

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

OWNERS CORPORATIONS LIST

VCATREFERENCE NO. OC915/2021 &
OC1008/2021

CATCHWORDS

Application for fee recovery – *Owners Corporations Act 2006 (Vic) ss 3, 29, 31, 32, 78, 165, 200 - Puppa v Walshe and Whitelock Pty Ltd (Owners Corporations)* [2019] VCAT 1561 (8 October 2019) – substantial compliance with approved form for fee notices – *Interpretation of Legislation Act 1984 s 53 - Rowson v McClure and VCAT* [2013] VSC 140 - *Owners Corporation Plan No RP001876 v Puppa (Owners Corporations)* [2018] VCAT 63 (12 January 2018) - *Owners Corporation 1 Plan No. PS735439F v Singh (Owners Corporations)* [2022] VCAT 389 - *Victorian Civil and Administrative Tribunal Act 1998 (Vic) ss 100, 109 & 115C.*

APPLICANT	Owners Corporation Plan Number 1876
RESPONDENT	Costanzo Puppa
WHERE HELD	Melbourne
BEFORE	Senior Member C. Powles
HEARING TYPE	Hearing
DATE OF HEARING	10 October 2022
DATE OF ORDER	18 July 2023
CITATION	Owners Corporation Plan Number 1876 v Puppa (Owners Corporations) [2023] VCAT 821

ORDER

OC915/2021

- The Tribunal orders that the respondent must pay to the applicant the sums of:
 - \$ 7,550.00 for levies and interest to the date of final fee notice (the date being 23 March 2021);
 - \$ 1,114.92 for interest from the date of final fee notice to the date of hearing;
 - \$ 400.00 for reasonable costs incurred in recovering the unpaid amount other than costs in the proceeding; and
 - \$ 700.00 costs in the proceeding (including \$217.70 for reimbursement of fees paid by the applicant);
- \$ 9,764.92 TOTAL.**

OC1008/2021

1. The Tribunal orders that the respondent must pay to the applicant the sums of:
 - a. \$ 7,550.00 for levies and interest to the date of final fee notice (the date being 23 March 2021);
 - b. \$ 1,114.92 for interest from the date of final fee notice to the date of hearing;
 - c. \$ 400.00 for reasonable costs incurred in recovering the unpaid amount other than costs in the proceeding; and
 - d. \$ 700.00 costs in the proceeding (including \$217.70 for reimbursement of fees paid by the applicant);
- \$ 9,764.92 **TOTAL.**

C. Powles
Senior Member

APPEARANCES:

For Applicant

J. De Fazio, manager

For Respondent

E. Brothers, attorney

REASONS

Background

- 1 Costanzo Puppa owns Lots 2 and 4 in the plan of subdivision for Owners Corporation Plan Number 1876 ('the Owners Corporation').
- 2 On 29 April 2021, the Owners Corporation applied to the Tribunal for orders requiring the payment of claimed outstanding fees owed by Mr Puppa to Owners Corporation in relation to Lot 2 (OC915/2021) and Lot 4 (OC1008/2021).¹
- 3 In accordance with current procedures for applications for fee recovery in the Owners Corporations List, both matters were listed for hearing and determination "on the papers" under s 100 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) ('the VCAT Act') unless a party to the proceeding objected to the proceeding being determined in that way.
- 4 Mr Puppa objected to both proceedings being heard and determined "on the papers" and after various procedural steps, both proceedings were listed for hearing before me on 4 April 2022.
- 5 Both parties submitted documents by email for the hearing, including:
 - a. a "Points of Defence" from Mr Puppa dated 5 July 2021;
 - b. an email from Mr Puppa received 22 March 2022;
 - c. "Summary of Proofs" statutory declarations setting out the basis of the fee recovery applications by the Owners Corporation; and
 - d. documents referred to in the Summary of Proofs, including copies of fee notices, final fee notices, minutes of annual general meetings of the Owners Corporation ('minutes')² and copies of management contracts between the Owners Corporation and its manager, Walshe and Whitelock Pty Ltd ('W&W').³
- 6 At the hearing on 4 April 2022, I heard from the parties in relation to the amounts sought by the applicant in the proceedings, except for the amounts sought as reasonable costs incurred other than in the proceedings under s 165(1)(ca) of the *Owners Corporations Act 2006* (the 'reasonable costs claims').⁴

Puppa (Owners Corporations) [2018] VCAT 63 (12 January 2018).

