

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Reefport Pty Ltd v Body Corporate for Sunbeau Court CTS 14442* [2021] QCAT 418

PARTIES: **REEFPORPT PTY LTD ABN 21 474 836 47**  
(applicant)

v

**BODY CORPORATE FOR SUNBEAU COURT CTS 14442**  
(respondent)

APPLICATION NO/S: OCL082-19

MATTER TYPE: Other civil dispute matters

DELIVERED ON: 18 October 2021

HEARING DATE: 14 September 2021  
15 September 2021

HEARD AT: Brisbane

DECISION OF: Member Richard Oliver

ORDERS:

- 1. There be an adjustment to the interest schedule for the Body Corporate for Sunbeau Court Community Titles Scheme 14442 so that the respective interest schedule lot entitlements recorded in the community management statement for the scheme reflect the market value principle and are to be in accordance with the schedule referred to in paragraph 46 of these reasons.**
- 2. The applicant file within 14 days of the receipt these reasons a final a draft order which includes the adjusted interest schedule.**
- 3. The Respondent within 45 days of this order lodge a new community management statement incorporating changes to the interest schedule lot entitlements for the lots included in the scheme in accordance with these orders.**

CATCHWORDS: REAL PROPERTY – STRATA AND RELATED TITLES – BODY CORPORATE: POWERS, DUTIES AND LIABILITIES – INTEREST SCHEDULE ADJUSTMENT – where the scheme first registered in 1997 – where new Community Management Statement registered in 2011 which set out the interest schedule of each Lot – where scheme includes both commercial and residential lots –

where value of lots vary – whether interest schedule reflects market value principle of the lots – whether interest schedule should be adjusted – whether method of valuation for each lot on a individual basis having regard to presentation or on average approach.

*Body Corporate and Community Title Act* ss 46B, and 48

#### APPEARANCES & REPRESENTATION:

Applicant: Mr Evans of counsel instructed by Baxter Lawyers  
Respondent: No representation

#### REASONS FOR DECISION

- [1] Sunbeau Court is a mixed commercial residential community title scheme located at 1470 Gold Coast Highway, Burleigh Heads. It is close to the Burleigh Heads beach and is in a business precinct made up of general retail shops, and food and beverage outlets. The real estate in this precinct bounded by West Street, Connor Street to the east and James Street to the south is tightly held and sought after by commercial investors.
- [2] The scheme was first registered in 1997 under the old *Building Units Titles Act*. It comprises 14 lots. Lots 1-4 are commercial, and lots 5-14 are residential. Lot 1 is a standalone building on the common property.
- [3] Over the years there have been changes to the building structure which included enclosed car parks and reconfiguration of lots. Lots 2 and 9 have been reconfigured into lots 2A and 9A.
- [4] On 24 November 2011 a new Community Management Statement<sup>1</sup> was registered which set out the lot interest entitlements for each lot. The applicant is the owner of lots 3 and 4 and has applied to the Tribunal for an adjustment of the interest schedule for the scheme to reflect the market value of the lots in the scheme. The applicant has named the Body Corporate for the scheme as the respondent.
- [5] The application is made under s.48 of the *Body Corporate and Community Management Act* 1997 (BCCM Act) which provides that, relevantly:
- (1) The owner of a lot in a community titles scheme may apply –
    - (a) ...
    - (b) as provided under the QCAT Act, for an order of QCAT exercising the tribunal’s original jurisdiction for the adjustment of an interest schedule.
- [6] Section 48 further provided under ss (2) that the respondent to such an application is the Body Corporate, as is the case here. Under ss.(4) any owner of a lot can elect to become a respondent to the application. That has not occurred here.

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<sup>1</sup> Dealing no. 714180830.

- [7] In determining any adjustment to the interest schedule, s48(5) provides:
- (5) The order of the specialist adjudicator or QCAT must be consistent with the market value principle, as applied in relation to the respective market values of the lots included in the scheme when the order is made.

