
JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

ACT : STRATA TITLES ACT 1985 (WA)

CITATION : THE OWNERS OF 244 FLINDERS ST. MT.
YOKINE STRATA PLAN 2724 and PERERA [2022]
WASAT 64

MEMBER : MS KY LOH, MEMBER

HEARD : 7 APRIL 2022

DELIVERED : 1 AUGUST 2022

FILE NO/S : CC 1420 of 2021

BETWEEN : THE OWNERS OF 244 FLINDERS ST. MT.
YOKINE STRATA PLAN 2724
Applicant

AND

C LIYANAGE KA AKA LICH PERERA
Respondent

Catchwords:

Strata titles - Duties of strata manager pre- and post-commencement of major amendments to *Strata Titles Act 1985* (WA) - Whether volunteer strata manager during transitional period - Utility in order that respondent refrain from applying to be strata manager

Legislation:

Building Services (Complain Resolution and Administration) Act 2011 (WA)
State Administrative Tribunal Act 2004 (WA), s 9, s 47(2), s 87(1)

Strata Titles Act 1985 (WA) (from 1 May 2020), s 3(1), s 109(1), s 137, s 143, s 144, s 144(1), s 144(1)(a), s 144(2), s 144(3), s 145, s 145(1), s 145(5), s 146, s 146(1), s 146(1)(a), s 146(1)(b), s 146(1)(c), s 146(1)(e), s 147, s 148, s 148(1), s 155, s 197(1)(g), s 199, s 199(3)(a), s 200, s 200(2)(o), s 200(2)(m), Pt 9, Sch 5, cl 2(1), cl 2(2), cl 2(3), cl 13, cl 13(3)

Strata Titles Act 1985 (WA) (pre 1 May 2020), s 39A, s 132, Sch 1, Sch 3, cl 6

Strata Titles Act 1996 (WA)

Strata Titles Amendment Act 2018 (WA)

Strata Titles Regulations 2019 (WA), reg 11(1)

Result:

Application partly allowed

Category: B

Representation:

Counsel:

Applicant : P IDell (as representative)

Respondent : In Person

Solicitors:

Applicant : N/A

Respondent : N/A

Case(s) referred to in decision(s):

Western Australian Planning Commission v Questdale Holdings Pty Ltd

[2016] WASCA 32; (2016) 213 LGERA 81

Wolfenden and Mandurah Homes Pty Ltd [2020] WASAT 127 (S)

REASONS FOR DECISION OF THE TRIBUNAL:

Introduction

1 Mr Perera was the strata manager of the strata scheme at
244 Flinders Street Mt Yokine.

2 He was also a co-owner of Lot 1 in the strata scheme.

3 In May 2021, the council of the strata company signed a strata
management agreement with the current strata manager,
EA Professionals, following concerns about Mr Perera's management
of the strata scheme and a break-down in communication with
Mr Perera.

4 Notably, Mr Perera disclosed that strata company funds were
taken from a person he entrusted to manage the strata scheme.

5 Mr Perera also failed to make payments to maintain the building
insurance for the strata scheme.

6 Mr Perera accepts responsibility for the loss of funds, but disputes
some of the amounts claimed.

7 The strata company seeks a declaration that Mr Perera has
breached ss 146, 147 and 148 and s 137 of the *Strata Titles Act 1985*
(WA) (**Act**) and for an order that he be prohibited from acting as strata
manager for the strata scheme.

8 The strata company also seeks its costs of the application.

9 For reasons set out below, I will make the declaration that
Mr Perera has breached a statutory duty under the Act, and order that
Mr Perera pay the strata company \$21,599.77 plus \$1,485 in costs, and
that Mr Perera is to refrain from applying to be the strata manager of
the strata scheme.

Issue for determination

10 The following issues arise for consideration:

- a) Did Mr Perera hold any statutory duties as strata manager?
- b) If so, did Mr Perera meet his obligations as a strata manager under the Act, that is, did he:

- i) act honestly and in good faith in the performance of his functions (s 146(1)(a))?
 - ii) exercise a reasonable degree of skill, care and diligence in the performance of his functions (s 146(1)(b))?
 - iii) have a good working knowledge of the Act (s 146(1)(c))?
 - iv) refrain from making improper use of his position of strata manager to gain, directly or indirectly, an advantage for himself or cause a detriment to the strata company (s 146(1)(e))?
 - v) inform the strata company in writing of any amount or value of any remuneration or benefit, exceeding a prescribed amount, that the strata manager receives, or has a reasonable expectation of receiving (other than from the strata company) in connection with the performance of his functions (s 147)?
 - vi) properly pay all monies received on behalf of the strata company into the requisite Australian authorised deposit-taking institution (**ADI**) account (s 148)?
- c) Do the obligations under s 137 of the Act apply to Mr Perera?
 - d) In determining the compensation for the strata company's pecuniary loss or damage, can the amount of any unpaid strata levy fees for Lot 1 be included?
 - e) Is there any utility in an order that Mr Perera refrain from acting as strata manager of the strata scheme?
 - f) Should Mr Perera pay the strata company's costs of the proceedings?

