QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Dunlop v the Body Corporate for Port Douglas Queenslander* [2024] QCAT 88
PARTIES:	**DAMIEN DUNLOP** (applicant) **v** **THE BODY CORPORATE FOR PORT DOUGLAS QUEENSLANDER** (respondent)
APPLICATION NO/S:	OCL016-22
MATTER TYPE:	Other civil dispute matters
DELIVERED ON:	20 February 2024
HEARING DATES:	13 February 2024
HEARD AT:	Brisbane
DECISION OF:	Member P Roney KC
ORDERS:	**1. The application by the Respondent pursuant to s 47 of the QCAT Act to dismiss the Applicant's primary application is dismissed.** **2. Within 14 days of the provision of these reasons the Applicant is to file a written outline of what he contends to be the basis for the jurisdiction of this Tribunal to grant the relief he claims.** **3. If it sees fit to do so, the Respondent has leave to deliver any responsive submissions on the issue of jurisdiction fourteen days thereafter.** **4. The parties have liberty to apply in respect of any other consequential or other orders which might be required to be made.** **5. The costs of the Application are reserved.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – ENDING PROCEEDINGS EARLY – SUMMARY DISPOSAL – striking out application – striking out and/or dismissal of an Applicant's claim pursuant to s 47 of the QCAT Act – ASSIGNMENT OF LETTING AND CARETAKING SERVICES CONTRACTS – whether the Body Corporate

committee was properly constituted to authorise the assignment of the contracts – whether the contracts purportedly transferred from one person to another should be declared to have no effect or is void

BODY CORPORATE AND COMMUNITY MANAGEMENT – COMPLEX DISPUTE – JURISDICTION – where original application a complex dispute within s 149B of the *Body Corporate and Community Management Act 1997* (Qld)

Where a dispute about a contractual matter in section 149B of the *Body Corporate and Community Management Act 1997* (Qld) is a complex dispute within the meaning of the Act – Where Section 229(2) of the Act specifically provides that the only remedy for a complex dispute is the resolution of the dispute by an order of a specialist adjudicator or an order of QCAT exercising the Tribunal's original jurisdiction under the QCAT Act – Whether a claim for damages only falls within the Tribunal's original jurisdiction under the *Queensland Civil and Administrative Tribunal Act 2009* (Qld)

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 3, s 47

Body Corporate and Community Management Act 1997 (Qld), s 100 s 310

Body Corporate and Community Management (Accommodation Module) Regulation 2008 (Qld), s 120(1), s 190

Uniform Civil Procedure Rules 1999 (Qld), Rule 292

General Steel Industries Inc v Commissioner for Railways (NSW) [1964] HCA 69; (1964) 112 CLR 125

Dey v Victorian Railways Commissioners [1949] HCA 1; (1949) 78 CLR 62

Cox v Journeaux (No 2) [1935] HCA 48; (1935) 52 CLR 713

Shaw v State of New South Wales [2012] NSWCA 102

Brimson v Rocla Concrete Pipes Ltd [1982] 2 NSWLR 937

Agar v Hyde [2000] HCA 41; (2000) 201 CLR 552

Gray v Morris [2004] 2 Qd R 118

Coldham Fussell v Commissioner of Taxation [2011] QCA 45

Queensland University of Technology v Project Constructions (Aust) Pty Ltd (in liq) [2003] 1 Qd R 259; [2002] QCA 224

Rich v CGU Insurance Ltd (2005) 79 ALJR 856

Hickson- Jamieson v University of the Sunshine Coast & Ors [2020] QCAT

Victorian Professional group Management Pty Ltd v Proprietors of Surfers Aquarius [1991] Qd R 487

Beck v Kerry M Ryan Pty Ltd [2019] QCAT 38

Felstead v Bundaberg Homes Pty Ltd [2016] QCAT 294

Murtagh v QBCC [2018] QCAT 258

Allure Apartments 2019 QBCCM Cmr 352

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)
Applicant:	Self-represented
Respondent:	Robert Herd, solicitor

REASONS FOR DECISION

[1] The Respondent has filed an application seeking to dismiss the Applicant's claim as pursuant to s 47 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('*QCAT Act*'). In effect it seeks summary dismissal of the entire claim brought in this Tribunal. For its purposes the Respondent relies on two affidavits of Christine Kolenc the Body Corporate manager, and Robert Herd, solicitor for the Respondent. The Applicant also filed affidavit material. I have considered all of that material and the various submissions filed.