- [8] To determine the market value, s.46B provides as follows:

**46B Principle for deciding interest schedule lot entitlements**

- (1) The market value principle for deciding interest schedule lot entitlements for the lots included in a community titles scheme is the principle that the lot entitlements must reflect the respective market values of the lots, except to the extent to which it is just and equitable in the circumstances for the individual lot entitlements not to reflect the respective market values of the lots.
- (2) The following apply for working out the market values of lots included in a community titles scheme –
- (a) if a lot included in the scheme is a subsidiary scheme, the market value of the lot is the market value of the scheme land for the subsidiary scheme;
- (b) for establishing the market value of a lot created under a standard format plan of subdivision or volumetric format plan of subdivision, buildings and improvements on the lot are to be disregarded.
- [9] Before the introduction of the BCCM Act, this scheme was registered under the *Building Units Plan Act*. By reference to s.277(2) of the BCCM Act, the former BUP became a “building format plan”<sup>2</sup>. I accept Mr Evans’ submission that the constraints set out in s 46B(2)(b) that buildings and improvements are to be disregarded because this is not a ‘standard format plan’ or ‘volumetric format plan’. Therefore in arriving at the market value regard can be had to the buildings and improvements in the scheme.
- [10] To assist in determining the market value of each lot both Reefport and the Body Corporate have obtained a number of valuations. Valuations have been provided to Reefport by Mr Laurie Hamilton initially when with Taylor Byrne, Valuers and more recently, with Colliers. The Body Corporate obtained valuations from Mr Stuart Rumble of SLR Valuations.
- [11] Mr Hamilton’s initial valuation dated 10 September 2019 is filed with the application and his affidavit of 22 October 2019. Mr Rumble’s initial valuation is dated 10 May 2021.<sup>3</sup>
- [12] By the time this matter came on for hearing there had been further developments with the valuations with a number of joint valuations having been prepared<sup>4</sup>. In addition, the individual valuations have been updated. When the matter came for

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<sup>2</sup> BCCM Act, s.331.

<sup>3</sup> Exhibit 5

<sup>4</sup> Exhibit 2 Joint Valuation dated 17 August 2020; Exhibit 3 Joint Valuation dated 14 September 2020.

hearing, there was no appearance by the Body Corporate. The Tribunal was informed by Mr Baxter, Director of Reefport, that members of the Body Corporate passed a resolution not to withdraw funding of the legal costs of Reefport's representation at the hearing. A letter was tendered<sup>5</sup> of a notice to all owners informing them of the application and of their rights to respond to the application should they choose to do so.

[13] At the commencement of the hearing, Mr Evans of Counsel who appeared on behalf of Reefport tendered the valuation reports by Mr Rumble, as well as the joint valuation reports in fairness to the Body Corporate and all lot owners. Also, at the commencement of the hearing, a further supplementary report was provided by Mr Hamilton<sup>6</sup> and on the second day of the hearing, a further updated valuation<sup>7</sup> dated 13 September 2021. It is on the basis of those various valuation reports, that the Tribunal is tasked with determining the market value of each lot in accordance with the market value principle set out in s.46B of the BCCM Act.

[14] During the course of the hearing, an issue arose as to the correct methodology to be adopted in attributing values to the property. This is highlighted in Mr Hamilton's updated valuation of 12 September 2021<sup>8</sup>, where he makes the following statement:

Over the past 50 years, all units have been updated to some degree including new appliances and air conditioning, light fittings, tapware, window finishings and shower screens. Upgrades are often undertaken in stages with, for example, a new kitchen installation 5 years ago may be followed a number of years later by an internal repaint.

Updating works that can be undertaken in Sunbeau Court are limited by the size of the units, location of weightbearing and subdivisional walls and position of internal partitions, electrical and plumbing/drainage connections.

An internal inspection of the majority of the units was undertaken in company with SLR (Rumble). Updating to various degrees had been undertaken over time to each of the units inspected.

The updating works noted during my inspection, in my opinion, were not of such substantial nature that they would alter the relativity between the market value of the units to any discernible degree.

Therefore, the values I have adopted to s.6 below are based on each of the units being in good average condition as noted during my inspection.