¹ I further note that under both contracts W&W is delegated the power to represent the Owners Corp

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² Held on 19 November 2016, 30 October 2017, 11 September 2018, 27 November 2019, 5 May 2021 & 9 August 2022 (according to the minutes of the 5 May 2021 meeting, no annual general meeting was held during 2020).

³ As noted in *Puppa v Walshe and Whitelock Pty Ltd (Owners Corporations)* [2019] VCAT 1561 (8 October 2019) ('*Puppa v W&W*') at [1] – [2], Mr Puppa has regularly been in dispute with W&W, resulting in at least five proceedings before the Tribunal between Mr Puppa and W&W since 2013.

⁴ References to sections or Parts in these reasons are to sections or Parts of the *Owners Corporations Act 2006* (Vic) ('the Act'), unless otherwise stated.

- 7 The reasonable costs claims were adjourned to be heard as soon as possible after the Tribunal published its decision in *Owners Corporation 1 Plan No. PS735439F v Singh (Owners Corporations)* [2022] VCAT 389 (8 April 2022) (*'Singh'*), addressing the basis on which reasonable costs incurred may be ordered under s 165(1)(ca).
- 8 Both parties submitted further documents by email before the resumed hearing.
- 9 I heard the reasonable costs claims on 10 October 2022 and reserved my decisions.
- 10 With leave of the Tribunal and no objection from the Owners Corporation, Mr Puppa was represented at both hearings by Ms E. Brothers. Mr Puppa has appointed Ms Brothers with a power of attorney in respect of Lot 2 but not Lot 4.
- 11 The Owners Corporation was represented both hearings by Ms J. De Fazio, an employee of W&W.
- 12 Unfortunately, resource demands placed on the Tribunal as a result of backlogs arising from the Covid 19 pandemic and other operational requirements has delayed the provision of my decision and reasons until now. I apologise to the parties for the delay.
- 13 For reasons set out below, I am satisfied that Mr Puppa must pay to the applicant the amounts in each proceeding set out in the orders above.

Findings

Applications

- 14 Mr Puppa claims the validity of the applications in these proceedings are in question because there is no proof of:
 - a. a valid management contract between the Owners Corporation and W&W; and
 - b. authority by the Owners Corporation for the applications to be made.

Contract of appointment

- 15 The Owners Corporation has provided two copies of contracts of appointment between the Owners Corporation and W&W. The first is for a two-year period commencing 11 September 2018. The second is for a two-year period commencing 5 May 2021.
- 16 The first contract includes a clause that states that “[i]f the Owners Corporation does not give a minimum of one month written notice to the manager prior to the expiry date the appointment will continue for another 12 months from the expiry date and that date will become the expiry date.”
- 17 I read that provision to mean that if the Owners Corporation does not want to renew the contract of appointment it must advise W&W of that at least one month before the expiry date. Accordingly, under the first contract, for the

contract of appointment to expire on 11 September 2020, the Owners Corporation needed to give W&W written notice of its intention not to renew the contract of appointment by 11 August 2020. There is nothing provided in these applications that shows the Owners Corporation gave W&W any such written notice by 11 August 2020 or at any other time. As a result, the first contract continued for another 12 months after 11 September 2020.⁵

- 18 Accordingly, W&W was acting on behalf of the Owners Corporation under a valid contract of appointment at the time the applications in these proceedings were lodged on 29 April 2021.⁶
- 19 In any event, the applications in these proceedings were brought by the Owners Corporation, not W&W itself, meaning that any lack of contractual arrangement between W&W and the Owners Corporation at the time the applications were lodged does not mean the applications were not validly made.