11 At the hearing, pursuant to s 47(2) of the *State Administrative Tribunal Act 1985 (WA) (SAT Act)*, I struck out part of the strata company's application for a declaration that Mr Perera breached s 109(1) of the Act and that he be fined \$3,000. As advised in my oral

reasons, it is the courts, not the Tribunal, that have jurisdiction to determine the breach of a criminal offence under s 109(1) of the Act.

12 In any event, s 109(1) of the Act imposes criminal liability on the strata company, not the strata manager, and the legislative provisions do not allow that criminal liability to be shifted to the strata manager.

13 The strata company had also applied for the transfer of documents relating to the strata scheme, although the parties agreed to an order made on 12 January 2022 that Mr Perera was to handover all such documents in his possession or accessible by him that relate to the entire period of his management of the strata company, except for bank statements which could be limited to the last 2 years of his management.

14 As documents were provided to the strata company on or about 18 February 2022 (following the grant of an extension of time), it no longer pursues an order for the transfer of documents from Mr Perera.

Legal framework

15 These proceedings commenced following the major amendments to the Act coming into operation on 1 May 2020 under the *Strata Titles Amendment Act 2018 (WA) (Amendment Act)*, and as such those amendments apply to the determination of this application.

16 All references to the provisions of the Act in these reasons are to those in the Act coming into operation from 1 May 2020.

17 All references to the provisions of the Strata Titles Act 1985 (WA) immediately prior to 1 May 2020 will be referred to as those in the **pre-amendment Act**.

18 The pre-amendment Act itself repealed and replaced the *Strata Titles Act 1966 (WA) (1966 Act)* from 30 June 1985.

19 The strata scheme was created by the registration of the strata plan on 15 October 1974 under the 1966 Act.

20 By virtue of s 132 of, and cl 6 of Sch 3 to, the pre-amendment Act, the strata scheme continued, with modification to it made by the transitional provisions in Sch 3.

21 Clause 2(1) of Sch 5 to the Act provides that the following
relevantly continues in existence notwithstanding the coming into
operation of the Amendment Act:

- a) a strata scheme;
- b) a lot or common property in a strata scheme;
- c) an estate or interest in a lot or common property in a
strata scheme;
- d) a strata company, its council or its officers.

22 Clause 2(2) of Sch 5 to the Act provides that the strata scheme for
which a strata plan is registered immediately before the commencement
day is taken to be registered as a strata titles scheme.

23 Further, the strata plan, as registered immediately before
1 May 2020, continues to be registered as scheme documents: cl 2(3)
of Sch 5 to the Act.

Background

24 The following facts are not in dispute between the parties or
appear in non-contentious documents filed in these proceedings.

Factual background

25 The strata scheme is comprised of a parcel of land on which there
are eight units contained in a building, described on Strata Plan 2724 as
being a 'single storied brick and tile home units: situated on Lot 10 of
Swan Loc. 1111. The postal address being Units 1-8, 244 Flinders
Street, Mt. Yokine.'

26 The location plan in the strata plan shows there are individual
carports for the use of each lot.

27 Mr Perera is a co-owner of Lot 1 with his wife at all relevant
times.

28 Mr Perera was providing strata management services from 2013 or
2014 through his business Budget Strata and Property Maintenance
(**Budget Strata**).

29 Whilst no written strata management agreement has been
produced in these proceedings, the parties agree that as a matter of fact

the strata management arrangement existed between the strata company and Mr Perera, whether formal or informal, explicit or implicit, and that that arrangement was terminated in its entirety as of 5 August 2021.

30 Based on the annual budgets prepared by Mr Perera, he was paid the following management fees:

- a) \$1,233.75 for the period 1 February 2017 to 31 January 2018 (with \$790 for extra service fees);
- b) \$1,295.43 for the period 1 February 2018 to 31 January 2019 (with \$320 for extra service fees);
- c) \$1,295.43 for the period 1 February 2019 to 31 January 2020 (with \$365 for extra service fees);
- d) nil for the period 1 February 2020 to 31 January 2021 (with \$168.50 for extra service fees).

31 No Annual General Meeting (**AGM**) was conducted in 2020.

32 In April 2021, Ms Carla Civitella, owner of Lot 5, wrote to Mr Perera by email following up on an unpaid invoice from a gardener who did work for the strata scheme.

33 She requested an Extraordinary General Meeting (**EGM**) as there had not been an AGM set after many requests and as she wanted to discuss ongoing maintenance of the complex and other matters related to the management of the strata scheme.

