QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Body Corp for '11 Joseph' CTS 33588 v Desarrollo Pty Ltd ATF The Cove Trust 1 and anor* [2022] QCATA 41
PARTIES:	**BODY CORP FOR '11 JOSEPH' CTS 33588** (appellant) **v** **DESARROLLO PTY LTD ATF THE COVE TRUST 1** **ALLENS INTL PTY LTD ATF THE COVE TRUST 2** (respondents)
APPLICATION NO/S:	APL016-21
ORIGINATING APPLICATION NO/S:	MCDO551/20 (Southport)
MATTER TYPE:	Appeals
DELIVERED ON:	30 March 2022
HEARING DATE:	On the papers
HEARD AT:	Brisbane
DECISION OF:	Member Gordon
ORDERS:	**1. The correct names for the respondents for the Appeal Tribunal's record are Desarrollo Pty Ltd atf The Cove Trust 1 and Allens Intl Pty Ltd atf The Cove Trust 2.** **2. Leave to appeal is granted.** **3. The appeal is dismissed.**
CATCHWORDS:	REAL PROPERTY – STRATA AND RELATED TITLES – GENERAL MATTERS – JURISDICTION AND POWERS OF COURTS AND TRIBUNALS – where the tribunal dismissed a minor civil dispute application to recover body corporate contributions from a lot owner because of a voting irregularity – where the applicant argued that such a voting irregularity could only be challenged in the dispute resolution process offered by the Commissioner of Body Corporate and Community Management and that since this had not been done, the debt was final and conclusive – whether the tribunal could consider the voting irregularity – whether the debt was final and conclusive EVIDENCE – PROOF – STANDARD OF PROOF – STANDARD OF SATISFACTION – PROBATIVE VALUE – FAILURE TO CALL, GIVE OR PRODUCE

	EVIDENCE – where the tribunal dismissed a claim to recover body corporate contributions because the applicant had not proved they were due – whether the presumption of regularity was displaced or rebutted – whether the tribunal was right to look to the applicant for proof that the processes under the *Body Corporate and Community Management Act* 1997 (Qld) had been followed
	Body Corporate and Community Management Act 1997 (Qld), s 111, s 229, s 229A, s 242 *Body Corporate and Community Management (Small Schemes Module) Regulation* 2008 (Qld), s 79
	Bhalsod v Perrie [2018] WASCA 108 *Body Corporate for Jargarra Villas CTS 19298 v Odalshire Pty Ltd* [2013] QCATA 168 *Body Corporate for SL8 v Falzon and Anor* [2012] QCAT 556 *Body Corporate of the Lang Business v Green* [2008] QSC 318 *James v The Body Corporate Aarons Community* [2002] QSC 386 *James v Body Corporate for Aarons Community Titles Scheme 11476* [2003] QCA 329 *Lynvale Pty Ltd as Trustee v Body Corporate for Surf Edge CTS 34002* [2017] QDC 191 *Morales v Murray Lyons Solicitors (a firm)* [2010] QCATA 87 *Northside Developments Pty Ltd v Registrar-General* (1990) 170 CLR 146 *Re Alcan Australia Ltd; Ex parte Federation of Industrial, Manufacturing and Engineering Employees* (1994) 181 CLR 96
APPEARANCES & REPRESENTATION:	This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld)

REASONS FOR DECISION

[1] This appeal raises the question about how far, when hearing an application by a body corporate to recover contributions from a lot owner, the tribunal may look to the body corporate to show that the processes under the *Body Corporate and Community Management Act* 1997 (Qld) (BCCM Act) have been followed. One question is whether the tribunal can dismiss the application because of a voting irregularity or whether the dispute resolution process offered by the Commissioner for Body Corporate and Community Management is the only way to deal with such a voting irregularity; in turn this is a question whether such a debt is final and conclusive if the dispute resolution process is not invoked.

[2] A minor civil dispute claim was brought by an applicant named 'Body Corp for 11 Joseph' against respondents who are properly named as 'Desarrollo Pty Ltd as

trustee for The Cove Trust 1' and 'Allens Intl Pty Ltd as trustee for The Cove Trust 2'.

[3] There were two lots in the 11 Joseph scheme and the respondents were owners of one of the lots. The claim was for $2,800 for body corporate contributions plus formal costs. The contributions were said to have been levied by the Body Corporate in a circulating resolution dated 16 March 2020.

