

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Kallis v Innovision Body Corporate Services* [2023] QCAT 524

PARTIES: **EMMANUEL KALLIS**
(applicant)

v

INNOVISION BODY CORPORATE SERVICES
(respondent)

APPLICATION NO/S: OCL022-23

MATTER TYPE: Other civil dispute matters

DELIVERED ON: 18 December 2023

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Deane

ORDERS:

- 1. The Tribunal's record is amended to reflect the respondent's name is Innovision Body Corporate Services.**
- 2. The Application to extend or shorten the time limit or for waiver of compliance with procedural requirement filed 3 November 2023 is dismissed.**
- 3. The Application to resolve a complex dispute filed 11 April 2023 is dismissed.**

CATCHWORDS: STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY – JURISDICTION – GENERALLY – whether application is a complex dispute as defined by the *Body Corporate and Community Management Act 1997* within the Tribunal's jurisdiction – whether application was brought against the proper respondent – whether misconceived and ought to be dismissed

Body Corporate and Community Management Act 1997 (Qld), s 14, s 47AA, s 47B, s 133, s 149A, s 149B, s 229, s 229A, s 385, s 387, s 405, s 412, Schedule 6
Queensland Civil and Administrative Tribunal Act 2009 (Qld), 47

APPEARANCES & This matter was heard and determined on the papers

REPRESENTATION: pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act)

REASONS FOR DECISION

- [1] Mr Kallis filed an Application to resolve a complex dispute against Innovation Body Corporate Services¹ seeking the following orders:
- (a) ‘investigate and seek information about extra payments from me to the body corporate without any explanation what these charges are for’;
 - (b) ‘why, after many attempts by phone and requests by writing no explanation or reasons given for these payments to be made’ (the Application).
- [2] The documents show that the respondent’s name is Innovision Body Corporate Services. The Tribunal’s record ought to be amended to reflect the proper spelling.
- [3] Mr Kallis was directed to provide written submissions by 12 May 2023 as to the proper Respondent to the Application and as to the jurisdiction of the Tribunal to hear the Application.² He was directed to address the following:
- (a) Why Innovision Body Corporate Services is the proper Respondent in the proceeding;
 - (b) The basis upon which the matter concerns a ‘complex dispute’ as referred to in Section 229 of the *Body Corporate and Community Management Act 1997* (‘the Act’), and as defined in Schedule 6 of the Act;
 - (c) Why the Application is not in relation to ‘a dispute that is not a complex dispute’ as referred to in Section 229(3) of the Act;
 - (d) Why the dispute should not be resolved by a ‘dispute resolution process’ as referred to in Section 229(3) of the Act, and be managed by the Office of Commissioner for Body Corporate and Community Management, pursuant to Section 230 of the Act; and
 - (e) Why the Application to resolve a complex dispute should not be dismissed or struck out pursuant to section 47(1) of the QCAT Act as being misconceived, on the basis of not being brought against a proper Respondent, and for a lack of jurisdiction of the Tribunal to hear the matter.
- [4] Innovision Body Corporate Services was directed to provide submissions in response and Mr Kallis was directed to provide any submissions in reply.³ The Tribunal directed that it would determine, by hearing on the papers, having regard to the written submissions whether the proceeding should be dismissed or struck out pursuant to section 47 (1) of the QCAT Act as being misconceived, on the basis of not being brought against a proper respondent and for lack of jurisdiction of the Tribunal to hear the matter after 2 June 2023.⁴
- [5] Mr Kallis did not file any submissions as directed.
- [6] Innovision Body Corporate Services filed submissions in which it contends:

¹ Filed 11 April 2023.

² Directions made 19 April 2023.

³ Ibid.

⁴ Ibid.

- (a) Innovision Body Corporate Services (**IBCS**) is a company that provides administrative and secretarial services to bodies corporate within the meaning of section 14 of the Act.
- (b) IBCS is the body corporate manager for the Body Corporate for Persse Palace CTS 48289 (**Body Corporate**).
- (c) The matters complained of in the Application relate to levies or contributions struck by the Body Corporate. IBCS simply manages the process of issuing the notice of contributions to each lot owners within Persse Palace.
- (d) As a result, IBCS is not a proper respondent to the proceeding.
- (e) Further, the Application does not fall within the jurisdiction of the Tribunal as it is not an application to resolve a “complex dispute” as defined in Schedule 6 to the Act.
- (f) Therefore, IBCS respectfully requests that the Tribunal dismiss the Application as being misconceived, on the basis of not being brought against a proper Respondent, and for a lack of jurisdiction of the Tribunal to hear the matter.

