

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**  
**CIVIL DIVISION**

**OWNERS CORPORATIONS LIST**

**VCAT Reference: OC2808/2019**

**CATCHWORDS**

PRACTICE AND PROCEDURE – application to strike out owners’ corporation proceeding under s 77 of the *Victorian Civil and Administrative Tribunal Act* (1998) (VCAT Act) on the basis the Supreme Court is the appropriate forum – application dismissed

PRACTICE AND PROCEDURE – Application to restrain solicitor from acting – application dismissed – Tribunal has no inherent jurisdiction to restrain solicitor from acting – no basis for such an order established in any event

PRACTICE AND PROCEDURE – Applications to summarily dismiss or strike out the proceeding under s 75 or s 76 of VCAT Act – applications dismissed – no basis established.

PRACTICE AND PROCEDURE – Application to join non-party under s 60 of VCAT Act – applications dismissed.

<b>APPLICANT:</b>	Owners Corporation 1 Plan No. RP 2044
<b>RESPONDENT:</b>	Jo-Anne Laura Finch
<b>WHERE HELD:</b>	Videoconference – Chambers
<b>BEFORE:</b>	Vice President Judge Marks
<b>HEARING TYPE:</b>	Directions Hearing
<b>DATE OF HEARING:</b>	21 January 2022
<b>DATE OF ORDER:</b>	27 January 2022, revised with Reasons added 9 February 2022
<b>CITATION:</b>	Owners Corporation 1 Plan No. RP 2044 v Finch (Owners Corporations) [2022] VCAT 149

**ORDERS**

- 1 The respondent’s application to restrain solicitors Berrigan Doube Lawyers and Lindsay Crofton from acting for the applicant, filed 10 March 2020, is dismissed.
- 2 The respondent’s application to strike out this proceeding under s 77 of the

*Victorian Civil and Administrative Tribunal Act* (1998) (**VCAT Act**) on the basis the Supreme Court is the appropriate forum, filed 10 March 2020, is dismissed.

- 3 The respondent's applications to strike out or dismiss the proceeding under s 75 or s 76 of the VCAT Act, filed 10 February 2020, is dismissed.
- 4 The respondent's application seeking relief against Chris Taylor, Peter Costa, and LR Reed (who are not parties to this proceeding), filed on 12 January 2022, is dismissed.
- 5 The applicant has leave to file Amended Points of Claim by **4pm on 18 March 2022**.
- 6 The respondent file any application for joinder of any person as a party to this proceeding under s 60 of the VCAT Act, together with any affidavit relied on in support of that application and any submissions, by **4pm on 8 April 2022**.
- 7 The respondent serve any application made under Order 6 above on the applicant in this proceeding (via its solicitors), and on each person who the respondent seeks to join, by **4pm on 13 April 2022**.
- 8 The respondent file Points of Defence and any Counterclaim by **4pm on 16 May 2022**.
- 9 The parties have leave to be represented by solicitors and a barrister if they see fit.
- 10 This matter be listed for a directions hearing after 30 May 2022.
- 11 Costs reserved.

## **VICE PRESIDENT JUDGE MARKS**

### **APPEARANCES:**

For the Applicant:	Mr L. Crofton, solicitor
For the Respondent:	Ms J. Finch, in person

## REASONS

### Background

- 1 After a hearing on 21 January 2021 I gave oral reasons for dismissing the respondent's applications which were before the Tribunal, and provided written orders on 27 January 2021. I now provide written reasons.
- 2 On 4 November 2019 the applicant (**OC**) sued the respondent (**Finch**) for \$12,836.36. That claim has not been heard yet. There have been various interlocutory applications by Finch, including applications for recusal of a member who dealt with one aspect, and for review of another decision. Delays in hearing this matter have partly been caused by time taken to deal with these applications, and partly by matters arising from the pandemic.
- 3 On 2 August 2021, the matter came on before me for the hearing of various interlocutory applications issued by Finch, and for a directions hearing. Although some affidavits had been filed, it was apparent the parties had not come prepared to deal that day with the substance of the interlocutory applications. I heard from the parties, then made various orders to advance the matter, including adjourning it to a date that suited both parties and the Tribunal – 21 January 2022.
- 4 Further written submissions and affidavits were filed.
- 5 On 21 January the matter came on for hearing. Ms Finch represented herself. Mr Crofton, a solicitor, represented OC. Oral submissions were made by both, and I then gave oral reasons. Orders were made, as listed above, dismissing the applications and making directions as to next steps in the matter.
- 6 At the hearing, Finch took issue with the fact that Crofton had made oral submissions to the effect that there was no material to support the making of the applications Finch sought. He also referred to a couple of cases which stood for standard propositions as to what is required to support such applications. Finch referred to this as being evidence of more 'shenanigans' by Crofton (and OC and its lawyers), and said she was being ambushed and this was a denial of justice. She referred to the fact she is a self-represented litigant.
- 7 It is not ambushing or shenanigans or a denial of justice to submit that a claim is not established, nor to quote standard cases regarding applications. It is for someone seeking relief to establish they are entitled to it. This includes a self-represented litigant. Finch was given ample opportunity to satisfy the Tribunal of her applications and did not do so. It is quite proper for that to be pointed out by the solicitor for the respondent. I would not have been satisfied there was a basis established for the applications in any event (even had those oral submissions not been made by Crofton).
- 8 I now turn to each of the applications before me.