Authority to apply

- 20 Under s 18 of the Act, as in force at the time the applications in these proceedings were lodged, an owners corporation required authorisation by special resolution to bring legal proceedings but not for an application to the Tribunal under Part 11 to recover fees.
- 21 I am satisfied that the applications in these proceeding have been brought under Part 11 to recover fees. Accordingly, the Owners Corporation was not required to be authorised by special resolution to bring these proceedings.
- 22 Further, all of the minutes provided include the standard resolution that the Owners Corporation take all steps necessary for the recovery of outstanding fees and that W&W is to take those steps on the Owners Corporation's behalf.
- 23 Accordingly, I find that the Owners Corporation had resolved to bring legal proceedings against lot owners for the recovery of outstanding fees and was doing so in making the applications in these proceedings.

Fee notices and final fee notices

- 24 The Owners Corporation sought recovery of fees and interest on those fees owed by Mr Puppa to the Owners Corporation, for amounts sent out in two final fee notices (one for each lot) dated 23 March 2021 ('the final fee notices').
- 25 In the Summary of Proofs provided for each application, and as clarified at the hearings, the Owners Corporation sought to recover Mr Puppa's quarterly Owners Corporation fees and contributions to the Owners Corporation's

⁵ I am satisfied the first contract was then replaced by the second contract when the second contract was entered into on 5 May 2021.

⁶ I further note that under both contracts W&W is delegated the power to represent the Owners Corporation in legal proceedings involving the Owners Corporation.

sinking fund for each quarter commencing 1 January 2017 to the quarter commencing 1 April 2021.⁷

- 26 The Owners Corporation provided:
- a. copies of each of the fee notices sent to Mr Puppa each quarter;
 - b. a spreadsheet setting out the date each fee notice was issued;
 - c. copies of the relevant Owners Corporation minutes of general meeting governing the issuing of each fee notice; and
 - d. copies of the final fee notices.
- 27 Mr Puppa disputed the validity of the fee notices referred to in the final fee notices, and of the final fee notices, claiming that:
- a. the amounts sought for fees and contributions to the sinking fund had not been properly raised by the Owners Corporation for resolution at a general meeting; and
 - b. that the fee notices and final fee notices:
 - i. did not comply with the relevant requirements under the Act and;
 - ii. had not been sent to him at the address specified by him on the Owners Corporation register.

Validity of amounts sought for fees and contributions

- 28 I am satisfied that the necessary resolutions were passed at annual general meetings of the Owners Corporation for the fees and contributions sought in these applications because:
- a. the minutes of the 2016, 2017, 2018 & 2019 annual general meetings state a quorum was present and record the passing of resolutions setting fees and contributions, and for their recovery;
 - b. the minutes of the 2021 annual general meeting state that a quorum was not reached but I am satisfied that the interim resolutions passed at the 2021 annual general meeting became resolutions of the Owners Corporation:
 - i. on 2 June 2021 under s 78(4) because there is no information before the Tribunal that shows a notice of a special general meeting was given after the annual general meeting and before 2 June 2021 under ss 78(4)(b) or 78(4)(c); and
 - ii. that include resolutions setting fees and contributions, and for their recovery.

⁷ FFN 2 includes a fee for a special levy in respect of roofing in the sum of \$213.28 which the Owners Corporation advised at hearing was the subject of orders made in a previous proceeding before the Tribunal and, accordingly, the Owners Corporation was not seeking to recover this amount in these proceedings.

- 29 I note that Mr Puppa does not claim that he has paid any of the amounts sought for fees and contributions to the sinking fund set out in the fee notices the subject of this proceeding.
- 30 Accordingly, I am satisfied that the amounts sought have been properly raised by the Owners Corporation and remain unpaid.