[2] The Applicant filed his original application in the Tribunal on 16th of March 2022 and it has now been ongoing for almost two years. In the principal application the Applicant is seeking orders against the Respondent Body Corporate that the Body Corporate pay him damages of $1,027,277.20 with interest on that sum and for an order for costs.

The Applicant's pleaded case

[3] In the attached statement of claim he set out the foundation for his claim as being that he was the owner and operator of a caretaking and management rights business and had a Resident letting agent's licence under the *Property Occupations Act 2014* (Qld) ('*Property Occupations Act')* pursuant to which he was the caretaker and letting agent within the Body Corporate for Port Douglas Queenslander

[4] He alleges that the interests in question were not liable to forfeiture or surrender and that the conditions of the agreements had been fulfilled and the assignment was unconditional aside from any conditions contained in or imposed by the resolution

of the Respondent Body Corporate pursuant to which the deed itself was to be executed.

[5] He claims to be entitled to act under the caretaking and management rights as the result of an assignment to him which he alleges occurred on or about 17 December 2013. He also says that on that date in 2013, the assignor and he entered into a caretaking agreement pursuant to which the Respondent agreed to engage the assignors and the assignor agreed to provide, at his request, certain services associated with the caretaking management maintenance and repair of the common property forming part of Body Corporate for Port Douglas Queenslander for a period of 25 years commencing January 2014 and for the payment of remuneration for the provision of those services.

[6] He further alleges that since the application for the Resident letting agent's licence under the Property Occupations Act was not determined, the legal effect was that the licence remained in full force and effect until July 2020 notwithstanding that the Resident letting agent's licence had been expressed to expire in September 2018.

[7] Ancillary to that was a letting agreement by which the Respondent allegedly agreed to permit the assignment to conduct a letting services business for the benefit of the owners and occupiers of lots within the scheme for a period of 25 years also commencing from January 2014.

[8] The Applicant alleges that in August 2014 those assignors, as well as the Applicant and a person called Rosemary Knights, entered into a deed of assignment of the caretaking and letting agreements pursuant to which there was a purported transfer and assignment of his right title and interest in those two agreements.

[9] The Applicant contends that the Respondent Body Corporate consented to that assignment, and in that context allegedly agreed with the Applicant that to the best of the knowledge of the Body Corporate there were no existing breaches by the assignors of either of those agreements.

[10] The Applicant contends that the Body Corporate also acknowledged that all of the conditions in the agreements about the assignment by the assignors to the Applicant had been fulfilled and that the assignment was unconditional, save for any conditions contained in or imposed by the resolution of the Body Corporate pursuant to which the deed itself was to be executed.

[11] The Applicant contends further that thereafter both the Applicant and the Respondent ratified and confirmed all of the terms and conditions of the agreements and agreed to be bound by them and that parties and the Body Corporate each agreed that they would procure every other person as required to sign and execute all such further documents and do all such things as might be necessary to give full force and effect to the deed. It is said that the formal terms of the deed of assignment are relied upon.

[12] The Applicant goes on to contend that in September 2018 he made application for renewal of the Resident listing agent's licence issued under the Property Occupations Act. He contends that although the renewal application was not determined until July 2020 the licence remained in effect until July 2020 notwithstanding that on its face it was due to expire in September 2018.

[13] He then recites the fact that on 1 October 2019 the Body Corporate purported to serve upon him remedial notices given pursuant to section 129 of the *Body*

Corporate and Community Management (Accommodation Module) Regulation 2008 (Qld) ('*Accommodation Module*') that pointed to the absence of a relevant licence and to a prohibition on a person acting as a resident agent without such a licence and contending that the licence had expired in September 2018. The contention in those notices was that because the licence had expired in September 2018 the Applicant's attempts to continue to carry on the business meant that it was in default under clause 5.3.6 of the letting agreement and that because of clause 19.1 of the caretaking agreement the Applicant was deemed also to be in default of the latter agreement. It called for the Applicant to remedy the breach by obtaining a Resident letting agent licence and that if it failed the Respondent would put a motion to its members in general meeting to terminate each of the respective agreements. The entitlement to terminate in that way was put in dispute by a letter from the Applicants' solicitors. Then a meeting was held on 24 October 2019, the general meeting of the Respondent, which resolved nine votes for and nil against termination of the respective letting and caretaking agreements on the basis that the Applicant was carrying on a business without a licence. The next step was that the Respondent gave notice of termination of those agreements on the 20th of November 2019.