### Restrain solicitor from acting

- 9 In March 2020 Finch filed an application seeking to restrain the solicitors for the

applicant and one of its principals (Crofton) from acting.

- 10 Finch complained of many matters, including:
- A. The solicitor agreed to act for the applicant without proper authority;
  - B. Crofton has not complied with Tribunal orders as to filing of affidavits and been misleading in the information presented and material submitted to the Tribunal;
  - C. The solicitor has brought a case against her that is 'defective, incompetent, frivolous, vexatious, species, misconceived and not tenable in fact or law' (Finch's affidavit of 10 March 2020 at [25]);
  - D. The solicitor has not responded to all her emails and has otherwise not dealt with the matter the way she considers it should;
  - E. The applicant's solicitor has otherwise conducted itself in a way that has disadvantaged Finch;
  - F. Crofton has told 'untruths';
  - G. The solicitor's involvement has been sporadic and lead Finch to believe it was possibly no longer representing the applicant;
  - H. The solicitor has breached ethical obligations of some sort; and
  - I. That there is a lack of respect to her and the judiciary shown repeatedly.
- 11 The Tribunal has no inherent jurisdiction to restrain or control the conduct of legal officers and cannot restrain a solicitor on the grounds that it is necessary in the administration of justice.
- 12 Even if there was such jurisdiction I would not be satisfied that it was necessary, in the administration of justice, to restrain the solicitors here. Nothing that was raised comes close to satisfying that test. (I note that I would not be satisfied, from the assertions made that the solicitors, or Crofton, have acted as Finch claims, but do not need to decide that in order to dismiss the application.)
- 13 I dismiss that application.

### **Strike out proceeding – section 77 VCAT Act**

- 14 In March 2020, Finch filed an application to strike out or stay this proceeding. She would like it heard in the Supreme Court.
- 15 Section 77 of the VCAT Act provides:
- (1) At any time, the Tribunal may make an order striking out all, or any part, of a proceeding (other than a proceeding for review of a decision) if it considers that the subject-matter of the proceeding would be more appropriately dealt with by a tribunal (other than the Tribunal), a court or any other person or body.
  - (2) The Tribunal's power to make an order under subsection (1) is exercisable only by a judicial member.

- (3) If the Tribunal makes an order under subsection (1), it may refer the matter to the relevant tribunal, court, person or body if it considers it appropriate to do so.
  - (4) An order under subsection (1) may be made on the application of a party or on the Tribunal's own initiative.
- 16 Finch argued that she wants to raise criminal matters in the Tribunal. She stated that Tribunal members were incompetent or had insufficient knowledge of criminal matters which she raised in this proceeding and that judges had the knowledge and capacity.
- 17 Finch also said, at the hearing, that she wants to bring a counterclaim, including defamation claims, against various people and that it could not be dealt with at the Tribunal. She stated she wanted to get legal advice, but thought the defamation claim would be brought against three owners, LR Reed, and possibly against OC, the applicant in this case.
- 18 Those proposed defamation claims relate to a contract of sale regarding one lot owner's property (Mr Costa), in relation to which Finch says allegations about her, her conduct, and money that is said to be owed by her, have been made, and which she says have been given to 'every Tom, Dick or Harry who has asked for it'.
- 19 This Tribunal (and not the Supreme Court) is the appropriate place to deal with the OC's debt claim, which is a claim under the *Owners Corporation Act 2006* (Vic) (**OC Act**).
- 20 As outlined in section 18 of the OC Act:
- (1) Subject to subsection (2), an owners corporation must not commence any legal proceeding unless it is authorised by special resolution to do so.
  - (2) If a matter is within the civil jurisdictional limit of the Magistrates' Court and an owners corporation is authorised to do so by ordinary resolution, the owners corporation may commence any legal proceeding in—
    - (a) the Magistrates' Court; or
    - (b) VCAT or any other tribunal; or
    - (c) a court of another State or a Territory that corresponds to the Magistrates' Court.
- 21 'Jurisdictional limit' in a civil proceeding means \$100,000 (*Magistrates' Court Act 1989* (Vic), section 3(1) 'jurisdictional limit').
- 22 Furthermore, as is outlined in section 162 of the OC Act:
- VCAT may hear and determine a dispute or other matter arising under this Act or the regulations or the rules of an owners corporation that affects an owners corporation (***an owners corporation dispute***) including a dispute or matter relating to—