[15] The distinction here is that the alternate approach discussed during the course of the hearing is that each individual unit be inspected and depending on its condition, a particular market value be placed on that unit. By way of example, lots 7 and 12 are identical units, one on the first floor and one on the second floor. Leaving aside for the moment any difference in value because one is on the first floor and the other on the second floor, when constructed and finished for sale, they would have been of identical finish and value. If over the intervening 50 years no further work was

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<sup>5</sup> Exhibit 15.

<sup>6</sup> Exhibit 7.

<sup>7</sup> Exhibit 22.

<sup>8</sup> Exhibit 7 at page 9.

carried out to say unit 7, and unit 12 had been refurbished, there would inevitably be a difference in the retail value of each unit if both went to market at the same time.

- [16] However, as Mr Hamilton had pointed out, at any time during the life of the scheme, lots can deteriorate and be improved at various times and it would be difficult then as each improvement is undertaken, to readjust the interest schedule to the point where it becomes unworkable. Therefore, in his opinion, the preferable approach is to have regard to the size of the lot, its various attributes such as carparks, balconies, the views and general amenity rather than, the state of the improvements on the internal of the lot because this will obviously vary from lot to lot over the life of the scheme.
- [17] Having regard to his explanations and his comment that Mr Rumble did not necessarily disagree with this approach when preparing the joint valuation reports, in my view that this is the preferable and sensible approach to adopt. I should also say the Tribunal was not referred to any authority, despite Mr Evan's investigations, that favoured a contrary view.

### **Residential Lots**

#### *Lots 5, 6, 8, 10 and 11*

- [18] Both Mr Hamilton and Mr Rumble have attributed a value of \$455,000 to each of these lots. In Mr Rumble's report of 10 May 2021, section 4, he sets out the valuations and referred to a number of, what he considers to be, comparable sales to support this valuation. Similarly, Mr Hamilton in his most recent report of 12 September 2021 comes to a similar view in respect of these units. Having heard the evidence of Mr Hamilton, and having had regard to the valuations where they have been consistently in agreement with respect to these values, initially at \$420,000 per lot, I propose to adopt those valuations their most current valuation of \$455,000

#### *Lots 7 and 12*

- [19] These two lots have the added attribute of an on title car space of 21m<sup>2</sup>. Other units<sup>9</sup> only have exclusive use car space of 19m<sup>2</sup>, and in respect of lot 5 only 16m<sup>2</sup>. The difference in the valuation seems to be that in respect of lot 7, Mr Hamilton values it at \$490,000 and the same for lot 12. These two lots are on the south western corner of the building and are larger than the other lots. Lot 7 is on the first floor and lot 12 is on the second floor. It is Mr Rumble's opinion that lot 12 would attract a premium because even though it was identical to lot 7 it is on the upper floor which has, according to Mr Rumble, a northerly aspect and some ocean views.<sup>10</sup> To each of these lots Mr Rumble attributes a value of \$525,000. The argument put forward by applicant, in reliance upon Mr Hamilton's report, is that given there has been no price differential for the 82m<sup>2</sup> lots there ought not be a price differential for the 95m<sup>2</sup> lots.
- [20] Mr Hamilton although conceding that this lot is much larger in area, the drawback is the relatively small balcony compared to the balconies on the other lots.

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<sup>9</sup> 5, 6, 8, 10 and 11.

<sup>10</sup> Exhibit 3 at page 26.

Furthermore, he disputes the existence of ocean views as does Mr Baxter, who is very familiar with the lots having been an owner of a number of lots for many years.

- [21] There has been one recent sale and that is lot 9A to Mr Be Leege in May 2021. That lot sold for \$700,000 which, according to Mr Be Leege who was called to give evidence, the price did not include a premium although he would have preferred to pay less. He considered the lot to be a good long term investment. Lot 9A has an area of 116m<sup>2</sup> which is larger than lots 7 and 12 of 95m<sup>2</sup>. It is at the front of the complex on the Gold Coast Highway and according to Mr Hamilton has a limited easterly outlook although Mr Rumble says that it has inferior ocean views to lot 14 which is directly above it.
- [22] Taking a fairly practical and pragmatic approach, given the differential in size of the lots and a price difference in the order of about \$200,000, it seems to me more likely that the value of units 7 and 12 would be at the higher end of the range rather than the lower. This recent sale in my view is relevant and demonstrates the saleability or value, of the lots and therefore in respect of lots 7 and 12, I propose to adopt a valuation of \$520,000.
- [23] Also, in doing a comparison of the 82m<sup>2</sup> lots to lots 7 and 12, there is a differential of 13m<sup>2</sup>. On Mr Hamilton's valuation that results in a differential of \$35,000 which does not properly reflect the recent sale of the 116m<sup>2</sup> unit for \$700,000.