[14] The Applicant alleges that this conduct was a repudiation of those agreements and that after receipt of the notices of termination he accepted that repudiation and ceased to conduct the business from the premises. He claims to have lost operating profit which in turn meant that he lost the realisable value of the business which he calculates by applying a cap rate.

[15] Neither party contends that the relevant letting and caretaking agreements remain on foot.

The Body Corporate's pleaded case and its arguments on the Application to dismiss

[16] In answer to those claims the Body Corporate contends that the purported assignment was invalid for a number of reasons. First that the Body Corporate had resolved in December 1997 that the transfer of a person's right under a service contract engagement or letting agent authority and any matters associated with the transfer were reserved for ordinary resolution of the Body Corporate. It contends that the effect of that December 1997 resolution is that the assignment of rights under a caretaking agreement and letting agency authorisation agreement were restricted matters for the committee and required a vote in general meeting. It alleges that the Applicant was or should have been aware of that resolution prior to the assignment inter alia because the resolution was in the minutes and held with the records and that the Applicant had a right to search those records and had undertaken that due diligence of the Body Corporate.

[17] The Respondent contends that on 30 July 2014 a committee of the Body Corporate considered a motion to agree to the assignment of the caretaking and letting agreements and it passed a motion agreeing to that. It alleges however that because the matter was a restricted matter for the committee, the 30 July 2014 resolution was invalid, and that no resolution was or has ever been passed to validate the invalid resolution of the committee.

[18] The Respondent then alleges a number of matters which I need not go into for the purposes of this application, concerning alleged offences committed by the Applicant at various times.

[19] It contends that it discovered in September 2019 that the statutory licence had expired and that no licence was held.

[20] Ultimately it contends that there was no relevant agreement because the assignments and motion in relation to them were invalid and therefore the Applicant did not lose anything because it had no saleable interest in the business.

[21] It appears to be common ground but there was never a motion passed by the Body Corporate in general meeting to approve the assignments or to ratify the committee motion relating to the assignment of the management rights.

[22] The solicitor for the Respondent swears an affidavit in which he in effect identifies the prudent practises when acting for a purchaser of such rights and in particular prudent practices in conducting a full records search but states that if a full search had been conducted the 1997 resolution would have been discovered.

[23] The Respondent accepts that it is not in dispute that the Applicant owned and operated the caretaking and Body Corporate management business including a letting agency and that it held a resident letting agent licence. It accepts that in December 2013 the Respondent entered into a caretaking agreement and letting agency agreement which were for 25 years commencing from January 2014 and that a document purporting to be the idea of assignment was executed by the committee on one August 2014 but there was no resolution in general meeting authorising the assignment. It argues that pursuant to section 100 of the *Body Corporate and Community Management Act 1997* (Qld) (‘*BCCM Act*’) the decision of the committee was not a decision of the Body Corporate because the decision was one which under the relevant module was a decision on a restricted issue for the committee.

[24] This suggests that what one needs to look to, to ascertain whether the decision is on a restricted issue, is what the Regulation provides. It then refers to section 24 of the Accommodation Module, which provides that a decision is a decision on a restricted issue for the committee if it is a decision on an issue reserved by ordinary resolution of the Body Corporate for decision by ordinary resolution of the Body Corporate. There seems to be no factual issue surrounding whether the Body Corporate did make the decision on the assignment of management rights a restricted issue.

[25] The Respondent concedes that there are significant factual issues in dispute concerning the alleged wrongful repudiation of the agreement and the causation of loss but that these are not necessary to be resolved if its submission is to the basis for the dismissal application are upheld.

