payment of the special fees and charges.
- (4) A special resolution is required when exercising a power under subsection (1) if the amount involved is more than twice the total amount of the current annual fees set under section 23.
- (5).....

Fees claimed

6 The fees claimed are as follows:

- | | | | |
|----|---|----------|----------|
| 1. | Window repairs, blocked sewer and letter box repairs - special levy | \$509.40 | |
| 2. | Two quarterly contributions of \$387.50 (for the period 1 Oct 2012 to 30 Sept 2013) | | \$675.00 |
| 3. | An adjustment to the 2013 levy | \$66.40 | |
| 4. | Special levy for external painting of iron work | | \$340.00 |
| 5. | One quarterly contribution for 2014 | \$453.90 | |

7 Mr Stepan argued that the above fees were not levied in accordance with the Act and that the owners corporation failed to levy fees against his lot. I will examine each fee separately.

1. Window repairs

An extraordinary fee of \$509.40 was struck in March 2013 to cover the cost of window repairs, a blocked sewer and letter box repairs. The quotations for the works totalled \$4,075.20. The owners corporation struck the extraordinary fee under Section 24 of the Act. The fees were set in accordance with lot liability. The extraordinary fee is not more than twice the total amount of the current annual fees so does not require a special resolution. The owners corporation does not need to hold a general meeting to strike the fee. Under the delegation to manager, the manager has the delegated power to strike the extraordinary fee. Mr Gregoriou, the manager, said he was acting under instructions of the Committee in sending the extraordinary fee notices to the lot owners. I find that the fee is valid and struck in accordance with the Act.

2. Quarterly contributions of \$387.50 (October 2012 and September 2013)

At the Annual General Meeting held on 16 May 2012 a quorum was present. The meeting resolved as follows:

It was resolved to accept the proposed budget totalling \$12,400 for the year ending 31 March 2012. The contribution level will be adjusted from the next

contribution due on 1st July 2012.

In accordance with the resolution, each lot owner was levied annual fees of \$1550 or \$387.50 per quarter. I find that the fee is valid and struck in accordance with the Act.

3. Adjustment to 2013 fees of \$66.40 and the quarterly contribution of \$453.90.

At the Annual General Meeting held on 28 May 2013 a quorum was present. The meeting resolved as follows:

It was resolved to accept the proposed budget totalling \$14,525 for the year ending 1st March 2013. The contribution level will be adjusted from the next contribution due 1st July 2013.

Please note: because the invoices for the 1st July to 30th September have been posted, the adjustment will show up at the next invoice from 1st October to 31st December 2013.

In accordance with the resolution, each lot owner was levied annual fees of \$1815.62 or \$453.90 per quarter. As the first quarter fees had already been invoiced at \$387.50, an adjustment of \$66.40 was sent to the lot owners. I find that the fees are valid and struck in accordance with the Act.

4. Special levy for painting work

The annual general meeting resolved that an extraordinary fee be struck to cover painting work quoted at \$2,700. Each lot owner was levied \$340 to cover the painting work.

I find that the fee is valid and struck in accordance with the Act.

Conclusion

- 8 It follows therefore that the defence to the owners corporation's claim must fail. There will be an Order in favour of the owners corporation.

L Rowland
Member

VCAT Reference No.

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