*Lot 9A*

- [24] Mr Hamilton's valuation for lot 9A is \$525,000 and Mr Rumble's is \$560,000. As Mr Rumble has not been involved in this matter since his report of May 2020, he would be unaware of the sale at \$700,000. However, Mr Hamilton is aware of that sale and despite that maintains that the market value is \$525,000. There certainly seems to be some incongruity between these two valuations and the demonstrated sale price of lot 9A in recent months of \$700,000. There is nothing remarkable about lot 9A when one has regard to the photographs included in the joint expert report.<sup>11</sup> In fact Mr Rumble's inspection report is that the standard of appointment is average and its condition is average to good. Mr Hamilton's remarks about lot 9A are that it presented in its original condition with limited easterly outlook restricted by the courtyard and also the views over rooftops and commercial buildings. The recent sale is indicative of its true value, and therefore, it is reasonable to adopt Mr Rumble's valuation for lot 9A of \$560,000.

*Lot 13*

- [25] This is one of the 82m<sup>2</sup> lots with an exclusive use car park. This unit was not inspected by Mr Rumble nor is reference made to it by Mr Hamilton. Mr Hamilton adopts the same value as the other 82m<sup>2</sup> units which seems reasonable. It is unclear from the report why Mr Rumble has adopted a higher value other than to say that it is on the second level away from the main stairwell access and has ocean views. Given that both agree that lots 10 and 11 have a value of \$455,000, and lot 13 which is exactly the same only on the longer part of the L shape between lots 14 and 12, it should demand a higher value. To give some benefit to Mr Rumble's opinion, a valuation of \$470,000 should be adopted.

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<sup>11</sup> Exhibit 3.

*Lot 14*

- [26] This was a sale to a related party and therefore it has been submitted that regard should not be had to the sale price. It was sold for \$720,000 and lot 14 is immediately above unit 9 which sold for \$700,000. Mr Rumble's valuation for lot 14 is \$595,000 and Mr Hamilton's is \$575,000. It is difficult to ignore the sale price even if it is to a related party and that leaves me to conclude that the appropriate valuation for this lot is \$595,000.

**Commercial Lots**

- [27] As mentioned this is a mixed commercial and residential scheme. Having dealt with the residential lots, I now turn to the four commercial lots in the scheme to consider their value adopting a market approach. Firstly, I propose to deal with the opinion of Mr Rumble that the value of commercial properties have receded in recent times and therefore why, for example, he adopted a reduction in his original value of Lot 1 from \$630,000 down to \$595,000.
- [28] Evidence was called from Mr Brace, who is a real estate agent in the area and has recently purchased a commercial lot in the same precinct as the subject scheme. His evidence was to the effect that although he mainly deals in residential property, he was also aware that the commercial property values have increased in recent times.
- [29] Another witness who has provided evidence of commercial property market movements is Mr Adam Young. He specialises in commercial property and has worked as an agent in the area for some 29 years. His evidence was that both commercial and residential values had increased in the last 18 months and there was a demand for commercial property in the Burleigh precinct.
- [30] The evidence was called from Mr Brace and Mr Young to counter the suggestion put forward by Mr Rumble that commercial properties values had retreated somewhat by reference to the comparable sales that are referred to in his supplementary report of 10 May 2021<sup>12</sup>. Mr Hamilton, during the course of his evidence, commented on the various comparable sales referred to and without dealing with them individually, it is sufficient to say that the only sales that might have some comparability to the subject property are those at Coolangatta, sale 11 and 12 which are clearly superior to the subject property.
- [31] Mr Hamilton's evidence convinced me that little weight can be given to the other comparable sales referred to in that report. It is unfortunate that Mr Rumble was not available to give evidence or comment further on those sales, but I do not draw any adverse inference from this because I regarded Mr Hamilton's evidence as objective and persuasive when making the comparison. Therefore, with respect to each of the commercial lots in the scheme, I make the following comments.