[26] The Respondent submits that the consequence is that the only way an assignment could be approved by the Respondent was by resolution in general meeting. It relies upon a decision of our Commissioner in *Allure Apartments 2019 QBCCM Cmr 352* as authority for the proposition that “since the committee was not authorised to approve the assignment any resolution doing so and the execution of the deed of assignment was void”. That decision held no such thing. The Adjudicator there held at [52] that:

> …the committee that made the decision to approve the transfer on 25 May 2015 was not properly constituted. Only one member of the committee was validly elected, or did not hold a conflict of interest. The decision of the committee that day, therefore, was at all times void.

There was no reference to, analysis of or consideration given to the operation of Section 310 of the BCCM Act which I deal with in paragraph 55 of these reasons, nor to any legal principles applicable to irregular acts engaged in by Committees in dealings with third parties. It is a judgement that depends to a significant degree on findings made in other adjudications.

[27] It submits that the real dispute is about whether the indoor management rule or the so-called rule in Turquand's case applies; that that rule only provides protection to individuals who could not know what the true position was and in this case the Applicant could have known and his sources did not make relevant inquiries that they ought to have made.

[28] The Respondent refers to statements by Connolly J in *Victorian Professional Group Management Pty Ltd v Proprietors of Surfers Aquarius* [1991] Qd R 487 to the effect that that the rule does not apply where a third party is on actual or constructive notice that the relevant steps had not been taken. From that proposition, however, it moves to seek to establish that because the Applicant apparently undertook due diligence enquiries in relation to the agreements, and had solicitors acting for him to do so, he was on actual or constructive notice.

Issues of legal principle – dismissal under s 47 of the QCAT Act

[29] QCAT has the power to bring an early end to proceedings under s 47 of the QCAT Act if the Tribunal considers the proceeding is frivolous, vexatious, misconceived, lacking in substance or otherwise an abuse of process.

[30] Section 47 of the QCAT Act confers on the Tribunal the power to dismiss or strike out proceedings and relevantly provides that:

> (1) This section applies if the tribunal considers a proceeding or a part of a proceeding is—
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> (a) frivolous, vexatious or misconceived; or
>
> (b) lacking in substance; or
>
> (c) otherwise an abuse of process.
>
> (2) The tribunal may— (a) if the party who brought the proceeding or part before the tribunal is the Applicant for the proceeding, order the proceeding or part be dismissed or struck out; …

[31] The Respondent's submissions are almost entirely devoid of references to any case law authority in support of any of the arguments put forward, or as to the correct approach to be adopted in an application of this type.

[32] It is of considerable concern that an application of this kind which is being determined so long after the proceeding in this Tribunal by a self-represented litigant was commenced where there has been no oral hearing of any of the relevant arguments; it is also of concern that there is almost no reference to any authority to support any of the arguments advanced on behalf of the Respondent.

[33] In *Hickson- Jamieson v University of the Sunshine Coast & Ors* [2020] QCAT 523 I set out what the settled approach is, particularly to a strike out application, although the principles are relevant also to an application to summarily dismiss an application.

[34] The power to strike out is to be used sparingly and only in clear cases. To summarily dispose of the proceedings is one which calls for the exercise of "exceptional caution": *General Steel Industries Inc v Commissioner for Railways (NSW)* [1964] HCA 69; (1964) 112 CLR 125 (at 129) per Barwick CJ.

[35] The power cannot be exercised "once it appears that there is a real question to be determined whether of fact or law and that the rights of the parties depend upon it": *Dey v Victorian Railways Commissioners* [1949] HCA 1; (1949) 78 CLR 62 (at 91) per Dixon J.

[36] It is only to be exercised "when the action is clearly without foundation and … to allow it to proceed would impose a hardship upon the defendants which may be avoided without risk of injustice to the plaintiff": *Cox v Journeaux (No 2)* [1935] HCA 48; (1935) 52 CLR 713 ('*Cox*') (at 720) per Dixon J.

[37] The "Court is not concluded by the manner in which the litigant formulates his case in his pleadings": Cox (at 720) per Dixon J.