34 Mr Perera responded that same day that his parents had passed away, and that he was not going to attend the EGM if called. He also suggested Ms Civitella find a management company. In another email that same day copying some of the other owners into the email train between Ms Civitella and himself, he sought confirmation if the strata company decided to cease his strata management services.

35 In the email correspondence over the next few days, when asked for a copy of the strata management agreement, he replied that the agreement 'got voided' on 1 May 2020 due to the changes to the Act, and that the strata scheme was managed as a courtesy and from 1 May 2020 up to the next AGM the management fee was zero.

36 On 20 May 2021, Mr Phillip I'Dell of EA Professionals wrote to Mr Perera advising that the council of owners of the strata scheme

appointed EA Professionals to be strata manager for the strata scheme effective immediately.

37 In that letter, Mr I'Dell asked Mr Perera to provide documents held by Mr Perera in relation to the strata scheme.

38 On 9 June 2021, Ms Civitella gave a notice to the strata company seeking access to documents held by the strata manager by 14 June 2021, and another notice to Mr Perera and/or Budget Strata to provide certain accounting and banking information to her by 14 June 2021.

39 Mr Perera gave notice of an AGM to be held on 15 June 2021 with a copy of the agenda, which was then re-scheduled to 28 June 2021.

40 Ms Civitella then asked for the AGM to be called for 15 July 2021, and on 4 July 2021 sent a notice of the AGM for 15 July 2021.

41 At a meeting on 15 July 2021, at which five of the eight lot owners were present or represented by proxy, it was decided that the existing strata management arrangement/agreement with Mr Perera/Budget Strata be suspended immediately, and that the strata company open a new bank account.

42 That meeting was re-convened on 5 August 2021, at which five of the eight lot owners were present or represented by proxy, where it was decided that the contract for voluntary or paid strata management services by 'Mr Perera (Budget Strata)' was terminated with immediate effect.

43 On 31 August 2021, Mr Perera advised EA Professionals and the lot owners that he had lost funds from his business bank account and that he was not in the position to pay the strata company from his own funds.

44 The bank statements tendered in these proceedings were of a trust account held in the name of Mr Perera trading as Budget Strata, for the period 6 January 2015 to 5 January 2016, and 29 June 2019 to 26 August 2021.

45 The bank statements showed that there were nine ATM withdrawals over the period 1 to 30 July 2021 totalling \$17,750, which brought the bank balance at the start of that month of \$17,054.91 into debit.

46 The bank statements also showed a payment transaction labelled
47 'Wesfarmers...Building Ins' of \$3,855.90 being made on 1 February
2020.

47 A CHU Residential Strata Insurance Plan Policy Schedule was
issued on 15 January 2021 indicating a premium of \$3,252.04 payable,
but the 2021 bank statements do not seem to show a payment for
insurance or to CHU or any payment of that particular amount.

48 On 1 September 2021, Mr Perera provided the strata roll and levy
position information with supporting documentation by email to
EA Professionals and the lot owners.

49 On 3 September 2021, the strata company commenced Tribunal
proceedings against Mr Perera.

50 On 4 September 2021, Mr Perera provided physical files and
documents to Mr Hettiarachchige Anthony Lushantha Rodrigo
(owner of Lot 6).

51 On 8 September 2021, Mr Perera provided electronic files on a
USB drive to Mr Rodrigo.

The strata company's case

52 The strata company seeks the amount of \$23,069.77
as compensation for the pecuniary loss it is has suffered,
which comprises:

- a) the opening balance of the trust account (\$17,054.91)
immediately prior to the nine ATM withdrawals being
made;
- b) amounts which correspond to Mr Perera's personal
water rates (totalling \$567.86);
- c) an amount for unpaid strata levies for Lot 1 during
1 January 2019 to 31 July 2021 (\$1,470); and
- d) two payments to Deewar FT for water plumbing and
water sewer works which are challenged by the strata
company (totalling \$3,977).

53 The strata company also seeks an additional payment of \$574.57
for Mr Perera's other personal water rates during 2014-2016 against

which, in the absence of corresponding bank statements, it has not been able to reconcile, but which it says is reasonable to assume has been paid out of the trust account.

54 Notwithstanding Mr Perera's agreement to an order to pay compensation, the strata company also pursues declarations for Mr Perera's breaches of strata manager duties and an order to prohibit him from acting as strata manager for the strata scheme.

55 It says that it is necessary to pursue these declarations and orders because Mr Perera's actions or inactions, which left the strata company insolvent in July 2021, should not be tolerated.

56 In the absence of regulation of strata managers, it is necessary to pursue these declarations and orders in these proceedings.