- (a) the operation of an owners corporation; or
  - (b) an alleged breach by a lot owner or an occupier of a lot of an obligation imposed on that person by this Act or the regulations or the rules of the owners corporation; or
  - (c) the exercise of a function by a manager in respect of the owners corporation; or
  - (d) a term of a contract of appointment of the manager of an owners corporation, including whether a term is fair; or
  - (e) the disposal by an owners corporation of goods abandoned on the common property.
- 23 The Tribunal's members have significant experience in this area. It has jurisdiction. The amount sought is minor. The debt claim should be dealt with by the Tribunal. This is not a matter that is better dealt with elsewhere. For completeness, I note that transfer would only further delay the hearing of the debt claim.
- 24 Any criminal proceeding or defamation proceeding should be issued as separate proceedings in the appropriate forums.
- 25 I dismiss Finch's application to transfer this proceeding.

#### **Dismiss or strike out proceeding – sections 75 and 76 of the VCAT Act**

- 26 On 10 February 2020, Finch filed an application seeking to strike out or dismiss the proceeding.
- 27 Section 75(1) of the VCAT Act provides:
- (1) At any time, the Tribunal may make an order summarily dismissing or striking out all, or any part, of a proceeding that, in its opinion—
    - (a) is frivolous, vexatious, misconceived or lacking in substance; or
    - (b) is otherwise an abuse of process.
- 28 The reasons Finch gave for dismissing or striking out the claim relate to her defence as to why the OC should not be able to recover its debt. This is particularly outlined at paragraphs 1-24, and 27-30 of her 10 March 2020 affidavit. Finch says things like the invoices for the OC fees are not legal, that the contract with the OC Manager is fraudulent in two ways, that procedures regarding the issuing of final notices were not followed, and other such things.
- 29 The OC has the onus of proving it is owed the fees it says Finch has not paid. The complex facts and law raised by Finch are best dealt with at the final hearing. They are not appropriate for a summary strike out of a claim.
- 30 Summarily dismissing, or striking out a proceeding is only available on limited bases, none of which are made out here.
- 31 I am not satisfied that there is any reason to dismiss the proceeding without a

hearing.

32 Section 76 of the VCAT Act was also referred to by Finch in her filed material.

33 Section 76(1) provides:

- (1) At any time, the Tribunal may make an order summarily dismissing or striking out all, or any part, of a proceeding for want of prosecution.

34 There has not been a want of prosecution by OC in this case. Dismissal for want of prosecution would require there to have been extensive delays by OC in failing to progress its case. That has not been established here.

35 I dismiss the application to dismiss or strike out the claim to the extent that it relies on section 76 of the VCAT Act.

### **Application seeking relief against non-parties – section 60 VCAT Act**

36 On 12 January 2021 (just before the hearing), Finch filed a further application. It is an endeavour to seek orders against people (lot owners Taylor and Costa, and LR Reed) who are not parties to this proceeding (but it is not an application to join them as parties). Amongst other things, Finch seeks orders against the owners of two apartments who have sold their apartments and which she alleges she was not informed about.

37 The application is confusing, is not relevant to the dispute in this proceeding (a debt claim brought by the OC), and those named are not parties to this proceeding.

38 I dismiss that application.

39 Finch may issue separate proceedings if she seeks to make claims that are not related to the issues in this proceeding against those people or others who are not parties.

40 Or, if she wants to seek to have claims against others heard as part of *this* proceeding, she may make an application under section 60 of the VCAT Act for the claims against them to be joined to this proceeding, supported by appropriate material. Any such application must be filed by 8 April, so this case is not unnecessarily delayed in reaching final hearing.

41 Section 60 states:

- (1) The Tribunal may order that a person be joined as a party to a proceeding if the Tribunal considers that—
  - (a) the person ought to be bound by, or have the benefit of, an order of the Tribunal in the proceeding; or
  - (b) the person's interests are affected by the proceeding; or
  - (c) for any other reason it is desirable that the person be joined as a party.
- (2) The Tribunal may make an order under subsection (1) on its own initiative or on the application of any person.
- (3) On the application of a person who is entitled under section

73(4) to be joined as a party the Tribunal must order that the person be joined as a party.

- 42 If an application for joinder is made, those who Finch seeks to have joined will need to be served with the application (VCAT Act, section 72(1)).
- 43 The Tribunal will then consider if the joinder orders should be made at a hearing involving the parties to this proceeding, and (if they choose to appear at that hearing), also involving those who Finch applies to be joined to the proceeding.
- 44 It is in the parties' interests that this matter now proceed to final hearing as soon as possible. Further orders have been made towards that goal.

**Judge Marks**

**VICE PRESIDENT**