Validity of notices

- 31 Section 31 states that notice to a lot owner of any fees and charges due and payable by the lot owner to the owners corporation must:
- a. be given in the approved form;
 - b. state that the lot owner has an obligation to pay the fee and charges within 28 days after the date of the notice;
 - c. state that interest at the rate specified in the notice will be payable in respect of any overdue fees and charges; and
 - d. include details of the dispute resolution process that applies under the rules in respect of disputed fees and charges.
- 32 Section 32 states that if money owing set out in a fee notice is not paid within 28 days after the date of the fee notice, the owners corporation may give a final notice to the lot owner which must:
- a. be given in the approved form;
 - b. state that the lot owner has an obligation to pay the overdue fees and charges and interest immediately;
 - c. if applicable, state that interest is payable in respect of the overdue fees and charges and the amount of interest that will accrue daily until the payment of the overdue fees and charges is made; and
 - d. state that the owners corporation intends to take action under Part 11 to recover the amount due if the overdue fees and charges and interest owing are not paid within 28 days after the date the final notice is given.
- 33 Section 3 defines:
- a. an "approved form" as a "form approved by the Director under section 200"; and
 - b. the "Director" as the Director of Consumer Affairs Victoria.
- 34 Section 200 requires that, if the Director approves forms for the purposes of the Act, the Director must publish a copy of each approved form on the Internet site for the Department of Consumer Affairs Victoria.
- 35 The Director has published approved forms under the Act, including the approved form for s 32, at www.consumer.vic.gov.au/resources-and-tools/forms-and-publications.

36 Section 53 of the *Interpretation of Legislation Act 1984* (Vic) states that where a form is prescribed by an Act, any form “in order to the like effect of the prescribed form shall, unless the contrary intention appears, be sufficient in law.”

Fee notices

37 Mr Puppa claims that a number of the fee notices sent to him over the course of 2016 – 2020 were never received by him and are not valid. It is not necessary for me to decide these claims in relation to each fee notice because a fee notice was sent for each lot on 19 December 2020 setting out the unpaid fees and sinking fund contributions for the period 1 January 2017 – 31 March 2021 (‘the December 2020 fee notices’).

38 Accordingly, as I have found the amounts sought for the quarterly fee and sinking fund contributions are correct, I only need to assess the validity of the December 2020 fee notices (and consequent final fee notices, as set out below).

39 Mr Puppa does not claim, and I find, that the December 2020 fee notices comply with the requirements set out at [31 b] – [31 d] above.

40 Mr Puppa claims that the 19 December 2020 fee notice for Lot 2 (‘FN 2’) and the final fee notice for Lot 2 (‘FFN 2’) (together, ‘the Lot 2 notices’)⁸ do not comply with the approved form for a fee notice because:

- a. the approved form for a fee notice under s 31 and for a final fee notice under s 32 require the postal address of the lot owner to be recorded on the form if it is different from the lot address; but
- b. the Lot 2 notices are addressed to Mr Puppa at an address in Coburg (‘Mr Puppa’s address’) when the postal address should be care of Ms Brothers at the lot address (‘Ms Brothers’ address’); and
- c. following the decision in *OC No SP034630W v Pekar* [2019] VCAT 136 (23 January 2019) (‘*Pekar*’), this means the Lot 2 notices do not comply with the requirements under the Act.

41 At an interlocutory hearing in *Puppa v W&W* on 28 June 2019, W&W acknowledged the granting of the power of attorney in respect of Lot 2 referred to at [10] above and undertook to ensure correspondence in relation to Lot 2 would accordingly be sent to Ms Brothers’ address.⁹

42 In light of the above, I find that the Lot 2 notices do not record the correct postal address for Mr Puppa.

43 However, I find that the Lot 2 notices substantially comply with the requirement that they be in the approved form even though they do not record the correct postal address for Mr Puppa because:

⁸ At hearing, Mr Puppa pressed this claim in relation to FFN 2 but it applies equally to FN 2 which records the same postal address as FFN 2.

⁹ The giving of this undertaking is confirmed in orders made in chambers on 5 August 2019 in *Puppa v W&W*.