[38] The fatal defects in an Applicant's case must be very clear before the Court will intervene to strike out a pleading: *Shaw v State of New South Wales* [2012] NSWCA 102 (at [30] ff) per Barrett JA (Beazley, McColl, Macfarlan JJA and McClellan CJ at CL agreeing); *Brimson v Rocla Concrete Pipes Ltd* [1982] 2 NSWLR 937 (at 944-945) per Cross J.

[39] A "high degree of certainty" that the Applicant's case will fail if it goes to trial is required: *Agar v Hyde* [2000] HCA 41; (2000) 201 CLR 552 (at [57]) per Gaudron, McHugh, Gummow and Hayne JJ. Hence a Court will only strike out the pleading on the basis that it does not disclose a reasonable cause of action if, on the face of the pleading, it is obvious that the claim is bound to fail and cannot be remedied by amendment.

[40] If it has prospects of success, but the claim is not adequately expressed in the pleading, the Court should not dismiss the proceedings or the particular claim, but should grant leave to the Applicant to file an amended statement of claim or cross-claim (in the case of an application in respect of a cross-claim). See generally *Brimson v Rocla Concrete Pipes Ltd* [1982] 2 NSWLR 937 at 943-944.

[41] An application to strike out a part of a pleading is inappropriate where to resolve the argument the Court needs to consider disputed questions of fact, or review the entirety of the Applicant's case, having regard to all of the evidence likely to be adduced at trial in order to resolve the alleged inadequacies, or to determine complex questions of law which are best left to final submissions at a trial.

[42] An analogous provision is rule 292 of the *Uniform Civil Procedure Rules 1999* (Qld) ('*UCPR*') which grants a discretion to the Courts to grant summary judgment. Decisions concerning the scope of that rule are also useful.

[43] It has been accepted that in exercising its discretion to grant summary judgment, the Court must exercise a high degree of caution to avoid depriving a party of the opportunity for the trial of their case, after taking advantage of the usual

interlocutory processes.[1] A Court must keep in mind the reasons the interests of justice usually require the issues to be investigated at trial.

[44] The power to determine an action summarily "is not to be determined lightly".[2] Thus, the grant of summary judgment has been described as only appropriate in the "clearest of cases" where there is a "high degree of certainty".[3] As the Court of Appeal said in *Queensland University of Technology v Project Constructions (Aust) Pty Ltd (in liq)*[4] in relation to the expression "no real prospect of succeeding":

> That level of satisfaction may not require the meeting of as high a test as that posited by Barwick C in *General Steel*: 'that the case for the plaintiff is so clearly untenable that it cannot possibly succeed'. The more appropriate inquiry is in terms of the Rule itself; that is, whether there exists a real, as opposed to a fanciful, prospect of success. However, it remains, without doubt, the case that: 'great care must be exercised to ensure that under the guise of achieving expeditious finality a plaintiff is not improperly deprived of his opportunity for a trial of the case.

[45] Indeed, the test is that of 'no real prospect' of success and not that of improbability of success.[5] As Ambrose J in *Michael Peldan & Raj Khatri v Baptist Jerry Romano*[6] warned, Courts must be careful not to deprive the defendant of the opportunity to cavass matters in defence of a claim merely on the ground that success is not likely because the factual matters raised by the defendant seem highly improbable or unlikely to be established at trial.

[46] In *CSR Limited v Casaron Pty Ltd & Ors*,[7] Holmes J (as her Honour then was) said of the appropriateness of summary judgment:

> It may be clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks….The simpler the case the easier it is likely to be [to] take that view and resort to what is properly called summary judgment but more complex cases are unlikely to be capable of being resolved that way without conducting a mini trial on the documents without discovery and without oral evidence. As Lord Woolf MR said in Swain's case [2001] 1 All ER 91 at 95, that is not the object of the rule. It is designed to deal with cases that are not fit for trial at all.