[4] The respondents filed a formal response to the claim. A number of detailed points were made including whether Mr David Lew who filed the claim, had authority to do so on behalf of the Body Corporate and whether he had authority to appear on its behalf. It was also said that the Body Corporate had not validly levied the contributions in many ways, one of which was an irregularity in the voting for the 16 March 2020 resolution.

[5] The claim was heard by an Adjudicator on 9 December 2020. The Appeal Tribunal has obtained a copy of the transcript of that hearing. The Adjudicator read the documents and heard from both parties and reserved the decision. On 17 December 2020 the Adjudicator gave the reserved decision dismissing the claim, giving oral reasons.

[6] Of the points made by the respondents in response the claim, the Adjudicator concentrated on one. This was whether the 16 March 2020 vote to levy the contributions had been valid. The case for both parties was that the scheme was governed by the Small Schemes Module,[1] and so this meant that the circulating resolution of 16 March 2020 which purported to levy the contributions, could only be done in accordance with the requirements of section 111 of the BCCM Act. The Adjudicator decided that this had not happened because section 111 required all lots to vote in favour of such a resolution and the respondents had not voted at all. Hence the resolution had no effect and the contributions were not validly levied.

[7] The Adjudicator expressed the view that the scheme was more likely to be governed by the Specified Two-lot Schemes Module,[2] but pointed out that nothing turned on this.[3] This was no doubt because although contributions would not be levied by resolution under the Two-lot Schemes Module and so section 111 would not apply, they would need to be levied by a lot-owner agreement and there was no evidence of such an agreement.

[8] The Adjudicator then dismissed the claim giving these reasons:[4]

> Mr Lew has not convinced the tribunal on a balance of probabilities that the debt exists.
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> The onus was upon him to satisfy the tribunal that the striking of the resolutions claimed as a debt were validly done and I am not satisfied that he

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1 At the time, this was the *Body Corporate and Community Management (Small Schemes Module) Regulation* 2008 (Qld).

2 *Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation* 2011 (Qld).

3 Transcript of reasons 1-4 line 3.

4 Transcript of reasons 1-4 line 9.

> has complied with the BCCM Act and the regulations in claiming that the debt has arisen.
>
> Debts may only be recovered by a body corporate in the tribunal to the extent that they comply with the statutory scheme and I am not satisfied that these debts do. For that reason the application is dismissed.

[9] In this appeal brought by Mr Lew purportedly on behalf of the Body Corporate, a number of points are made which are irrelevant to the appeal.[5] One point is that the respondents were not entitled to vote in the meeting because they had not paid the contributions to the Body Corporate.[6] That point must fail because if the contributions were not properly levied in the first place then the respondents would not be disentitled to vote by being indebted to the Body Corporate by failing to pay them.

[10] One of the points has some potential merit. It is that the respondents never challenged the validity of the circulating resolution with the Commissioner for Body Corporate and Community Management.[7] It is said that the respondents had 3 months to do that and having failed to do so, the validity of the resolution could not be challenged in the tribunal because it could only be challenged through the dispute resolution process offered by the Commissioner. Therefore the Adjudicator was wrong about section 111 or otherwise should have found the claim proved. This submission was before the Adjudicator in the hearing,[8] and the Adjudicator understood that this point was being made.[9] The Adjudicator did not however, deal with this point when giving reasons.

[11] The suggestion that the validity of the resolution must be challenged with the Commissioner and this must be done within 3 months comes from section 242 of the BCCM Act (time limit on certain adjudication applications) and the dispute resolution provisions in Chapter 6 of the Act, in particular section 229 which is called the 'exclusivity provision'.

[12] If the exclusivity provision means that the validity of body corporate resolutions cannot be challenged in a body corporate debt claim heard in the tribunal's minor civil dispute jurisdiction, then the Adjudicator was wrong to dismiss the claim. Instead, if the Adjudicator had been satisfied that Mr Lew had authority to bring the claim on behalf of the Body Corporate, and to represent the Body Corporate in the claim, then the Adjudicator should have ordered the respondents to pay the contributions.

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5 Much is made of the Adjudicator's stated belief that the scheme was in fact a specified two-lot scheme, also it is said that the respondents' lawyer made a written submission without obtaining leave of the tribunal and that the respondents should be fined for making false and misleading statements. These points are irrelevant to this appeal because they were not reasons for, or an influence in, the Adjudicator's decision to dismiss the claim.

6 Paragraph 9 of submission in support of an application for a decision in default, adopted for this appeal in a document marked 'APL3'.