- a. relevant case law about substantial compliance with prescribed forms suggests that to determine whether non-compliance with an approved form gives rise to invalidity requires construing the relevant statute to determine whether the legislature intends that a failure to comply with the stipulated requirement invalidates the act done or whether the validity of the act would be preserved notwithstanding non-compliance;¹⁰
- b. ss 31 & 32 do not expressly require that a postal address be correctly recorded in a fee notice or final fee notice;
- c. accordingly, I find there is not an explicit “contrary intention” (as referred to in s 53 of the *Interpretation of Legislation Act 1984* (Vic)) in the Act that a fee notice or final fee notice with an incorrect postal address recorded does not comply with the requirement that it be in the approved form;
- d. I also find that it is consistent with the purposes of the Act, which include to provide for the management, powers and functions of owners corporations, that the practical, day-to-day management of an owners corporation, including undertaking the recovery of fees by the issuing of fee notices, does not require an owners corporation to strictly comply with the completion of an approved form (as opposed to with criteria expressly set out in the Act);
- e. I am satisfied that it was not intended by the Victorian Parliament that the incorrect recording of a postal address on a fee notice (as opposed to a failure of a fee notice to be *given* at the correct postal address, about which I make findings below) would render a fee notice (or final fee notice) invalid;
- f. in *Pekar*, the Tribunal found that a fee notice addressed to two individuals, only one of whom was the lot owner, did not comply with the requirements of s 31;
- g. while I am not bound by decisions of previous Tribunal members, I should consider them in determining whether I should make findings that are inconsistent with those decisions;¹¹
- h. the question of substantial compliance with an approved form does not appear to have been raised by the parties or considered by the presiding Member in *Pekar*;
- i. further, it is, with respect, a little unclear as to why the presiding Member found the fee notice had not been “given” to the respondent lot

¹⁰ See *MZAIC v Minister for Immigration and Border Protection* [2016] FCAFC 27; *Wu v Minister for Immigration and Ethnic Affairs* [1996] FCA 106 and, in particular, *Rowson v McClure and VCAT* [2013] VSC 140, [27].

¹¹ *Towie v State of Victoria* [2007] VCAT 1489 (22 August 2007).

owner only because it was addressed to the lot owner and another person;¹² and

- j. accordingly, having considered the findings in *Pekar*, I am not bound by them and, given that the issue of substantial compliance was not addressed in that decision, I do not follow them in assessing the validity of the fee notices and final fee notices in this case.

44 Mr Puppa does not claim that the postal address on the December 2020 fee notice for Lot 4 is incorrect.¹³

45 In light of the above, I find that the December 2020 fee notices are valid notices that meet the requirements under s 31.

Final fee notices

46 Mr Puppa claims that he was not given the December 2020 fee notices and I understand his claim to be that the final fee notices are not valid because:

- a. a final fee notice can only be given if *money owing* is not paid within 28 days after the date of a fee notice; and
- b. as he did not receive the December 2020 fee notices (or, he claim, any other fee notices), there was no *money owing* by him to the Owners Corporation that he did not pay within 28 days after the date of the December 2020 fee notices.

47 Mr Puppa claims that he was never given the December 2020 fee notices because:

- a. he never received the December 2020 fee notices by post; and
- b. in March 2020, Mr Puppa had expressly stated to the Owners Corporation that all correspondence to him needed to be sent by post.¹⁴

48 Ms De Fazio at hearing stated that:

- a. the Owners Corporation's practice was to send fee notices by ordinary post, not by registered post, to limit the costs to the Owners Corporation for fee recovery;
- b. the December 2020 fee notices had been sent to Mr Puppa by email;
- c. in relation to FN 2, since July 2019, after two items of correspondence in relation to Lot 2 were sent by W&W on behalf of the Owners Corporation addressed to Mr Puppa's address and not to Ms Brothers' address in July 2019 as a result of an "oversight",¹⁵ all correspondence in relation to Lot 2 has been sent to Ms Brothers' address, including FN 2, despite it recording a different postal address;

¹² *Pekar* [19] refer to the fee notice not having been "provided" to the lot owner.

¹³ By email from Mr Puppa to W&W sent 2 March 2020, Mr Puppa expressly requested that all correspondence for Lot 4 be sent to Mr Puppa's address, which is the postal address on the 19 December 2020 fee notice for Lot 4.

¹⁴ *Ibid.*

¹⁵ *Puppa v W&W*, [34].