[7] Mr Kallis did not provide any submissions in reply challenging any of the matters raised by IBCS.

[8] On 3 November 2023 Mr Kallis filed an Application to extend or shorten the time limit or for waiver of compliance with procedural requirement. The orders which Mr Kallis sought were as follows:

- (a) ‘investigate and seek information about extra payments from me to the body corporate without any explanation what these charges are for.’
- (b) ‘Votes that were shown didn’t have 75% of the homeowners for authorisation to pay the fee.’

[9] These orders are essentially the same orders as those sought in the Application. It did not seek any orders to extend or shorten the time limit or for waiver of compliance with procedural requirement. I therefore dismiss the Application to extend or shorten the time limit or for waiver of compliance with procedural requirement and I now proceed to determine the Application on the papers.

Is IBCS a proper respondent?

[10] On the limited information before me this dispute is a dispute between Mr Kallis, a lot owner, and the Body Corporate about certain levies or charges rather than a dispute with IBCS, the body corporate manager. I find that IBCS is not a proper respondent.

Is this proceeding about a complex dispute?

[11] I find that the Application is not about a complex dispute.

[12] Schedule 6 of the Act provides:

complex dispute means—

(a) a matter for which an application mentioned in section 47AA(3)(a), 47B(3)(a), 48(1)(a), 385(8)(a), 387(6)(a), 405(2)(a) or 412(2)(a) is, or may be, made; or

(b) a dispute mentioned in section 133, 149A, 149B or 178.

[13] On the limited information before me I am not satisfied that the dispute falls within any of the following:

- (a) section 47AA, section 47B, section 385, section 387, section 405 or section 412, which all relate to a dispute about contribution schedule lot entitlements.
- (b) section 48, which relates to a dispute about an interest schedule.
- (c) section 133, which relates to disputes arising out of a review of terms of service contracts.
- (d) section 149A, which relates to disputes about the transfer of a letting agent's management rights.
- (e) section 149B, which relates to disputes about a claimed or anticipated contractual matter about the engagement of a person as a body corporate manager, caretaking service contractor or letting agent.
- (f) section 178, which relates to disputes about an exclusive use by-law.

Is this proceeding about a dispute that is not a complex dispute? Does the Tribunal have jurisdiction to determine such a dispute?

[14] I find that this is a dispute 'that is not a complex dispute' as referred to in Section 229(3) of the Act. I find that the Tribunal does not have jurisdiction to determine such a dispute.

[15] The Tribunal is a court of limited jurisdiction and must find power to hear and determine the Application either in the QCAT Act or the Act.

[16] Section 229(3) of the Act provides:

Subject to section 229A, the only remedy for a dispute that is not a complex dispute is—

- (a) the resolution of the dispute by a dispute resolution process; or
- (b) an order of the appeal tribunal on appeal from an adjudicator on a question of law.

[17] Section 229A does not apply as it relates to actions by a body corporate to recover debts from a lot owner.

[18] Schedule 6 also provides:

dispute resolution process means—

- (a) department conciliation; or
- (b) dispute resolution centre mediation; or
- (c) specialist mediation; or
- (d) specialist conciliation; or
- (e) department adjudication; or

(f) specialist adjudication.

[19] The Tribunal is not part of the dispute resolution process as defined. Section 229(3) sets out the 'only remedy' for a dispute that is not a complex dispute. The Tribunal does not have jurisdiction to hear and determine such a dispute.

Summary

[20] I find that the proceeding is misconceived as the Tribunal does not have jurisdiction to hear it and it has not been brought against a proper respondent.

[21] Section 47 of the QCAT Act provides that where a proceeding is misconceived it may be dismissed or struck out. Where the Tribunal lacks jurisdiction, it has no power to make orders sought.

[22] I therefore dismiss the Application.