

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Donaldson v The Body Corporate for Maple Court CTS 19593* [2022] QCAT 2

PARTIES: **MEGAN LOUISE DONALDSON**
(applicant)

V

**THE BODY CORPORATE FOR MAPLE COURT
CTS 19593**
(respondent)

APPLICATION NO/S: NDR096-20

MATTER TYPE: Other civil dispute matters

DELIVERED ON: 7 January 2022

HEARD AT: Brisbane

DECISION OF: Member Lember

ORDERS: **The application for a tree dispute is dismissed.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE
TRIBUNALS – QUEENSLAND CIVIL AND
ADMINISTRATIVE TRIBUNAL – neighbourhood
disputes – trees – where neighbour is defined by Act –
where land registered under Building Units and Group
Titles Act 1980 – where applicant is not owner or occupier
of land registered under Land Title Act 1994 – where
applicant not authorised to represent body corporate

ENVIRONMENT AND PLANNING – TREES,
VEGETATION AND HABITAT PROTECTION –
DISPUTES BETWEEN NEIGHBOURS – tree disputes –
whether lot owner in group title scheme is a neighbour as
defined by Act – whether tribunal has jurisdiction

Building Units and Group Titles Act 1980 (Qld), s 8
Neighbourhood Disputes (Dividing Fences and Trees) Act
2011 (Qld), s 42(1), s 42(2), s 42(3), s 42(4), s 49, s 52
Queensland Civil and Administrative Tribunal Act 2009
(Qld), s 3(b), s 4(b), 4(c), s 32(2), s 47, s 62(1), s 95(1)

Brown & Anor v Wallace [2014] QCAT 461

Dey v Victorian Railways Commissioners [1949] 78 CLR
62

Valuers Registration Board v Murphy (No. 2) [2019]
QCAT 332

Yeo v Brisbane Polo Club Inc [2013] QCAT 261

APPEARANCES & REPRESENTATION: This matter was heard and determined on the papers pursuant to s32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

REASONS FOR DECISION

What is the application about?

- [1] Ms Donaldson owns a lot in a Community Title Scheme (“CTS”). She says roots from a fig tree situated on common property within the CTS and owned by the responding body corporate caused considerable damage to her lot, discovered in the course of property renovations.
- [2] In an application she filed on 24 June 2020, Ms Donaldson sought orders that responding body corporate compensate her for the damage to her property caused by the roots of the fig tree.
- [3] On 15 October 2020 the body corporate filed a response resisting the orders sought and asking the tribunal to dismiss the application.
- [4] On 24 November 2020 the tribunal directed that the parties make submissions on a preliminary issue of jurisdiction, in respect of which neither party filed submissions.
- [5] A decision was to be made on the papers after 24 January 2021. That decision, and the reasons for it, follow.

Consideration of the law

- [6] Chapter 3 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (Qld) (‘the NDA’) applies to trees situated on land recorded in the freehold land register¹ (subject to some exclusions) and “tree keepers” are responsible to their “neighbours” for their trees.²
- [7] The NDA defines³ a “neighbour” as each of the following:
 - (a) if land affected by the tree is a lot recorded in the freehold land register under *the Land Title Act 1994* —
 - (i) a registered owner of the lot under that Act; and
 - (ii) an occupier of the land;
 - (b) if land affected by the tree is scheme land under the *Body Corporate and Community Management Act 1997*—the body corporate for the community titles scheme; and
 - (c) if land affected by the tree is a parcel of land the subject of a plan under the *Building Units and Group Titles Act 1980* — the body corporate for the plan.

¹ Section 42(1)(a) of the NDA.

² Section 52, *ibid.*

³ Section 49, *ibid.*

- [8] Under section 8 of the *Building Units and Group Titles Act* 1980 (“the BUGT Act”), land may be subdivided into lots and common property by the registration of a group title plan.
- [9] Upon registration of the group title plan:
- (a) each lot comprised therein may devolve or be transferred, leased, mortgaged or otherwise dealt with; and
 - (b) subject to the approval of the local government to the lease, a lease of part of a lot and, in the case of a group titles plan, of part of any improvements on a lot may be registered;
- in the same manner and form as any other land held under the provisions of the *Land Title Act* 1994.⁴
- [10] On 9 August 1993 Group Titles Plan No. 3620 was registered creating the lot now owned by Ms Donaldson. In fact, all of the lots situated in her complex are registered under Plan No. 3620.
- [11] In similar circumstances in *Brown & Anor v Wallace*⁵ Member Hughes (as His Honour then was) found that an individual lot owner in group title scheme is neither a registered owner or occupier of land under the *Land Title Act* 1994 (Qld) nor as a natural person can they be a body corporate for land under the BUGT Act. In the absence of evidence that the applicant was authorised to act on behalf of the body corporate, that it supported the application or that it would be amenable to an order of the tribunal in the proceedings, the proceedings were dismissed as “misconceived” and “lacking in substance”.⁶
- [12] As Ms Donaldson is not a registered owner or occupier of land under the *Land Title Act* 1994 (Qld), nor is she is a body corporate for land under the *Building Units and Group Titles Act* 1980 (Qld), she is not a “neighbour” as defined by the NDA and has no standing to commence the proceedings against the responding body corporate under the NDA.
- [13] Clearly, as the responding body corporate *is* the body corporate for Ms Donaldson’s lot, and they resist the orders she seeks, there can be no suggestion that Ms Donaldson acts with the permission or authority of the body corporate in the proceedings.
- [14] The objects of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) (“QCAT Act”)⁷ include to have the Tribunal deal with matters in a way that is accessible, fair, just, economical, informal and quick, and, to that end, section 4 of the Act requires the Tribunal, among other things, to:
- (a) encourage the early and economical resolution of disputes before the Tribunal;⁸ and

⁴ Section 8(3) of the BUGT Act.

⁵ [2014] QCAT 461.

⁶ Ibid, at paragraphs [13]-[15].

⁷ Section 3(b) of the QCAT Act.

⁸ Section 4(b), *ibid*.

- (b) ensure proceedings are conducted in an informal way that minimises costs to the parties and is as quick as is consistent with achieving justice.⁹

Procedural powers

- [15] Section 62(1) of the QCAT Act permits the tribunal to give a direction at any time in a proceeding and do whatever is necessary for the speedy and fair conduct of the proceeding.
- [16] Proceedings may be finally determined, or interlocutory applications decided upon the written submissions of the parties without those parties appearing at a hearing.¹⁰ These proceedings are known as decisions made “on the papers”.
- [17] Section 47 of the QCAT Act allows the tribunal to strike out or dismiss a proceeding (47(2)) but the power should only be exercised “sparingly” and “to prevent an abuse of process when a claim is groundless or futile”.¹¹
- [16] The tribunal must allow a party to a proceeding a reasonable opportunity to call or give evidence and to make submissions to the Tribunal.¹²
- [17] I am satisfied that such an opportunity was given to the parties in this instance.

Decision

- [18] As Ms Donaldson is not a “neighbour” as defined by the NDA, the application for a tree dispute is futile and I therefore order that the application be dismissed.

⁹ Section 4(c), *ibid.*

¹⁰ Section 32(2) QCAT Act.

¹¹ *Yeo v Brisbane Polo Club Inc* [2013] QCAT 261,[5]-[7] citing *Dey v Victorian Railways Commissioners* [1949] 78 CLR 62.

¹² Section 95(1) QCAT Act.