- d. W&W's practice for recording the address for items sent by ordinary post is for the address listed in its document management system to be the address used; and
 - e. the address listed in the document management system for Lot 2 is Ms Brothers' address and the address for Lot 4 is Mr Puppa's address.¹⁶
- 49 Mr Puppa claimed that I should not accept Ms De Fazio's evidence about having sent the December 2020 fee notices by ordinary post because, he claimed, she was not reliable or consistent in the way she sent documents to Mr Puppa. In support of this claim, he referred to correspondence between Mr Puppa and W&W during 2022, copies of which were provided to the Tribunal after the first hearing.
- 50 I accept that the December 2020 fee notices could not be given by email to Mr Puppa given his express request in March 2020, which appears to have been accepted by the Owners Corporation, that he receives all correspondence by post.
- 51 On balance, I find that it is more likely than not that the December 2020 fee notices were sent to Mr Puppa by ordinary post to Ms Brothers' address for Lot 2 and Mr Puppa's address for Lot 4 (together, 'the requested addresses'), because:
- a. Mr Puppa and Ms Brothers stated at hearing that they accepted that they had received the final fee notices by registered post at the requested addresses;
 - b. I find it highly unlikely that, if the Owners Corporation sent the final fee notices to the requested addresses (which Mr Puppa accepted it did), it would have sent the December 2020 fee notices, a few months earlier, to different addresses; and
 - c. I do not accept that Ms De Fazio has not been reliable or consistent in the way she has provided documents on behalf of W&W to Mr Puppa: I overall found her evidence, both at hearing and in the detailed information set out in the Owners Corporation's supporting documents, about the giving of documents to Mr Puppa to be plausible and credible.
- 52 In light of the above, I find that the implicit requirement in s 32(1) that a lot owner be given a fee notice before a final fee notice can be given has been met by the Owners Corporation in relation to both lots in this proceeding, before the final fee notices were given to Mr Puppa.
- 53 I have addressed above Mr Puppa's claims in relation to the validity of FFN 2 because the postal address recorded on that notice is incorrect and, again, I find that FFN 2 is not invalid because it records an incorrect postal address.

¹⁶ Ms De Fazio referred to and read out the relevant parts of the W&W document management system during the hearings.

- 54 However, I find that the final fee notices include sums that the Owners Corporation was not at the time of application in these proceedings entitled to recover, being those for the fee and sinking fund contribution for the financial quarter beginning 1 April 2021 (“the April quarter fees”).
- 55 As noted above, the December 2020 fee notices cover the fees and sinking fund contribution for the period 1 January 2017 – 31 March 2021 only. The Owners Corporation has not provided a fee notice that has been sent to Mr Puppa for the April quarter fees. As the Owners Corporation has not given Mr Puppa a fee notice for the April quarter fees under s 31, the amount owing for the April quarter fees does not remain unpaid “within 28 days after the date of the fee notice”, as required under s 32.
- 56 Accordingly, the final fee notices cannot include the amount owing for the April quarter fees and by including the amount owing for the April quarter fees the total amount payable on the final fee notices is not an accurate statement of the overdue fees and charges as at the date of the final fee notices.
- 57 Mr Puppa has claimed that because the total amounts payable in the final fee notices are incorrect they cannot be valid notices. I do not accept this argument because:
- a. the Act includes the process, by way of application to the Tribunal, by which an owners corporation can seek to recover, or a lot owner can challenge, an amount that an owners corporation seeks to recover as set out in a final fee notice;
 - b. by including this process, I find the intention of the Victorian legislature is that the Tribunal can determine what are the overdue fees and charges in each final fee notice and what are not, while allowing an owners corporation to maintain its financial viability by being able to recover what is found to be overdue fees and charges in each final fee notice rather than having to issue a new final fee notice without the amounts which the Tribunal finds are not overdue fees and charges; and
 - c. accordingly and again applying the relevant case law in relation to substantial compliance with approved forms, I am satisfied that the intention of the Victorian legislature is that a final fee notice must include all overdue fees and charges that are sought to be recovered but is not rendered invalid merely by including other amounts sought.
- 58 In light of the above, I am satisfied that the final fee notices meet the requirements of s 32 and can be relied on by the Owners Corporation to seek recovery for the fees and sinking fund contribution owed by Mr Puppa for both Lots for the period 1 January 2017 – 1 April 2021 as amounts:
- a. recoverable for the standard charging of owners corporation fees in accordance with lot liability as approved by resolution at annual general meetings of the Owners Corporation for the Owners Corporation budget to be met;

- b. for interest on arrears that the Owners Corporation was entitled to charge under s 29 as authorised by resolution at a general meeting of the Owners Corporation; and
 - c. in the sum of **\$7,550.00** in relation to each Lot.
- 59 I am also satisfied that the Owners Corporation is entitled to recover an amount for interest on the fees owed from the date of the final fee notices until the date of hearing (10 October 2022), being the sum of **\$1,114.92** for each Lot.