57 The strata company says that Mr Perera has breached his statutory duties under ss 146, 147 and 148 of the Act as strata manager in the following manner:

- a) he failed to act honestly and in good faith by withholding information about the strata scheme and its accounts from the members of the strata scheme despite repeated requests;
- b) he failed to exercise skill, care and diligence by failing to pay insurance and water bills for many months;
- c) he demonstrated superficial working knowledge of the Act by failing to set up a bank account in the name of the strata company;
- d) he improperly used his position as strata manager by making improper use of strata company funds (amounting to fraud or misappropriation of funds);
- e) he failed to disclose his remuneration from the strata company; and
- f) he failed to set up a bank account in the name of the strata company.

58 The strata company seeks costs of its application of \$1,485, comprising application fees, Landgate fees and Mr I'Dell's fees,

which it says could have been avoided but for Mr Perera's refusal to provide documents and his resistive nature to the requests.

59 The strata company called Mr I'Dell, Mr Rodrigo and Ms Civitella as witnesses.

Mr I'Dell's evidence

60 Mr I'Dell gave evidence that after EA Professionals were appointed by the strata company in May 2021, he requested that Mr Perera handover documents of the strata company but was met with unsavoury responses by email or voicemails, including threats of defamation action.

Mr Rodrigo's evidence

61 Mr Rodridgo is a finance manager at an accounting firm, and has owned Lot 6 since April 2010.

62 He has been on the council of the strata company since 2013 or 2014.

63 He says that the agreement for Mr Perera to act as strata manager, and the proposal to set up a trust account for strata company funds under the name of Budget Strata, originated at an AGM.

64 He does not consider that Mr Perera was acting as a volunteer strata manager. Whilst he accepted Mr Perera had advised in an email that no management fee would be charged, that advice was only given after the strata members had challenged Mr Perera's actions (or inactions).

65 In the early stages of Mr Perera's strata management, there was a lot of correspondence with the strata council seeking approval for strata company expenses, such as insurance, gardening and maintenance costs.

66 However, in the later stages, there was a decline in the amount of such correspondence to about a couple of times (or even just once) a year.

67 Mr Rodrigo does not know if Mr Perera has sought approval for all expenses incurred by the strata company.

68 Mr Rodrigo was aware that as at 2019 there was about \$15,000 of
strata company funds, and did not expect the strata company to have
difficulties paying its expenses.

69 He says that part of the reason for seeking the declarations and
orders is to prevent Mr Perera from denying liability for his poor
professional judgment, and for putting the strata scheme in danger by
failing to renew the building insurance, which they only discovered in
August 2021.

Ms Civitella's evidence

70 Ms Civitella is an academic language co-ordinator, and has been
the owner of Lot 5 since 2013.

71 She has been on the council of the strata company since 2013
or 2014.

72 She has attended every AGM.

73 She recalls Mr Perera coming to introduce himself as a neighbour
and strata manager when she first bought her unit.

74 She has never seen a copy of the strata management contract with
Mr Perera.

75 She says that Mr Perera would occasionally send an email, once or
twice a year, seeking approval for expenses, which were usually for
repairing damage.

76 She was not aware who mowed the lawns, and only enquired when
it did not happen (as she suffers from allergies).

77 She noticed in 2020 that maintenance had not occurred on the
strata scheme property for months, in particular lawn mowing where
the grass had grown to 1 metre in height and triggered her allergies.

78 She then noticed paint work near the entrance had been undertaken
without her approval, as well as grass appearing dried, burnt
and unwatered.

79 In previous years, Mr Perera had always corresponded with her in
a courteous and professional manner; however, since she requested an
AGM in April 2021, his responses had been unprofessional and
abusive, and had refused several requests.

80 She then called an EGM to discuss strata management issues with
other owners.

81 Whilst Mr Perera had disclosed his mental health issues to her,
there was no avenue for discussing these issues.

82 She accepted that she had largely left financial matters to
Mr Perera, never questioning the amount of expenses charged or
invoices provided, and accepting the financial documents received
at AGMs.

83 When she sent the two notices to inspect documents, she did not
receive any documents, instead receiving excuses or attacks from
Mr Perera.

84 In her view, based on his behaviour in the past year, Mr Perera is
not suitable to be a strata manager.

Mr Perera's case

85 Mr Perera accepts that he will have to compensate the strata
company for the loss it suffered from funds misappropriated from his
business account.

86 He generally accepts the amount calculated by the strata company,
save for the amounts claimed for unpaid strata levy fees of Lot 1
(\$1,470).

87 He also seeks reimbursement for personally paying the strata
company's water account of November 2017 (\$321.07), and provided a
redacted copy of a bank statement in his name for the period
14 October to 15 December 2017 in support of that claim.

88 He disputes that any unpaid strata levy fees for Lot 1 can be
sought in these proceedings.

89 Further, he seeks to pay off any compensation amount in \$1,000
monthly repayments as he does not currently have sufficient funds to
pay it as a lump sum.