*Lot 1*

- [32] This is a stand-alone lot with an area of approximately 86m<sup>2</sup>. It is presently being fitted out as a high end Japanese restaurant and expected to be opened in the coming months. It has excellent exposure fronting onto the Gold Coast Highway with good

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<sup>12</sup> Exhibit 5.

volumes of pedestrian traffic passing by. It is described by Mr Hamilton as a ‘sought after highway front position with dual shop frontages’ the second frontage being onto Justin Lane. In his most recent valuation, Mr Rumble valued the property at \$595,000, or \$7,000 per/m<sup>2</sup>. This was less than his earlier valuation of November 2019 of \$630,000 and hence the commentary above about the commercial real estate market in that area.

- [33] Recently the lot was sold to an interrelated party for \$975,000 however despite this, Mr Hamilton has attributed a value of \$875,000 to the property. In terms of valuation principles, Mr Hamilton’s evidence is that one needs to be cautious when using sales to interrelated parties for valuation purposes. Despite that, it does demonstrate that the value of the property is closer to that as assessed by Mr Hamilton as opposed to the lower valuation of Mr Rumble.
- [34] Having found that on the basis of the evidence from Mr Young and Mr Brace, that the commercial property market has increased in value in recent times, I propose to accept the valuation of Mr Hamilton in respect of lot 1 at \$875,000.

*Lot 2A*

- [35] This lot is a smaller lot at the rear of Lot 1 and has an area of 57<sup>2</sup>. It is owned by Mrs Baxter, again a related party to the applicant. Mr Hamilton has valued this lot at \$385,000 and Mr Rumble at \$350,000.
- [36] Having regard to their difference of opinion as recorded in the joint experts’ report of 14 December 2020<sup>13</sup>, there is little in terms of the commentary to assist me in deciding which value should be preferred. I therefore propose to adopt a valuation of \$375,000 for Lot 2A.

*Lots 3 and 4*

- [37] These two commercial lots are utilised as the offices of Baxter Lawyers. The best way to describe lots 3 and 4 is to adopt what Mr Hamilton has said in the joint valuation report as follows:

Lots 3 and 4 have been extensively fitted out as good quality commercial premises. Lot 3 is located in the shop front to the Sunbeau courtyard and also enjoys rear access onto Justin Lane. It comprises 82m<sup>2</sup>. Lot 4 is located on the highway frontage of the complex. It comprises 92m<sup>2</sup> and enjoys dual highway and courtyard frontages and access to Justin Lane.

- [38] Mr Rumble was a little more detailed in his description and described the internal area as a ‘commercial unit partitioned into reception/waiting area, boardroom, separate toilet and vanity, 4 x separate offices, open office area comprising four cubicles, kitchen/lunch room’. He made no adverse comment about the lots but relied on additional comparable sales which are sales 1 – 11 in his report of 10 May 2021<sup>14</sup>. By reference to these comparable sales Mr Rumble reiterated his opinion that the commercial sales were not as vigorous as residential property. He adopted a value of between \$3,500/m<sup>2</sup> and \$7,000/m<sup>2</sup>. He was aware that lot 1 had recently been leased as with lot 2A. He had not been informed of the rental therefore could

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<sup>13</sup> Exhibit 3.

<sup>14</sup> Exhibit

not undertake a capitalisation approach to determine a value. The rentals were not disclosed during the hearing. Mr Rumble then went on to comment in respect of those comparable sales, and by reference to the commentary above concerning commercial sales that:

My investigations suggest all commercial sales provided by Mr Baxter<sup>15</sup> were not exposed to open market conditions and also have adjoining owner issues. The sales therefore should be deemed inadmissible as market evidence.