7 Part D, paragraph 2, application for leave to appeal or appeal of 12 January 2021. The word 'requested' in that submission may be an error for 'required'.

8 Paragraphs 4.2 and 4.3 of the paper submitted with the claim, also paragraph 13 of submissions in support of a request for decision by default filed on 9 October 2020.

9 Transcript 1-8, line 38 and 1-18, line 37.

[13] Under the statutory provisions the appeal point concerning the exclusivity provision seems reasonably arguable and raises matters of importance which need to be resolved. Hence I shall grant leave to appeal.

Can the validity of a body corporate resolution be considered by the tribunal when hearing a body corporate debt claim?

Satisfaction that there is jurisdiction to hear the application

[14] It seems to me that the answer to this question is informed by another consideration, and that is when hearing a body corporate debt claim as a minor civil dispute, the tribunal will probably need to be satisfied that it has jurisdiction over the matter. This is not a fanciful issue because there are many gaps in the jurisdiction of the tribunal and whether or not there is jurisdiction is quite often a necessary starting point.

[15] In this application for example, the Adjudicator said:[10]

> The tribunal has jurisdiction in minor debt matters to the prescribed amount of $25,000 and pursuant to section 229A of the BCCM Act the tribunal can hear claims by body corporates against an owner in its minor civil dispute, minor debt jurisdiction.

[16] To my mind the tribunal also has jurisdiction to hear such claims if the claim is to recover a body corporate debt owed by a lot owner. This is because the tribunal has jurisdiction to hear and decide a minor civil dispute,[11] and one type of minor civil dispute is a claim to recover a debt or liquidated demand of money of up to the prescribed amount.[12]

[17] Examining these two sources of jurisdiction in more detail, section 229A(1) provides:

> (1) A claim to recover a debt the subject of a debt dispute that is a claim under the Queensland Civil and Administrative Tribunal Act 2009, schedule 3, definition minor civil dispute, paragraph 1(a) is, under paragraph 2 of that definition, a minor civil dispute.

[18] And 'debt dispute' is defined in section 229A(7) as:

> (7) In this section—
>
> ***debt dispute*** means a dispute between a body corporate for a community titles scheme and the owner of a lot included in the scheme about the recovery, by the body corporate from the owner, of a debt under this Act.

[19] This can be compared with the usual wording in the regulation modules for recovery of contributions and other body corporate debts. All the current regulation modules provide that these can be recovered as a debt.[13]

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10 Transcript of reasons 1-2 line 19.

11 Section 11 of the QCAT Act.

12 Schedule 3 of the QCAT Act – definition of minor civil dispute.

13 The *Accommodation Module* in section 156, the *Commercial Module* in section 116, the *Small Schemes Module* in section 85, and the *Standard Module* in section 166. The *Specified Two-lot*

[20] Here are the words used in the 4 December 2020 version of the *Small Schemes Module*, which applied on the date of the Adjudicator's decision:

> **79 Payment and recovery of body corporate debts [SM, s 145]**
>
> (1) If a contribution or contribution instalment is not paid by the date for payment, the body corporate may recover each of the following amounts as a debt—
> (a) the amount of the contribution or instalment;
> (b) any penalty for not paying the contribution or instalment;
> (c) any costs (recovery costs) reasonably incurred by the body corporate in recovering the amount.
>
> (2) If the amount of a contribution or contribution instalment has been outstanding for 2 years, the body corporate must, within 2 months from the end of the 2-year period, start proceedings to recover the amount.[14]
>
> (3) A liability to pay a body corporate debt in relation to a lot is enforceable jointly and severally against each of the following persons—
> (a) a person who was the owner of the lot when the debt became payable;
> (b) a person (including a mortgagee in possession) who becomes an owner of the lot before the debt is paid.
>
> (4) If there are 2 or more co-owners of a lot, the co-owners are jointly and severally liable to pay a body corporate debt in relation to the lot.

[21] A 'body corporate debt' is widely defined in the Dictionary in the Schedule to the Small Schemes Module as including not only contributions and penalties but also 'another amount associated with the ownership of a lot'. An example is given in the definition of an annual payment for parking under an exclusive use by-law or an amount owing to the body corporate for lawn-mowing services arranged by the body corporate on behalf of the owner.