90 He contests the other declarations and orders sought by the
strata company.

91 He says that he acted as a volunteer strata manager in waiving management fees from May 2020, and thus can rely on the protection afforded by s 155 of the Act.

92 In oral evidence, Mr Perera accepts that he used inappropriate language in his email communications with Ms Civitella and Mr I'Dell.

93 In explanation, he attributes such behaviour to his mental health issues experienced during a difficult period where he endured events such as the death of both his parents in Sri Lanka due to the coronavirus, his inability to attend their funerals, his personal relationship issues, initiation of his workers' compensation claim, incurrence of demerit points relating to his driver's licence and the person entrusted with his formal and personal affairs absconding with significant amounts of money from his business account.

Legislative framework

The pre-amendment Act

94 Unlike the current provisions of the Act, there were no statutory liabilities imposed on strata managers under the pre-amendment Act.

95 In particular, the pre-amendment Act did not provide for the general duties of a strata manager, nor any requirement for a particular form for an agreement with a strata manager.

96 The pre-amendment Act simply allowed by-laws to be adopted that relevantly permitted a council to employ on behalf of the strata company such 'agents ... as it thinks fit in connection with the control and management of the common property and the exercise and performance of the powers and duties of the strata company': Sch 1 by-law 8(2)(b) of the pre-amendment Act.

97 Section 39A of the pre-Amendment Act relevantly provided that implied in every agreement relating to the 'provision of services of an agent in connection with the management of the common property or the performance of the functions of the strata company' was a provision that the strata company could terminate the agreement by notice in writing to all other parties to the agreement after five years had passed since entry into the agreement.

The Act

Strata management

98 Part 9 of the Act provides for the authorities and duties of strata managers, as well as requirements of strata management agreements.

99 Section 143 of the Act provides that, save for certain functions outlined in sub-section (5), a strata company can authorise a strata manager to perform a specified scheme function, subject to any specified conditions (sub-section (2(a))) or existing voting requirements on the performance of a function (sub-section (3)).

100 Any authorisation under s 143 of the Act does not negate the overarching requirements that a strata management contract be in force between the strata manager and the strata company and the relevant requirements under the *Strata Titles Regulations 2019* (WA) (**Regulations**): s 144(1) of the Act.

101 A strata management contract includes a volunteer agreement between a volunteer strata manager and the strata company: s 144(1)(a) of the Act.

102 A volunteer strata manager is defined under s 3(1) of the Act as a strata manager of a strata company who:

- (a) is the owner of a lot in the strata titles scheme; and
- (b) does not receive any fee, reward or benefit for work performed as a strata manager other than an honorary fee or reward not exceeding, if an amount is fixed by the regulations, that amount; and
- (c) personally performs the work of the strata manager.

103 Regulation 11(1) of the Regulations prescribes such amount of the honorary fee or reward is fixed at \$250 per calendar year for each lot in the strata titles scheme.

104 Whilst a strata management contract is still required for a 'volunteer strata manager', there are reduced obligations to meet the requirements under the Regulations.

105 For example, a 'volunteer strata manager' is not required to maintain professional indemnity insurance nor meet prescribed educational qualifications: s 144(2) and (3) of the Act.

106 A strata management contract must be in writing and fulfil the minimum requirements set out in s 145(1) of the Act, including, relevantly, specification of when the contract starts and ends, each scheme function to be performed by the strata manager, the remuneration that is payable under the contract, and the accounts to be used under s 148(1) of the Act.

107 Some minimum requirements are waived for volunteer strata managers, such as the need to specify the Australian Company Number or Australian Business Number or to provide for written reports to be given to the strata company: s 145(5) of the Act.

108 Section 146(1) of the Act provides for the following general duties of a strata manager:

- (a) must at all times act honestly and in good faith in the performance of the strata manager's functions; and
- (b) must at all times exercise a reasonable degree of skill, care and diligence in the performance of the strata manager's functions; and
- (c) must have a good working knowledge of [the] Act; and
- ...
- (e) must not make improper use of the position of strata manager -
 - (i) to gain, directly or indirectly, an advantage for the strata manager or any other person; or
 - (ii) to cause detriment to the strata company or a member of the strata company[.]

109 A strata manager must also inform the strata company in writing, as soon as practicable after becoming aware of the relevant facts, of the amount or value of any remuneration or benefit, exceeding a prescribed amount, that the strata manager receives, or has a reasonable expectation of receiving (other than from the strata company) in connection with the performance of the strata manager's functions: s 147 of the Act.

110 Under s 148 of the Act, a strata manager must pay all monies received on behalf of a strata company into:

- a) an ADI account of the strata company (if a volunteer strata manager); or

- b) a separate ADI trust account or pooled ADI trust account solely for strata companies, or a strata company's own ADI account (if not a volunteer strata manager).