[47] In relation to the analogous power under s 47 to order the proceeding be dismissed, in the Tribunal case of *Murtagh v QBCC* [2016] QCAT 294 Member Traves noted that:

> Pursuant to s 47(2)(a) the tribunal may exercise its discretion to strike out or dismiss a proceeding or part of a proceeding brought by an Applicant… The power should be exercised sparingly so that claims that are groundless or

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1 *Gray v Morris* [2004] 2 Qd R 118 at 1333 per PD McMurdo J (as his Honour then was) with whom McPherson JA agreed.
2 *Coldham Fussell v Commissioner of Taxation* [2011] QCA 45 per White JA at [102].
3 *Rich v CGU Insurance Ltd* (2005) 79 ALJR 856, 859 at [18] – [19.
4 [2003] 1 Qd R 259; [2002] QCA 224 per Holmes J (with the concurrence of Davies JA and Mullins J) at 264-265.
5 *Deputy Commissioner of Taxation v Salcedo* [2005] 2 Qd R 232 at [13] per Williams JA.
6 [2001] QSC 463.
7 [2002] QSC 21.

> which lack merit are barred. If there is a real question to be tried then dismissal at an interlocutory stage is not appropriate.

[48] Likewise, in *Felstead v Bundaberg Homes Pty Ltd* [2016] QCAT 294, Senior Member Brown noted that:

> In exercising the discretion it is necessary to consider whether it is either necessary or appropriate to do so in the circumstances.....The exercise of the discretion to strike out requires a consideration of the factors relevant in an application under UCPR r 171: ensuring that relevant documents filed in the Tribunal disclose a reasonable cause of action or defence, do not prejudice or delay the fair trial of the proceeding, are not unnecessary or scandalous, frivolous or vexatious or otherwise an abuse of process.

[49] In *Beck v Kerry M Ryan Pty Ltd* [2019] QCAT 38, [22]-[24], Senior Member Brown said that:

> Section 47 of the QCAT Act is, in effect, a summary judgment power. In an application for summary judgment under the *Uniform Civil Procedure Rules 1999* (Qld) current QCAT President Daubney J found in *Elderslie Property Investments No 2 Pty Ltd v Dunn*:
>
> > ... the court needs to be satisfied not only that the defendant has no real prospect of successfully defending all or a part of the claim, but also that 'there is no need for a trial of the claim or the part of the claim'.

[50] The test to be applied has been expressed in various ways, but all of the verbal formulae which have been used are intended to describe a high degree of certainty about the ultimate outcome of the proceeding if it were allowed to go to trial in the ordinary way.

Identifiable issues which have sufficient merit to justify a hearing/trial

[51] In my view, it is clear that there is a factual issue to be determined, as to whether the due diligence or any other enquiry made did reveal the invalidity of the proposed and then purported assignment or put the Applicant in a position of having actual or constructive notice of the limitations on the committee to consent to an assignment.

[52] There is also a factual dispute concerning whether the conduct of the Body Corporate was in other respects capable of amounting to ratification of the "invalid" committee resolution.

[53] The Applicant submits that the Body Corporate had a duty to not unreasonably withhold consent to the assignment and that it did not need to formally enter into the deed itself. The Respondent submits that even if that were true it does not make the date of assignment valid because it was void *ab initio*. Once again, no authority is cited for that proposition.

[54] Section 120(1) of the Accommodation Module provides that a person's rights under an engagement as a Body Corporate manager or service contractor may only be transferred if the Body Corporate under the engagement approves the transfer. Subsection (2) provides that the approval may be given by resolution of the committee, or by ordinary resolution of the Body Corporate.

[55] Section 310 of the BCCM Act expressly provides for the application of the indoor management rule to persons having dealings with the committee. It provides that:

> If a person honestly and without notice of an irregularity enters into a transaction with a member of the committee for the Body Corporate for a community titles scheme or a person who has apparent authority to bind the Body Corporate, the transaction is valid and binding on the Body Corporate.

[56] The Respondent submits that in effect this should be read literally as only referring to transactions with a member of the committee and does not concern itself with transactions with the committee as a whole evidenced by a resolution of the committee. It seems to me that this is clearly an issue upon which views might differ and in and of itself raises a triable issue. The Respondent cites no authority for the proposition that that is the way in which section 310 is to be construed.

[57] Furthermore, the Respondent concedes that the Applicant's material shows that he placed reliance on his solicitor and the response from his solicitor in response to a request concerning whether all minutes were inspected, but nothing is there to suggest on the evidence, directly or even inferentially, that the Applicant was on notice of the irregularity within the language of Section 310.