Costs in the proceeding

- 60 In the Summary of Proofs for each application, the Owners Corporation states it is seeking payment of a sum of \$1,100.00 for costs in the proceeding (including the application fee).
- 61 Having considered the factors set out in sections 109(3) and 115C(2) of the VCAT Act in relation to each of these proceedings, being applications by an owners corporation against lot owner seeking recovery of unpaid fees, I am satisfied it is fair in all of the relevant circumstances¹⁷ to order that Mr Puppa pay the Owners Corporation's costs of each proceeding in the sum of **\$700.00**, inclusive of reimbursement of the application fee of \$217.70.

Reasonable costs incurred other than in the proceeding

- 62 Under s 165(1)(ca), an owners corporation can seek an order requiring a lot owner to pay the owners corporation reasonable costs incurred by the owners corporation in recovering an unpaid amount from the lot owner other than costs in the proceeding.
- 63 The Owners Corporation seeks to recover a sum of \$400.00 for reasonable costs in relation to each Lot. It states in the Summary of Proofs for each proceeding that it seeks the sum "to cover application fee, title search, registered post costs, copying fees and the total amount of \$1,100.00 is being sought including these costs plus the managers time to prepare the file, attend and have stat decs [sic] signed, issue documents and attend hearings."
- 64 The Owners Corporation clarified at hearing that the reference above to the total amount of \$1,100.00 is to the amounts sought in relation to costs in the proceeding.
- 65 The basis on which the Owners Corporation in these proceedings is seeking an order for the recovery of reasonable costs under s 165(1)(ca) is somewhat misconceived. *Singh* makes clear that reasonable costs can only be recovered for costs incurred *before* the application in the proceeding is lodged, and even when costs have been incurred before that stage, it may still be found that those costs were incurred as part of the proceeding.

¹⁷ See *Vero Insurance Ltd v The Gombac Group Pty Ltd* [2007] VSC 117, [20] & [22].

- 66 Accordingly the application fee and any other of the costs referred to in paragraph [63] above that were incurred as part of the proceeding are not recoverable under s 165(1)(ca).
- 67 The Owners Corporation has provided a copy of the management contract between the Owners Corporation and W&W for the period covering the time the Owners Corporation was seeking recovery of unpaid fees from Mr Puppa, being the contract of appointment entered into in 2018 that I have found at [17] above remained in effect up until the applications were lodged in these proceedings.
- 68 That contract does not specify particular charges for the sending of final fee notices but does refer to an agreed amount of \$110.00 per hour for the undertaking of works required by the Owners Corporation from time to time.
- 69 Given the likely amount of work required to be undertaken by W&W in seeking to recover the unpaid fees and sinking fund contributions I have found Mr Puppa to be owing for a number of years, I am satisfied it is appropriate to award the Owners Corporation the sum of **\$400.00** for reasonable costs incurred other than in the proceeding for each of these proceedings.

Conclusion

- 70 In light of the above, I order that Mr Puppa must pay the Owners Corporation the following amounts in relation to each proceeding:
- a. \$ 7,550.00 for levies and interest to the date of final fee notice (the date being 23 March 2021);
 - b. \$ 1,114.92 for interest from the date of final fee notice to the date of hearing;
 - c. \$ 400.00 for reasonable costs incurred in recovering the unpaid amount other than costs in the proceeding; and
 - d. \$ 700.00 costs in the proceeding (including \$217.70 for reimbursement of fees paid by the applicant);
- \$ 9,764.92 TOTAL.**
- 71 Accordingly, Mr Puppa must now pay the Owners Corporation a total sum of **\$19,529.84.**

C. Powles
Senior Member