111 In relation to strata management arrangements that existed prior to 1 May 2020, the transitional provision in Sch 5 to the Act (cl 13) provides that a person may continue to perform scheme functions under a contract or volunteer agreement with a strata company that is in force immediately before 1 May 2020 for six months after that date (**grace period**).

112 For that grace period, the Act applies as if those functions were authorised to be performed by that person under s 143 of the Act and as if the contract or volunteer agreement were a strata management contract.

113 After that grace period, a contract or volunteer agreement ceases to have effect unless the strata manager then meets the requirements under s 144 of the Act and the agreement meets the requirements under s 145 of the Act: cl 13(3) of Sch 5 to the Act.

114 Finally, under s 155 of the Act, no civil liability attaches to a volunteer strata manager for anything that the person has, in good faith, done or omitted to be done, relevantly:

- a) in the performance of a function under the Act; or
- b) in the reasonable belief that the act or omission was in the performance of a function under the Act.

Council members and officers

115 Section 137 of the Act imposes general duties on council members, an officer of the strata company, or persons specifically authorised by a corporate council member or officer, which duties are similar to those imposed on strata managers under s 146 of the Act.

116 An 'officer' of a strata company is defined under s 3(1) of the Act as the chairman, secretary (if the strata company has one under the scheme by-laws) or treasurer (if the strata company has one under the scheme by-laws).

Scheme disputes

117 I am empowered under s 197(1)(g) of the Act to resolve 'scheme disputes', which includes a dispute between a former strata manager of a strata company and a strata company about a matter arising under Pt 9, or the performance of, or the failure to perform, a function conferred or imposed on the strata manager.

118 Under s 199 of the Act, I may make a declaration, as a legally qualified member, concerning a matter in the proceedings instead of, or in addition to, any order I can or do make in the proceedings.

119 The types of declarations I can make include that a specified person has or has not contravened a specified provision of the Act: s 199(3)(a) of the Act.

120 Under s 200 of the Act, I may make any order I consider appropriate to resolve the dispute or proceedings, including an order requiring:

- a) a party to the proceedings to pay money to a specified person by way of compensation for any pecuniary loss or damage suffered (s 200(2)(o)); or
- b) a person to take specified action or to refrain from taking specified action to prevent further contraventions of the Act (s 200(2)(m)).

Consideration

Issue 1 - did Mr Perera hold any statutory duties as strata manager?

121 By an agreed fact, both parties accept that there was a strata management arrangement that existed between the strata company and Mr Perera, whether formal or informal, which was terminated as of 5 August 2021.

122 The terms of that strata management agreement are not clear as there appears to be an oral agreement made at an AGM for Mr Perera to provide strata management services without it being reduced to writing.

123 Whilst the transitional provisions allow for any volunteer strata agreement to be recognised in the grace period without the need to comply with the formal requirements under ss 144 and 145 of the Act (including that the agreement be in writing), no dispensation is given

after that grace period if the requirements are still not met as such agreement ceases to have effect.

124 Whilst the parties' agreement as to the termination date of the agreement avoids the need to determine whether a strata management arrangement exists, I do need to determine whether such arrangement is so recognised under the Act during the period when it is said that Mr Perera breached statutory duties.

125 If the arrangement survived the grace period, then any strata manager duties that were imposed by the commencement of the major amendments endured until the 'arrangement' was terminated; otherwise, any strata manager duties could only be imposed during the grace period because any volunteer strata agreement ceased to have effect after that time.

126 Given that no attempt was made to enter into a written strata management agreement at any time after the major amendments to the Act came into effect, I find that the relevant period during which I could make any findings of breach of statutory duties by Mr Perera is the grace period.

127 It may be that some other form of agreement or arrangement subsisted after 1 November 2020; however, for the purpose of determining whether any breach of statutory duties occurred after 1 November 2020, cl 13(3) of Sch 5 to the Act precludes me from making any such determination.

128 Finally, as to the nature of the strata management agreement, the evidence of the parties is that Mr Perera was responsible for calling and preparing relevant documents for AGMs, maintaining common property including the garden, paying for maintenance services, and collecting strata levies.

129 Whilst the strata management agreement does not appear to have been reduced in writing, it appears to be commonly accepted by the parties that the scope of Mr Perera's responsibilities fell into the categories described in [128], and that the nature of his responsibilities can be described as those of a strata manager.

130 Mr Perera would go one step further and describe himself as a volunteer strata manager, having waived his management fee from around 1 May 2020.

131 The concept of a volunteer strata manager was only introduced by the major amendments; however, there is recognition in transitional provision cl 13 of Sch 5 to the Act to pre-existing agreements that qualify as volunteer agreements under the Act.

132 As such, to qualify as a transitional volunteer agreement, it may not be fatal that such agreements fail to meet the prescribed rate threshold (since it was only set by the major amendments) if the substantive qualities of such agreements envisaged by the Act exists (such as the fact that the strata manager is an owner of the strata scheme and personally performs the work of the strata manager).