[58] Nor is there anything which demonstrates, beyond there being a serious question about it, that the Applicant did not honestly enter into the relevant deed of assignment on the basis that the committee had passed a resolution approving it and had authority to do so.

[59] The Respondent even goes so far as to suggest that the solicitors for the Applicant had drafted the deed of assignment and failed to confirm the appropriate mechanism for execution of it, namely to confirm that the consent to the assignment was by resolution in general meeting. It then refers to the proposition that the Applicant should have been on notice of an irregularity.

[60] There are other issues which neither party has given any consideration to, but which in my view clearly, or at least potentially, raise an arguable case. They concern whether having regard to the lengthy period during which the Applicant conducted the business after the approval of the assignment by the committee, and the failure of the Respondent to assert that there was any invalidity or potential invalidity in relation to the consent which had been given by committee resolution, that the Respondent is estopped from asserting reliance upon that irregularity, or has, by conduct, ratified the "invalid" committee resolution.

[61] I do not accept that it is beyond argument, as the Respondent would have it, that if or since the committee was not authorised to approve the assignment, then any resolution by which it did approve it and the execution by the Body Corporate of the deed of assignment was void.

[62] There are other potential ways in which the Applicant might overcome the want of authority of the committee. These include informal or actual ratification by the Body Corporate of the committee's resolution even if that was not done by the Body Corporate by resolution passed by a general meeting of lot holders.

[63] Sadly, as is often the case where parties are unrepresented, they are seriously disadvantaged by their failure to have a proper understanding of the law, to make submissions which are directed to the application of that law to the relevant facts of a case.

[64] One construction of the provisions of the relevant agreement is that the Body Corporate was required to do all things reasonably necessary on its part to determine

whether to consent to an assignment and not to withhold that consent unreasonably. It was placed, therefore, under duty to take steps to act with appropriate authority to give or refuse that consent. It is a well-accepted principle that a party is not entitled to rely on its own misconduct or breach as entitling it to terminate or to contend that a condition had not been met.

[65] There is a further issue independently of whether the committee had authority to do that which it did and that is because the deed of assignment was executed by the Body Corporate under its seal. Neither party specifically addressed the effect of a party entering into a deed and what if any formal requirements there are for entry into the deed which it did on 1 August 2014. The Applicant did focus to a limited degree in his submissions on the fact that the seal of the Body Corporate had been placed on the deed.

[66] The material discloses that the original Caretaking agreement of 2013 and the Letting agent authorisation which were later assigned to the Applicant were executed by the Body Corporate as deeds. Their Deed of Assignment, which made the original Deeds attachments, was also signed by the Body Corporate under seal, purportedly affixed pursuant to a resolution of the Body Corporate.

[67] The Deed of Assignment is in the material before me and it purports to have had the seal applied and affixed by two members of the "committee/the Body Corporate manager" in the presence of a witness. There are two signatures to the right of the seal and the seal appears over those signatures.

[68] The Recital to the Deed of Assignment specifically states that the Body Corporate consents to the assignment, and clause 4 expressly provides to that effect. It also specifically provides that the Body Corporate agrees to be bound by the provisions of the original agreements as if the new manager was originally named as caretaker and letting agent and confirms the provisions of the agreements for the balance of the term. It expressly provides in the Deed of Assignment that the Body Corporate agreed to be bound by the Terms & Conditions of the original agreements.

[69] The use of the seal is regulated by section 190 of the Accommodation Module and section 190 (2) provides that if the Body Corporate has not resolved how the seal is to be used, it may be used if authorised by the committee. The factual issue then for determination in this case includes whether the Body Corporate acted by placing the seal on the document of assignment and whether by that act the Body Corporate acted with authority in its own right rather than by virtue of any resolution passed by the committee. The precise circumstances by which the seal came to be placed on the date of assignment is not dealt with in the material in a way which resolves this issue in favour of the Respondent.

[70] In my view there is an arguable case as to whether entry into the Deed of Assignment in and of itself bound the Body Corporate to the assignment and gave approval for it to occur, independently of the question of the validity or otherwise of the earlier Committee resolution concerning it.