[22] The Small Schemes Module also provides that the cost to the body corporate of maintenance arising from damage or deterioration can be recovered as a debt (section 93), the reasonable cost of work done by the body corporate in doing work that the lot owner or occupier was obliged to do can be recovered from the owner as a debt (section 105), and amounts due under an exclusive by-law can be recovered from the owner as a debt (section 109). Thus it can be seen that a right to compensation which might otherwise be regarded as a right to damages can be recovered as a debt. So if they are within the tribunal's financial limits they could be recovered in the tribunal.

[23] It can be seen from the above that for the tribunal to be satisfied that it has jurisdiction to hear a particular body corporate debt claim, it would have to be satisfied that there is a 'debt' over which it has jurisdiction. If recourse is needed to

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Schemes Module in section 27 has similar provisions but it also provides for a lot owner who has paid contributions to pay the amount due and then recover these from a defaulting lot owner.

[14] There has been a relaxation of this time limit in amendments to accommodate Covid-19.

section 229A(1) for jurisdiction, then the tribunal would need to be satisfied that the claim was a debt dispute - that is a 'debt under this Act'.

[24] I do not think that this means that the tribunal would need to consider the validity of the debt, and therefore jurisdiction, as a preliminary issue, because unlike in those instances where a preliminary step is imperative before the tribunal will have any jurisdiction over the application,[15] in a body corporate debt claim the tribunal would be able to infer or presume that the required processes had been followed properly, by applying the presumption of regularity. This means therefore, that in the usual body corporate debt claim, although the tribunal might require proof of authorisation,[16] it would not generally enquire into the processes followed by the body corporate applicant resulting in the alleged outstanding debt.

[25] If the tribunal is reasonably put on enquiry however, it would be unable to apply the presumption.[17] In any case the presumption is rebuttable.[18]

[26] In this particular case there was evidence before the Adjudicator that the processes had not been followed properly. Hence the Adjudicator was entitled not to infer or presume that the processes had been followed, and to look to the applicant to show that they had been.

Is the dispute resolution process exclusive?

[27] Since, as has been seen above, whether or not the correct processes under the BCCM Act have been followed go to the question of the tribunal's jurisdiction (because if they had not been there would be no 'debt'), it is very difficult to argue that the tribunal is unable to enquire into those processes if the dispute resolution process offered by the Commissioner has not been invoked.

[28] To say that would mean that if there had been no application for dispute resolution about the processes within the required 3 months set by section 240 then the validity of the debt could not be challenged in the tribunal because it would be final and conclusive.

[29] This would mean that in a case where the correct processes under the BCCM had not been followed so that there was no debt and the tribunal had no jurisdiction to hear the claim, once the 3 month time period in section 240 had passed, the exclusivity provision would mean that the tribunal did have jurisdiction to hear the claim after all. It seems to me that clear words would be needed in the exclusivity provision to have this effect. But as can be seen from the following analysis this is not the case.

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15 For example where the tribunal has no jurisdiction unless dispute resolution has been attempted first as in the case of a 'non-urgent' residential tenancy application [section 416 of the *Residential Tenancies and Rooming Accommodation Act* 2008 (Qld)] or in the case of a building dispute [section 77 of the *Queensland Building and Construction Commission Act* 1991 (Qld)] or a lawyers claim to recover legal costs which requires steps to be taken under section 329 of the *Legal Profession Act* 2007 (Qld), as explained in *Morales v Murray Lyons Solicitors (a firm)* [2010] QCATA 87.

16 Under rule 55(4) of the *Queensland Civil and Administrative Tribunal Rules* 2009 (Qld).

17 *Northside Developments Pty Ltd v Registrar-General* (1990) 170 CLR 146, Brennan J, [12], Mason CJ, [12].

18 *Bhalsod v Perrie* [2018] WASCA 108, [112].

[30] Dispute resolution is governed by Chapter 6 of the BCCM Act. It is done by conciliation, mediation or determination by an adjudicator appointed by the Commissioner for Body Corporate and Community Management.[19] The purpose of dispute resolution is stated to be (of relevance here) that it is concerned with the exercise of rights or powers, or the performance of duties under the Act.[20] Dispute resolution can be done where there is a dispute about these things between entities, in this case between the Body Corporate and the respondents, or at least between two lot owners.[21]

[31] For the type of dispute in this appeal, section 229(3) contains the relevant exclusivity provision. It says:

> Subject to section 229A, the only remedy for a dispute that is not a complex dispute is—
>
> (a) the resolution of the dispute by a dispute resolution process; or
>
> (b) an order of the appeal tribunal on appeal from an adjudicator on a question of law.