133 In this case, whilst I accept Mr Perera's uncontroverted evidence that he waived his management fees, there is evidence that he provided his strata management services through his business Budget Strata, and engaged and relied on other people to assist in carrying out strata management services (which has resulted in one person absconding with the strata company's funds).

134 In my view, this disentitles him from qualifying as a volunteer strata manager, and he will not be able to rely on s 155 of the Act to avoid civil liability.

Issue 2 - If so, did Mr Perera meet his obligations as a strata manager under the Act?

135 At the outset, I acknowledge that the tenor of the language used by Mr Perera in his email correspondence with Ms Civitella and Mr I'Dell during the period April to September 2021 (and, in particular, in September 2021) was at times hostile, vitriolic and threatening.

136 The facts relied upon by Mr Perera as justification for such behaviour - that he was suffering from mental health issues caused or contributed by events - were not challenged by the strata company, although it does not seem to accept such justification as negating his obligations as a strata manager.

137 Further, whilst the strata company submits that the loss of funds constitutes fraud or misappropriation of funds by Mr Perera, Mr Perera's version of events - that his agent, employee or contractor had withdrawn monies from his business bank account - was not challenged by the strata company in cross-examination, nor was it put to Mr Perera (nor evidence adduced) that he had personally misappropriated the funds.

138 Similarly, there were no questions put to Mr Perera, nor any
evidence adduced, that he had acted dishonestly or failed to act in good
faith.

139 Indeed, there were no questions put to Mr Perera in
cross-examination.

140 Whilst Mr Perera was brief in his oral testimony, he appeared as a
truthful witness.

141 In any event, given my finding that any statutory duties held by
Mr Perera were only applicable during the grace period, these events
which occurred after November 2020 are irrelevant.

142 Similarly, whilst Mr Perera accepts he failed to pay the building
insurance fee and water bills for the strata company in 2021, the bank
statements suggest that he had paid the building insurance for the
strata scheme in 2020.

143 No evidence was led that the water bills or the building insurance
premiums were in arrears any earlier than 2021.

144 Given my findings about the applicable period during which
Mr Perera held statutory duties, I am not satisfied that he had failed to
exercise skill, care and diligence in the performance of his functions as
strata manager under s 146(1)(b) of the Act, nor improperly used his
position of strata manager to gain an advantage for himself or caused a
detriment to the strata company under s 146(1)(e) of the Act.

145 Given Mr Perera's unchallenged evidence that he waived his
management fee since about May 2020, I am not satisfied that there is
evidence of any remuneration or benefit paid to him during the grace
period in respect of which he was to inform the strata company under
s 147 of the Act.

146 In addition, there is no evidence of dishonesty or lack of good
faith on the part of Mr Perera during May to November 2020 such as to
support a declaration that he failed to comply with s 146(1)(a) of
the Act.

147 As Mr Perera is not considered a volunteer strata manager during
the grace period, he is entitled to open (and maintain) the strata
company funds in a trust account, which, based on the copies of bank

statements submitted into evidence, was established in his name trading as Budget Strata.

148 It is unclear whether the trust account is a separate trust account or a pooled trust account (if Mr Perera manages any other strata schemes), but it is sufficient that it is established as a trust account, and it is not necessary to establish an account in the name of the strata company.

149 Thus, there is no basis for finding that Mr Perera had breached s 148 of the Act.

150 However, I do find that a strata manager with a good working knowledge of the Act would have made arrangements for compliance with the formal requirements of a strata management agreement under ss 144 and 145 of the Act, most significantly, that it be reduced in writing.

151 Indeed, Mr Perera's email correspondence indicated that he was aware of changes to the Act which affected the strata management agreement in respect of the strata scheme.

152 His inaction to arrange compliance with the new requirements for strata management agreements, or at least arrange for the return of funds and property of the strata company to allow for a new strata manager to take over, constitutes a failure to demonstrate a good working knowledge of the Act, and I am prepared to make a declaration to that effect.

Issue 3 - Do the obligations under s 137 of the Act apply to Mr Perera?

153 The obligations under s 137 of the Act relevantly only apply to council members or officers of a strata company, which do not include Mr Perera, who was acting as a strata manager during the grace period.

154 As such, there is no basis for making any findings against Mr Perera for any breaches under s 137 of the Act.

Issue 4 - What amount is payable by Mr Perera to the strata company, and can it include outstanding Lot 1 levy fees?

155 Given Mr Perera's concessions, I am satisfied that the strata company has suffered pecuniary loss or damage caused by the misappropriation of funds by Mr Perera's agent, employee or contractor, and that an order for Mr Perera to pay compensation to the strata company should be made.