[71] In my view this is clearly one of those more complex cases which is not capable of being resolved without conducting a mini trial on the documents, and without discovery and without oral evidence. There are factual disputes which it will be necessary to resolve at a hearing and there are arguable ways to overcome the alleged invalidity of the committee resolution. In my view there are real, not merely fanciful, prospects of success.

[72] In the exercise of my discretion, I decline to summarily dismiss the principal application.

The jurisdiction of this tribunal is to make an award of damages

[73] One matter of considerable significance that neither the party has touched upon is what the jurisdiction of this tribunal is to make an award of damages of the kind sought in the principal application. The issue was not without its complexities and I think it appropriate that the parties' focus upon it before this matter is set down for a hearing.

[74] By virtue of section 149B of the BCCM Act, a party to a dispute about a contractual matter regarding the engagement of a person as a caretaking service contractor or authorisation of a person as a letting agent may apply for an order of a specialist adjudicator, or for an order of QCAT exercising the Tribunal's original jurisdiction, to resolve the dispute. A dispute about a contractual matter in section 149B of the BCCM Act is, by definition, a complex dispute within the meaning of that Act. Section 229(2) of the BCCM Act specifically provides that the only remedy for a complex dispute is the resolution of the dispute by an order of a specialist adjudicator or an order of QCAT exercising the Tribunal's original jurisdiction under the QCAT Act.

[75] The expressions "contractual matter" and "caretaker service contractor" are each defined in Schedule 6 of the BCCM Act in the following terms:

> "contractual matter", about an engagement or authorisation of a Body Corporate manager, service contractor or letting agent, means—
>
> (a) a contravention of the terms of the engagement or authorisation; or
>
> (b) the termination of the engagement or authorisation;
>
> (c) the exercise of rights or powers under the terms of the engagement or authorisation; or
>
> (d) the performance of duties under the terms of the engagement or authorisation.

[76] The term, "complex dispute" is defined in Schedule 6 to include a "dispute mentioned in s149B".

[77] In my decision in *Body Corporate for the Lakes-Cairns CTS 28090 v Sunshine Group Australia Pty Ltd* [2023] QCAT 39, I was called to consider the operation of these provisions where one claim made was for the recovery of money allegedly overpaid. At [102] and [109] I said:

> [102] The Applicant here concedes that on any view of the matter, the relief sought in the proposed amended application for "AN ORDER that the Respondent repay to the Body Corporate the sum of $[TBA] representing the 10% Increases paid to it between 2015 up to the date of judgment" is one which is properly before this Tribunal and which it has jurisdiction to hear, although those provisions do not enlarge the jurisdiction of the Tribunal, and that they are to be exercised in aid of the jurisdiction otherwise conferred on the Tribunal, the jurisdiction in s.149B must be read as including the power to resolve the dispute by reference to normal and reasonable remedies, and that the Tribunal has power under s.9(4) of the QCAT Act to do all things necessary or convenient before exercising its jurisdiction.

> [109] In my view, in the present context, this Tribunal can exercise the powers to declare the agreement either valid or void or voidable and make any other orders that would necessarily flow from that, as well as the grant of any of the alternative forms of relief which are more conventional and in nature and involve an interpretation of a prime facie valid agreement.

[78] Here, however, neither party contends that the relevant agreements remain on foot and no declaration is sought. The claim made is for damages for their repudiation.

[79] I will therefore direct that the Applicant is to file within 14 days of the provision of these reasons a written outline of what he contends to be the basis for the jurisdiction of this Tribunal to grant the relief he claims.

[80] If it sees fit to do so, the Respondent has leave to deliver any responsive submissions fourteen days thereafter.

[81] The orders that I make are:

1. The application by the Respondent pursuant to s 47 of the QCAT Act to dismiss the Applicant's primary application is dismissed.
2. Within 14 days of the provision of these reasons the Applicant is to file a written outline of what he contends to be the basis for the jurisdiction of this Tribunal to grant the relief he claims.
3. If it sees fit to do so, the Respondent has leave to deliver any responsive submissions on the issue of jurisdiction fourteen days thereafter.
4. The parties have liberty to apply in respect of any other consequential or other orders which might be required to be made.
5. The costs of the Application are reserved.