

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Hodgson & Sweeny v The Committee of Seafarer Chase*
[2023] QCAT 404

PARTIES: **MARLON HODGSON**
(first applicant)

TINA SWEENY
(second applicant)

v

**THE COMMITTEE OF SEAFARER CHASE - CTS
6549**
(respondent)

APPLICATION NO/S: OCL006-19

MATTER TYPE: Other civil dispute matters

DELIVERED ON: 11 October 2023

HEARING DATE: On The Papers

HEARD AT: Brisbane

DECISION OF: Member Holzberger

ORDERS: **The application to resolve a complex dispute filed on
31 January 2019 is dismissed.**

CATCHWORDS: REAL PROPERTY – STRATA AND RELATED TITLES
MANAGEMENT AND CONTROL – BODY
CORPORATE: POWERS, DUTIES AND LIABILITIES
Validity and Relevance of Termination of caretaking
agreement by Body Corporate – whether manager
terminated the caretaking agreement validity of notice

Body Corporate and Community Management Act 1997
Queensland Civil and Administrative Tribunal Act 2009,
s 47(1)(a)

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] On 31 January 2019 Marlon Hodgson and Tina Sweeny applied to the Tribunal to resolve a complex dispute under the *Body Corporate and Community Management Act 1997* (BCCM Act). At the same time they also filed an application to stay a decision (the stay application) of The Committee of Seafarer Chase - CTS 6549

(Seafarer). Both related to the decision of Seafarer to “terminate caretaking and letting agreements.”¹

- [2] The stay application was dismissed by the Tribunal on 14 June 2019.
- [3] The matter was listed for hearing on 11 September 2019 but was adjourned as a result of Mr Hodgson and Ms Sweeny failing to attend. The Tribunal has subsequently accepted their explanation for failing to attend.
- [4] On 20 May 2021 Seafarer applied to the Tribunal to dismiss the application. The Tribunal is in receipt of written submissions from the respondent and the applicant and further submissions from the respondent in response to the applicant’s submissions.
- [5] Seafarers’ application asserts that the application of Mr Hodgson and Ms Sweeny is frivolous and vexatious and should be dismissed in accordance with s 47(1)(a) of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) or in the alternative is lacking in substance and should be dismissed in accordance with s 47(1)(a).

Agreements

- [6] By agreement dated 12 August 2017 Seafarer entered into an agreement with Mr Hodgson and Ms Sweeny for the provision of caretaking services (caretaking agreement) for the common property.
- [7] On the same day Seafarer entered into a separate agreement with Mr Hodgson and Ms Sweeny to conduct a letting service (letting agreement).
- [8] The letting agreement provides at clause 6.2 that default under the caretaking agreement constitutes default under the letting agreement and termination of the caretaking agreement automatically terminates the letting agreement. There is no reciprocal provision in the letting agreement.
- [9] On 3 October 2018 Seafarer issued a Remedial Action Notice (First RAN) in relation to breaches of the letting agreement.
- [10] On 24 January 2019 Seafarer issued a further Remedial Action Notice (Second RAN) again in relation to breaches of the letting agreement.
- [11] In response to the Second RAN Mr Hodgson and Ms Sweeny lodged the complex dispute application and the stay application.
- [12] It is not in dispute;
 - (a) that Seafarer had not terminated the letting agreement at that time;
 - (b) Mr Hodgson and Ms Sweeny had not and could not comply with the Second RAN; and
 - (c) Mr Hodgson and Ms Sweeny could not conduct the letting business because of loss of their license and in any event had no desire to do so.

¹ Stay application Part B, Part D.

- [13] On 23 April 2019 at an extraordinary general meeting of the body corporate it was resolved to terminate both the caretaking agreement and the letting agreement.
- [14] In their submissions lodged in the Tribunal on 2 July 2021 Mr Hodgson and Ms Sweeny have included an extract (but not the actual notice) of an explanatory note contained in the notice of extraordinary general meeting dated 28 March 2019 which cites noncompliance with the Second RAN as the basis for the motion.
- [15] It is not explained in the evidence why Seafarer thought it necessary to terminate both agreements but it was ill conceived to do so. The Second RAN which related only to the letting agreement, while not complied with, does not permit termination of the caretaking agreement as well.

Termination by Mr Hodgson and Ms Sweeny

- [16] On 6 March 2019 Mr Hodgson and Ms Sweeny forwarded an e-mail to Gerard McMahon of Alpha Strata, the body corporate manager, which included the following:

We are sending this e-mail to terminate the caretaking and letting agreements with three months written notice effective on 12 March. Can you please advise if this is an acceptable form of written notice of termination.²

- [17] Mr McMahon responded on 7 March 2019 by e-mail which included the following:

This e-mail is sufficient notice.