156 As this is an application seeking orders and declarations against Mr Perera personally relating to his management of the strata scheme, as opposed to lot owners of Lot 1, the strata company will not be able to claim for any unpaid strata levies against Mr Perera personally in these proceedings and will need to commence separate proceedings against both lot owners of Lot 1.

157 As to Mr Perera's claim for reimbursement of the strata company's water account of November 2017, the redacted 2017 bank statement does not show a transaction equating to the exact amount owed under that account, so I will disregard his claim for reimbursement.

158 As to the additional amounts claimed for Mr Perera's personal water rates which were not reconciled against bank statements, I decline to draw the inference that those rates were similarly paid out the trust account.

159 I therefore make an order under s 200(2)(o) of the Act that Mr Perera pay an amount of \$21,599.77 to the strata company.

160 Whilst I can appreciate Mr Perera's difficult financial situation, the strata company has had to manage without access to most of its funds since July 2021, so I will make an order for Mr Perera to pay within 30 days of the order, and leave it to the parties to negotiate a repayment plan if appropriate.

Issue 5 - Is there utility in an order prohibiting Mr Perera from acting as strata manager?

161 There is no indication from Mr Perera that he wishes to re-apply to be the strata manager for the strata scheme; equally, there is no indication based on recent events that the strata company will receive any such application from Mr Perera in a favourable light.

162 However, to the extent that the ownership of the strata scheme may change resulting in a loss of knowledge about the strata company's experience with Mr Perera's strata management services, there may still be some utility in the order sought by the strata company.

163 I accept that there is no evidence that Mr Perera acted dishonestly or had personally misappropriated strata company funds, and that Mr Perera had been experiencing some difficult mental and personal issues at the relevant period; however, I consider that he had exercised poor judgment in failing to implement adequate controls or procedures

to safeguard the strata company funds against the very misappropriation committed by his agent, employee or contractor, or to ensure important insurance building insurance policy payments were met.

164 This had the devastating consequence of depleting the strata company funds in its entirety in July 2021, and exposing the strata scheme to potential risk of liability, loss and damage had any adverse event occurred causing damage to the strata building.

165 It is also not clear whether Mr Perera's mental health issues are likely to resolve in the near future.

166 This does not bode well for any future aspiration by Mr Perera to resume strata management duties for any strata scheme, and, in particular, this strata scheme.

167 As such, I am prepared to make the order that Mr Perera is to refrain from applying to be the strata manager of the strata scheme.

Issue 6 - Should Mr Perera pay the strata company's costs?

168 My consideration of the relevant principles for costs recovery are set out in my previous decision of *Wolfenden and Mandurah Homes Pty Ltd* [2020] WASAT 127 (S) (*Wolfenden*), and, save for references to the costs provision of the Building Services (*Complaint Resolution and Administration*) Act 2011 (WA), remain relevant to this costs application.

169 As stated in *Wolfenden* at [18], the starting point under s 87(1) of the SAT Act is that each party is to bear its own costs: *Western Australian Planning Commission v Questdale Holdings Pty Ltd* [2016] WASCA 32; (2016) 213 LGERA 81 (*Questdale*) at [50].

170 It is relevant to consider whether and to what extent Mr Perera's conduct in connection with the proceedings has impaired the attainment of the Tribunal's objectives under s 9 of the SAT Act to have the proceedings determined fairly and in accordance with the substantial merits, with as little formality and technicality as possible, and in a way which minimises the costs to the parties: *Questdale* at [54].

171 In this case, certain conduct by Mr Perera had delayed the progress of the proceedings, such as being unprepared with his witness attendances for the hearing first listed on 12 January 2022, and not

complying with the order to produce documents by 2 February 2022, requiring an extension of time to 18 February 2022.

172 Further, the strata company had to commence proceedings to seek further banking records from him in order to determine the amount of compensation to be sought, given his reticence to provide such documentation until Tribunal orders were made, which amount he predominantly conceded.

173 In the circumstances, I consider it appropriate that Mr Perera pay the costs of these proceedings to the strata company fixed at \$1,485 within 30 days of this order.

Conclusion

174 For reasons set out above, I will make orders that Mr Perera is to pay the strata company \$21,599.77 and costs fixed at \$1,485 within 30 days of this order, and for Mr Perera to refrain from applying to be strata manager of the strata scheme.

175 I will also make the declaration that Mr Perera has contravened s 146(1)(c) of the Act by failing to demonstrate a good working knowledge of the Act.

Orders

The Tribunal makes the following orders:

1. Within 30 days of this order, the respondent will pay the applicant \$21,599.77 plus costs fixed at \$1,485.
2. The respondent is to refrain from applying to be the strata manager of the strata scheme.
3. It is declared that the respondent has contravened s 146(1)(c) of the *Strata Titles Act 1985 (WA)* by failing to demonstrate a good working knowledge of the Act.

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

MS K Y Loh, MEMBER

1 AUGUST 2022