[32] Section 229A was added by amendment in 2010, and in considering this matter I need to look at the position as demonstrated by case law before it was added, and then consider whether anything changed by reason of the amendment.

[33] Prior to the amendment, section 229(3) simply read:

> The only remedy for a dispute that is not a complex dispute is—
>
> (a) the resolution of the dispute by a dispute resolution process; or
>
> (b) an order of the appeal tribunal on appeal from an adjudicator on a question of law

[34] When construing these words in an earlier version of the Act when they appeared in section 184, Holmes J in *James v The Body Corporate Aarons Community* [2002] QSC 386 said:

> The heading to s 184, 'Exclusivity of dispute resolution provisions' is part of the Act, and part of the provision itself. It indicates, plainly enough, an intention to confer jurisdiction in dispute resolution in accordance with the provisions of chapter 6, excluding other fora. The wording of the section itself is unusual: rather than providing for exclusive jurisdiction in so many words, s 184(2) speaks in terms of 'the only remedy' being the order of an adjudicator or that of a District Court on appeal on a question of law. But those words 'the only remedy' are not ambiguous; it is difficult to see what meaning they can have other than that in the circumstances to which s 184(2) applies, the only manner in which the dispute itself can be resolved is by the means prescribed: the adjudicator's order or that of the District Court on appeal.
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19 Definition of 'dispute resolution process' in Schedule 6 to the BCCM Act.

20 Section 228 of the BCCM Act.

21 'Dispute' being defined in section 277.

> Chapter 6, as already outlined, creates the positions of commissioner, adjudicators and mediators, and provides for case management and for management and adjudication in such a way as to constitute, in my view, a comprehensive code for dispute resolution. The existence of such a code for dealing with the subject matter is at least an indication of exclusivity. As Lunn AJ observed in *Hemruth Advertising v Karafotias*,
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> > The efficient operation of a specialist tribunal with powers to conciliate and to resolve disputes in an expeditious and inexpensive way would be partly defeated if parties to such a dispute could resort to other courts as they saw fit.
>
> The combined functions of commissioner, mediator and arbitrator under chapter 6 constitute a specialised mechanism peculiarly suited to speedy, cheap and relatively informal resolution of community titles scheme disputes.
>
> *footnotes omitted*

[35] It might appear therefore that the view of Holmes J was that the dispute resolution process was the only way in which matters suitable for dispute resolution could be decided. However, in *James* the court was being asked to make a declaration and an injunction and so there was definitely a *remedy* being sought from the court by originating application.

[36] *James* went on appeal where the meaning of the provisions was put differently by Davies JA (with whom the other members of the court agreed):[22]

> **Whether the Act, on its face, gives the adjudicator exclusive jurisdiction to resolve this dispute**
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> This was plainly a dispute in respect of which an adjudicator may make an order under Chapter 6 within the meaning of s 184. It was, at the very least, both a dispute between the body corporate and the owner of a lot included in the scheme and a dispute between the body corporate and a letting agent for the scheme. In the end, the only questions in issue in this appeal are whether the order which an adjudicator may make to resolve this dispute is one pursuant to s 223 or one pursuant to s 227; or whether the adjudicator may make such an order under either section.
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> Section 184 does not speak in terms, specifically, of jurisdiction to hear and decide but in terms of providing a remedy. However I think its plain intention is that the adjudicator is to have exclusive jurisdiction to make orders of the kind which the Act prescribes, relevantly in s 223 and s 227, in disputes of the kind to which s 182 refers, subject to any statutory exception or limitation. Mr Savage SC, for the appellants did not argue to the contrary.
>
> *footnotes omitted*

[37] Davies JA therefore concentrated on the *remedies* available from the dispute resolution process, without saying that the exclusivity provision provided an exclusive way in which such matters should be heard and determined.

[38] This was also the approach of Justice Daubney in *Body Corporate of the Lang Business v Green* [2008] QSC 318. In that case a body corporate claimed

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22 *James v Body Corporate for Aarons Community Titles Scheme 11476* [2003] QCA 329.

contributions from the defendant and in defence to the claim the defendant challenged the notices of contribution on the basis that he had requested but not received details of the calculations. Since the application was for summary judgment, the defence raised issues which at least went to quantum and which conventionally would not be considered appropriate for summary determination.[23] Despite this, the plaintiff argued that because of the exclusivity provisions in the BCCM Act, and the fact that there had been no dispute resolution as required by section 229(3), there could be no defence to the claim for contributions.[24]