The body corporate solicitor will prepare a simple deed of termination for you to sign and in return the body corporate will then sign that deed and the agreements will be at an end on the 11th of June 2019.³

- [18] Seafarer's written submissions include annexures E-H, a series of email in February, March 2019 attempting to negotiate termination of both agreements.
- [19] By e-mail dated the 12 March 2019 Tammy Wills of Miller Sockhill Lawyers, Seafarers solicitors, forwarded an e-mail to Mr Hodgson and Ms Sweeny confirming receipt of the notice to terminate, and the deed of termination would be prepared. She also indicated that Seafarer was prepared to waive the three month notice provision if that offer was acceptable it would be necessary to vary both agreements by deed of variation to the effect that the agreements end from the date following the passing of the motion to enter the deeds of variation.
- [20] On 13 March 2019 Mr Hodgson and Ms Sweeny responded complaining of mistreatment and said:
- We would like termination on our terms to be as soon as possible as we know we are no longer willing to attend the building as the toxic environment is to [SIC] much.
- [21] In submissions filed on the 2 July 2021 Mr Hodgson and Ms Sweeny say that their "offer/request for termination" was not accepted.

² Respondents written submissions and annexures H.

³ Respondents written submissions and annexures H.

- [22] They say that they took three weeks leave from 12 March 2019 and during the course of that changed their minds. Upon return from leave they were denied access to the building.
- [23] They say that they “later retracted the offer” although there is no evidence this was communicated to Seafarer.
- [24] No termination deed was ever signed by them and they understood this to mean that the termination was not valid.
- [25] Part D of the complex dispute application specified the orders sought to include the following:
- We are seeking a stay in the contract and committee proceeding to terminate caretaking and letting agreements with 14 years remaining; [SIC] without proven or sufficient grounds.
- [26] In their joint statement of 11 July 2019, they modified the orders sought to;
- (a) The reinstatement of their caretaking agreement with variations to require them to reside within a certain radius rather than on site;
 - (b) Alternatively the pay out of an agreed value of the agreements by Seafarer; and
 - (c) Letting agreement to remain terminated.
- This was confirmed in the submission filed on 2 July 2021.
- [27] Reinstatement of a varied caretaking agreement is misconceived. It is not for the Tribunal to unilaterally impose an arrangement substantially different from the parties agreement on those parties. In so far as that claim is concerned the complex dispute application is misconceived and struck out pursuant to s 147(1)(a), QCAT Act. This leaves the only available remedy what is effectively compensation for termination of the caretaking agreement.
- [28] Clause 8.2 of the caretaking agreement provides; “The caretaker may terminate this agreement at any time without being required to provide reasons if the caretaker gives the body corporate three (3) months written notice” There is no similar provision in the letting agreement but as previously mentioned clause 6.2 of the letting agreement provides the termination of the caretaking agreement automatically terminates the letting agreement.
- [29] Clause 8.2 does not require the body corporate to accept or agree to the termination. The caretaker is not required to have or provide a reason. There are not any conditions precedent to the termination if the notice is properly given.
- [30] In that regard clause 12.2 of the caretaking agreement requires notice to be given by leaving it at or sending it to the body corporates address, however it also provides the notices will be “deemed to have been duly given or made if sent by e-mail when the sender's transmission record indicates it was received.”
- [31] Seafarer can in any event waive strict compliance with the agreement and accept the notice.
- [32] The e-mail forwarded by Mr Hodgson and Ms Sweeny on 6 March 2019 unequivocally terminates the caretaking agreement pursuant to clause 8.2.

- [33] Mr McMahon's e-mail in response confirms that the e-mail under reply is sufficient notice.
- [34] The e-mail from Mr Hodgson and Ms Sweeny to Tammy Wills 13 March 2019 confirms the termination by indicating that Mr Hodgson and Ms Sweeny would not return to the premises.
- [35] The issue of whether notice pursuant to Clause 8.2 can be withdrawn during the three (3) month notice period is moot. There is no evidence before the Tribunal that Mr Hodgson and Ms Sweeny indicated to Seafarer that they wished to do so.
- [36] Both the caretaking and letting agreements were terminated by Mr Hodgson and Ms Sweeny. Their application for compensation is frivolous and vexatious and is struck out pursuant to s 47(1)(a) of the QCAT Act.