

Owners Corporation 4 PS539033E v Peng (Owners Corporations) - [2016] VCAT  
I354

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## VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

### CIVIL DIVISION

OWNERS CORPORATIONS LIST      VCAT REFERENCE NO. OC1578/2016

#### CATCHWORDS

Costs on fee recovery application, claim paid before application served. Order for costs.

APPLICANT:                    Owners Corporation 4 PS539033E

RESPONDENT:                Gengge Peng

WHERE HELD:                VCAT 55 King St, Melbourne

BEFORE:                      Member L. Rowland

HEARING TYPE:             Fee Recovery Hearing

DATE OF HEARING:        2 August 2016

DATE OF ORDER:          15 August 2016

DATE OF REASONS:        15 August 2016

CITATION:                    Owners Corporation 4 PS539033E v Peng (Owners Corporations) [2016] VCAT 1354

### ORDER

The respondent must pay the applicant's costs fixed in the sum \$400 (including \$174.10 for reimbursement of fees paid by the applicant).

MEMBER L ROWLAND

APPEARANCES:

For Applicant Ms Ang, solicitor

For Respondent Ms Peng in person

REASONS

1. The parties to this fee recovery proceeding disagree over the costs of the proceeding. The substantive claim by the applicant owners corporation for owners corporation fees has been paid by the respondent. The respondent lot owner disputes an order for costs on the grounds that she paid the outstanding arrears before the application was served on her.
2. The owners corporation lodged an application and paid the relevant application fee with the Tribunal on 13 June 2016. The claim for \$2,077.49 was for outstanding fees from September 2015. At the time of lodging the application, the respondent had not made any payment in reduction of her owners corporation fees since November 2015. On 1 July 2016, the respondent paid the owners corporation \$3,018.60 which reduced her account balance to \$343.47 and completely paid the amount claimed by the owners corporation in this proceeding. By letter dated 4 July 2016, the Tribunal served the application and hearing notice for these proceedings on the respondent. [\[1\]](#)

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[\[1\]](#) Pursuant to s 72 of the [Victorian Civil and Administrative Tribunal Act 1998](#), the registrar undertakes service of the application on behalf of the applicant.

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3. The applicant contends that because the application was not served upon her until after she had paid the claim she should not be required to pay the costs of the proceeding.
4. The Tribunal's jurisdiction is invoked by the filing of an application in accordance with the rules of the Tribunal. The [Victorian Civil and Administrative Tribunal Act 1998](#), ('the [VCAT Act](#)') relevantly provides:

**43How is original jurisdiction invoked?**

The original jurisdiction of the Tribunal is invoked

- (a) by a person who is entitled by or under an enabling enactment to do so applying to the Tribunal in accordance with section 67...

...

**67How to make an application to the Tribunal**

- (i) An application to the Tribunal
  - (a) must be in the form, and contain the particulars, required by the rules; and
  - (b) must be accompanied by any documents or further information required by the rules; and
  - (c) must be lodged in the manner specified by the rules.
  
5. On 13 June 2013, the applicant invoked the jurisdiction of the Tribunal by lodging an application in accordance with the rules and the VCAT Act and paying the requisite fee.
  
6. I am satisfied that, at the time of making the application to the Tribunal, the respondent was in arrears of fees owing to the owners corporation and the owners corporation was entitled to make the application. The fact that payment of the claim was made before the application was served by the registrar does not affect the validity of the application.
  
7. The application, having been properly made, the jurisdiction of the Tribunal was invoked on 13 June 2016. Accordingly, the Tribunal is empowered under s 109 and s 115C (of the VCAT Act) to determine the issue of costs and Tribunal fees.
  
8. Pursuant to s 109, I find that it is fair to make an award of costs in favour of the owners corporation having regard to the amount of fees in arrears and the length of time the fees were in arrears. Lot owners have an obligation to other lot owners to pay the owners corporation fees on time. Failure to pay owners corporation fees can have a deleterious effect on the efficient operation of an owners corporation and often causes additional costs and fees to the other lot owners. A lot owner who fails to pay fees should bear a greater proportion of the costs to recover the unpaid fees than the lot owners who pay their fees. Lot owners have no say in who can own a lot in their subdivision. If a lot owner declines to pay owners corporation fees, the remaining lot owners are left with the burden of recovering the fees. Accordingly, a costs order is both appropriate and fair, I am not persuaded that the spontaneous late payment of fees by the respondent before she was served with the application absolves her from contributing to the costs of the application to the Tribunal.
  
9. Pursuant to s 115C, I am satisfied that the applicant is entitled to reimbursement of the Tribunal application fee on the grounds that the applicant was substantially successful in the proceeding. I consider it is irrelevant for the purposes of s 115C that payment was made before the application was served. The Tribunal fee had been incurred before the payment of outstanding fees. I am satisfied that the applicant was both justified and entitled to make the application. The spontaneous payment before service of the application does not diminish the fact that the applicant was successful in the proceeding.
  
10. I will allow costs in the total sum of \$400.00 including the application fee to the Tribunal. It was unnecessary for the applicant to prepare an affidavit proving the claim. A copy of the respondent's ledger was all that was required to seek an order for costs.

MEMBER L ROWLAND