[39] Justice Daubney pointed out that had the defendant challenged the notices of contribution in the Supreme Court he would have been thwarted by the exclusivity provisions in the BCCM. He then said:[25]

> He has not, however, done so. Rather, the defendant has raised particular matters in defence of the plaintiff's claim. I would be loathe to conclude, in the absence of a specific statutory provision compelling such a conclusion, that a defendant to a claim such as the one advanced by the plaintiff could not, under any circumstances, raise in a defence a matter which might trespass into the territory covered by the dispute resolution provisions of the BCCM. There is no legal or statutory impediment to these matters being raised by way of defence.
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> My view is reinforced by reference to *Independent Finance Group Pty Ltd v Mytan Pty Ltd*, in which the Court of Appeal was called upon to consider whether an appeal to the Court of Appeal lay from a decision of the District Court made under the appeal provisions of the dispute resolution processes set out in the BCCM, McMurdo P expressed a 'preliminary view' in the context of the precursor to s229, that 'it would be surprising if, in the absence of the clearest words, the inherent jurisdiction of the Supreme Court was diminished by ch. 6.' In the same vein, it would be 'surprising' indeed if chapter 6 of the BCCM were read as so significantly constraining the right of a defendant to advance a defence as to render it unable to advance a simple contention that it is 'only liable to pay such contributions as have been properly identified, calculated and resolved to be payable by members of the Body Corporate.'
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> *footnotes omitted*

[40] Unlike in *James* therefore, Justice Daubney was looking at a defence to a body corporate debt claim as in the matter before me in this appeal. *Green* is authority that a respondent to a body corporate debt claim in the Supreme Court can attempt to defend the claim by raising an issue which could have been raised, but was not raised, under the dispute resolution provisions of the BCCM.

[41] Although *Green* was in the Supreme Court,[26] it would not appear from the words used by Justice Daubney that he relied on the presumption that the jurisdiction of a superior court can only be excluded by the clearest expression of legislative intent. So there seems no reason why the principle in *Green* does not also apply to the minor civil dispute jurisdiction of the tribunal. In both cases, a court or tribunal

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23 [17].
24 [28] and [36].
25 [40] and [41].
26 Because the claim was for some $326,000.

hears a body corporate debt claim and has clear jurisdiction to do so; in neither case are there sufficiently clear words to oust the jurisdiction of that court or tribunal to decide whether the claim is proved.

[42] I would note in passing here, the words in section 229(3) - 'the only remedy for a dispute'. It is difficult to say that defending a body corporate debt claim on the grounds that the debt is not due because the processes required by the BCCM Act have not been followed is seeking a 'remedy for a dispute'. Usually a person would seek a 'remedy' when they take the initiative by originating application.

[43] The question now arises whether the amendments made in 2010 make any difference to the outcome of this question.

[44] I would note that in *Green*, Justice Daubney referred to the possibility that the Body Corporate might not be able to claim the contributions because of the exclusivity provisions themselves which provided the Body Corporate with its only remedy, but noted that in this particular case the regulations permitted the amounts to be recoverable as a debt.[27] It seems possible that section 229A was added to deal with this issue, to make it clear that such contributions could be recovered as a debt in the tribunal or in the mainstream courts. This seems to be at least a possibility from the explanatory notes to the statute adding that section:[28]

> Clause 10 inserts a new section 229A (Disputes about particular debts) into the Act. This section clarifies that adjudicators do not have jurisdiction for debt disputes, and clarifies the jurisdiction for dealing with debt disputes.

[45] In order properly to analyse the amendment I need to set out section 229A in full:

> **229A Disputes about particular debts**
>
> (1) A claim to recover a debt the subject of a debt dispute that is a claim under the Queensland Civil and Administrative Tribunal Act 2009, schedule 3, definition minor civil dispute, paragraph 1(a) is, under paragraph 2 of that definition, a minor civil dispute.
>
> (2) Subsection (1) does not affect a body corporate's right to start proceedings in a court of competent jurisdiction to recover a debt the subject of a debt dispute.
>
> (3) To remove any doubt, it is declared that an adjudicator does not have jurisdiction in a debt dispute.
>
> (4) A dispute resolution process does not apply to a debt dispute or a related dispute to a debt dispute once a proceeding to recover the debt the subject of the debt dispute is started before QCAT or in a court of competent jurisdiction.
>
> (5) If—
>
> (a) a dispute resolution process has started for a debt dispute or a related dispute to a debt dispute; and

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27 [37].

28 *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act* 2010 (Qld).