- [39] Mr Hamilton took issue with most of the comparable sales referred to by Mr Rumble on the basis that they were not in the Burleigh Heads area but in non-comparable areas such as Surfers Paradise, Broadbeach and Mermaid Beach. They did not have the same or similar exposure or passing pedestrian traffic. He referred the sales identified as sale a, sale b and sale c, which follow those referred to by Mr Rumble in the 10 May 2021 report. Mr Hamilton considered these to be more comparable because they were in the Burleigh Heads precinct. With respect to Mr Rumble's opinion about these sales he said:

“in the opinion of LH, it is incorrect to dismiss these sales as suggested by SR by failing as he does to give them any weight in his deliberations. There are no valid reasons for the sales to be deemed inadmissible as market evidence as suggested by SR. They represent by far the best evidence available as they share very similar attributes with the commercial lots in Sunbeau Court including lot size, exposure, location, zoning and land uses.

- [40] Mr Hamilton's evidence during the hearing reinforced this opinion about these comparable sales. It also seems logical that sales in the precinct with similar attributes would carry more weight.
- [41] Sale (a) is lot 4 at 2 West Street, West Burleigh. It is in an ideal position within the Burleigh Heads precinct and has steady pedestrian traffic exposure and parking. The property fronts West Street which is on the western side of the subject property and is of an area of 47m<sup>2</sup>. It sold in June 2020 for \$550,000 or \$11,702m<sup>2</sup>. Mr Hamilton considered this was superior overall to lot 2A but inferior to lot 3. Another recent sale was lot 5 at 2 West Street of a similar area and the same price with similar comments.
- [42] Sale (c) is lot 2 at 20 James Street, Burleigh Heads which again is within the precinct of the subject land with an area of 49m<sup>2</sup>. It sold for \$750,000 in August 2020. This has a square metre value of \$15,306. Mr Hamilton considered that it was inferior over all compared to lots 1 and 4 but superior to lots 2A and 3 in Sunbeau Court.
- [43] Sale (d) is lot 1 at 1736-1740 Gold Coast Highway, Burleigh Heads is a commercial premises of 86m<sup>2</sup>, and had a sale price of \$950,000. This is \$11,047/m<sup>2</sup>. Mr Hamilton considered this property was superior to lot 4 in Sunbeau Court and superior to lots 2A and 3.
- [44] Having regard to these sales Mr Hamilton attributed a value of \$665,000 or \$8,110m<sup>2</sup> to lot 3. Mr Rumble valued lot 3 at \$490,000 or \$5,976m<sup>2</sup>. For lot 4 which is 92m<sup>2</sup> Mr Hamilton valued it at \$910,000 and Mr Rumble \$595,000.

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<sup>15</sup> Mr Baxter had provided the sales to the valuers

- [45] I find that Mr Hamilton's evidence with respect to the values of these lots is more convincing. Another reason for favouring Mr Hamilton's approach is because the argument that values of commercial property have receded during 2021 is against the weight of the evidence of those in the market place e.g. Mr Brace and Mr Young. This raises a question mark about Mr Rumble's overall approach, but having said that he may have been better able to justify his position had he been available for the hearing. Mr Baxter informed the tribunal that as a result of an extraordinary meeting of the Body Corporate, funding for its legal expenses was withdrawn.
- [46] Of the sales that have been produced, Mr Hamilton's comparable sales are clearly more relevant to the subject property than those supplied by Mr Rumble. On this basis I prefer his valuation evidence to that of Mr Rumble in respect to the valuation of these lots.
- [47] Therefore, I propose to adopt a valuation of \$665,000 for lot 3 and \$910,000 for lot 4. Given the disparity in the values, there is no basis to reduce the valuations adopted by Mr Hamilton.

### Summary

- [48] Therefore the interest schedule to the scheme should be adjusted in accordance with the following table which represents the respective market values of the lots included in the scheme.

Lot	Market Value	Interest
Lots 5, 6, 8, 10, & 11	\$455,000	
Lots 7 & 12	\$520,000	
Lot 9A	\$560,000	
Lot 13	\$470,000	
Lot 14	\$595,000	
Lot 1	\$875,000	
Lot 2A	\$375,000	
Lot 3	\$665,000	
Lot 4	\$910,000	

- [49] The adjustment of the interest schedule involves the application of a formula once the market value is established. As discussed during final addresses I will leave it to the applicant to submit a final order with an interest schedule based on the above market values.