> (b) a proceeding to recover the debt the subject of the debt dispute is subsequently started before QCAT or in a court of competent jurisdiction; the dispute resolution process is at an end.
>
> (6) A dispute is a related dispute to a debt dispute if—
>
> (a) the subject matter of the dispute is related to the subject matter of the debt dispute; and
>
> (b) there are proceedings in a court or before QCAT to recover the debt the subject of the debt dispute; and
>
> (c) the commissioner considers that the dispute and the debt dispute are connected in a way that makes it inappropriate for the dispute to be dealt with by a dispute resolution process.
>
> (7) In this section—
>
> ***debt dispute*** means a dispute between a body corporate for a community titles scheme and the owner of a lot included in the scheme about the recovery, by the body corporate from the owner, of a debt under this Act.

[46] It can be seen that sections 229A(1) and 229A(2) make it clear that the tribunal and the mainstream courts have jurisdiction in a claim to recover a debt the subject of a debt dispute. So this would overcome any difficulty arising from section 229(3) which might have limited the ability of a body corporate to sue for contributions in the courts as mentioned by Justice Daubney in *Green*.

[47] Indeed section 229A(3) ensures that it is only the tribunal and the mainstream courts which could hear a debt dispute. A department adjudicator would have no jurisdiction to hear such a dispute.[29]

[48] That provision also gives an important clue as to what is, and what is not, a debt dispute. A debt dispute is defined in section 229A(7) as follows:

> In this section—
>
> ***debt dispute*** means a dispute between a body corporate for a community titles scheme and the owner of a lot included in the scheme about the recovery, by the body corporate from the owner, of a debt under this Act.

[49] It is clear from the remainder of Chapter 6 that a department adjudicator can resolve disputes about (for example) the exercise of rights or powers, or the performance of duties under the Act or community management statements, and the adjustment of lot entitlement schedules.[30] Hence a dispute about such matters cannot be a 'debt dispute'.[31] Such disputes might determine whether or not a particular body corporate debt is payable, but they would not be an action to recover such a debt: that is left to the tribunal or the courts.

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29 The word 'adjudicator' here does not mean a tribunal adjudicator: Schedule 6 Dictionary. This is contrary therefore, to what was said in *Body Corporate for Jargarra Villas CTS 19298 v Odalshire Pty Ltd* [2013] QCATA 168 but accords with *Body Corporate for SL8 v Falzon and Anor* [2012] QCAT 556.

30 Section 228 setting out the purpose of Chapter 6.

31 Because section 229A(3) would remove such jurisdiction and this is clearly not intended.

[50] The 'related dispute' provisions in sections 229A(4) to (6) envisage a dispute in the dispute resolution process which is related to a claim in a court or tribunal to recover a body corporate debt (a debt dispute). If the Commissioner decides under section 229A(6)(c) that the connection between the two disputes makes it inappropriate for the dispute resolution process to continue, then the dispute in the dispute resolution process becomes a 'related dispute' and this brings the dispute resolution process to an end.

[51] These provisions are of value in deciding whether the tribunal can consider such a related dispute when hearing a debt dispute. Although there is nothing in section 229A which gives the tribunal jurisdiction to hear and determine the related dispute, it is right to imply this so that the tribunal can hear the debt claim and also deal with the related dispute if the Commissioner has made the decision under section 229A(6)(c), because the related dispute would not otherwise be determined.

[52] Suppose for example in this matter before me in this appeal, the respondents had applied to the Commissioner for a declaration that the contributions had not been validly levied by the Body Corporate. Suppose the Commissioner appointed a department adjudicator to decide that matter. Then suppose that, instead of waiting for the outcome of the dispute resolution process, the Body Corporate made an application to the tribunal to claim recovery of the debt. If the Commissioner then decided under section 229A(6)(c) that the application for a declaration was a related dispute, the dispute resolution process would come to an end. It must then be the case that the respondents would be free to raise the issue of the validity of the body corporate debt with the tribunal in defence to the debt claim, because it would not otherwise be determined. This demonstrates that defending a claim on the basis of such related matters is permitted despite the wording of section 229(3) (the 'exclusivity provision').

[53] In the scenario above the tribunal's jurisdiction over the related dispute arose from a decision from the Commissioner. But suppose the respondents had not applied to the Commissioner for a declaration that the contributions had not been validly levied by the Body Corporate. The Commissioner would then not be making a decision under section 229A(6)(c). In that scenario I would say again that defending a claim on the basis of such related dispute is permitted despite the wording of section 229(3) (the 'exclusivity provision'). This is because there is nothing to show that the meaning of section 229(3) is changed by the presence or absence of, a decision made by the Commissioner under section 229A(6)(c).

[54] I would note that the words 'subject to section 229A' were added in the exclusivity provision in section 229(3). If this proviso were intended only to apply where the Commissioner made a decision under section 229A(6)(c) then it would have said 'except where the Commissioner makes a decision under section 229A(6)(c)'. Instead it makes the exclusivity provision wholly subject to section 229A which suggests that the exclusivity provision in section 229(3) does not apply to the jurisdiction given to the tribunal and the mainstream courts to hear claims for recovery of purported body corporate debts. In other words, it suggests that when hearing such a claim the court or tribunal can consider related disputes such as validity of the body corporate debt, provided of course the department adjudicator has not already determined that issue.

[55] In my view therefore, the changes made by section 229A do not change the position as stated in *Green* and if anything, seem to support the proposition that in hearing a

claim to recover a body corporate debt the tribunal and the mainstream courts are able to consider whether the processes required by the BCCM have been followed to give validity to the debt.

[56] This proposition is supported by the fact that section 229A was added by amendment and section 229(3) was amended by the addition of the words 'subject to section 229A'. There is a presumption that where Parliament repeats words which have been judicially construed then it is taken to have intended the words to bear the meaning judicially attributed to them.[32] Parliament had an opportunity to add the 'clearest words' referred to in *Green* but did not do so. This makes it more likely that the intention of Parliament is to maintain the approach stated in *Green*.

[57] The same view as in *Green* was reached in the District Court in *Lynvale Pty Ltd as Trustee v Body Corporate for Surf Edge CTS 34002* [2017] QDC 191 but in relation to a damages claim relied on as a set-off against a claim for contributions brought by the Body Corporate. It was argued on behalf of the Body Corporate that the damages claim ought to have been dealt with in a dispute resolution process, but Smith DCJA thought otherwise, saying that there was a sufficient connection between the damages claim to make it a dispute about the recovery of the debt and commenting:[33]

> Firstly in order for the jurisdiction of a court to be ousted by statute there must be a very clear expression of legislative intent.
>
> ..
>
> It would seem to be wrong to 'hive off' valid claims of set-off to an adjudicator where the set-off is clearly related to the claim. This would lead to the possibility of conflicting decisions and unnecessary cost.

[58] When referring to *Green*, Smith DCJA said:[34]

> .. the difficulty with that case is that it was decided before the introduction of Section 229A.

[59] But despite this, Smith DCJA came to the same conclusion as had been reached in *Green* albeit in the case of a defence of set-off rather than a defence about the validity of the claim itself.

Other considerations

[60] It might be said that deciding whether the processes required under the BCCM Act had been followed is not suitable for a claim in the minor civil dispute list. But that does not mean that the tribunal when hearing a debt dispute does not have jurisdiction to consider such defences.

[61] I would point out that in minor civil disputes, by section 126(2) of the QCAT Act the tribunal's decision on a particular issue is not final. And by section 52(1), a matter can be transferred if it is more appropriately dealt with elsewhere. In addition

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32 *Re Alcan Australia Ltd; Ex parte Federation of Industrial, Manufacturing and Engineering Employees* (1994) 181 CLR 96 at 106-107.

33 [45] and [75].

34 [39].

to this, members are available in the tribunal with considerable experience in body corporate matters. This is because complex disputes and also appeals from department adjudicators are heard in the tribunal.

[62] It can be noted that the Adjudicator dealt with this claim with considerable efficiency by concentrating on only one issue where it was clear that there was a breach of procedure on admitted facts. That was the failure to follow the voting procedure required by section 111 of the BCCM Act.

[63] It can be seen from the above that it is not impractical for the tribunal to be able to deal with defences to a body corporate debt claim which involve consideration of the processes required by the BCCM Act.

[64] It follows that the respondents were entitled to defend the debt claim in the tribunal on the basis that the contributions were not due. In turn the Adjudicator was right to look to Mr Lew to prove that the Body Corporate could properly bring the claim, and to dismiss the claim when he was unable to do this.

Conclusion

[65] Although I have given leave to appeal I have concluded that the Adjudicator was right to dismiss the claim on the grounds that the processes required by the BCCM Act had not been followed and because Mr Lew failed to prove that the Body Corporate could properly bring the claim.

[66] Accordingly the appeal is dismissed.