

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Moore v The Body Corporate of 19 Maryvale Street CTS 10427* [2024] QCAT 46

PARTIES: **LAURENA MOORE**  
(applicant)

**v**

**THE BODY CORPORATE OF 19 MARYVALE STREET CTS 10427**  
(respondent)

APPLICATION NO/S: OCL021-23

MATTER TYPE: Other civil dispute matters

DELIVERED ON: 30 January 2024

HEARING DATE: 30 January 2024

HEARD AT: Brisbane

DECISION OF: Member Deane

ORDERS:

- 1. The Tribunal's record is amended to reflect that the Applicant is Laurena Moore.**
- 2. The Tribunal's record is amended to reflect that the Respondent is The Body Corporate of 19 Maryvale Street CTS 10427.**
- 3. The Application to resolve a complex dispute (excluding lot entitlement disputes) filed 5 April 2023 is dismissed with no order as to costs.**

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 – whether matter should be transferred – whether costs order should be made

*Body Corporate and Community Management Act 1997* (Qld), s 47AA, s 47B, s 48, s 133, s 149A, s 149B, s 178, s 229, s 229A, s 385, s 387, s 405, s 412, Schedule 6  
*Queensland Civil and Administrative Tribunal Act 2009* (Qld), 47, s 52, s 100, s 102

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) (QCAT Act)***REASONS FOR DECISION**

- [1] Lilley and Power Property Agents Pty Ltd filed an Application to resolve a complex dispute (excluding lot entitlement disputes) on 5 April 2023 (the Application) against the Body Corporate Committee of 19 Maryvale Street CTS 10427 seeking orders regarding external courtyard areas, permission to erect privacy fencing, amendments to by-laws, trimming of trees on common property, provision of keys to allow equal access to common property area, waiver of any requirement to hold a General Meeting and an order that the applicant not be required to pay for the holding of a General Meeting.
- [2] The Application claimed it was a dispute about a review of exclusive use by-laws.<sup>1</sup>
- [3] The Tribunal directed Lilley and Power Property Agents Pty Ltd, the named applicant and the Body Corporate Committee of 19 Maryvale Street CTS 10427, the named respondent to file submissions, including as to whether Laurena Moore should be substituted as the Applicant, whether the Body Corporate of 19 Maryvale Street CTS 10427 (Body Corporate) should be substituted as the Respondent, the basis of the Tribunal's jurisdiction and whether the Application should be dismissed or struck out for lack of jurisdiction and for these issues to be determined on the papers after 26 May 2023.<sup>2</sup>
- [4] Submissions were received.<sup>3</sup> The matter has now been allocated and I proceed to determine these matters. The delay in determining these matters is regrettable and relates to resourcing issues.
- [5] Lilley and Power Property Agents Pty Ltd's submissions concede that the proper applicant is Laurena Moore, that it acts as agent for Ms Moore and the proper respondent is the Body Corporate of 19 Maryvale Street CTS 10427. It also essentially conceded that the Tribunal does not have jurisdiction and requested that the Application be transferred to a suitable adjudication or conciliation application or other process and sought waiver of fees or refund of the Tribunal filing fees if the Application was dismissed rather than transferred.
- [6] The Body Corporate's submissions essentially concede that Laurena Moore and it are the proper parties. It submits that the Tribunal does not have jurisdiction under section 178 of the *Body Corporate and Community Management Act 1997 (Qld)* (the Act) nor on any other basis to determine this dispute. It submits that the Tribunal should dismiss or strike out the Application for lack of jurisdiction and consider making an order for costs.

**Is this proceeding about a complex dispute?**

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

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<sup>1</sup> *Body Corporate and Community Management Act 1997 (Qld)*, s 178 (the Act).

<sup>2</sup> Directions made 18 April 2023.

<sup>3</sup> Applicant's submissions filed 9 May 2023 and 5 June 2023. Respondent's submissions filed 26 May 2023 and 20 June 2023.

[8] 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.

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

(a) section 178, which relates to disputes about an exclusive use by-law where the owner of the lot to which the exclusive use by-law attaches stops being a body corporate manager, service contractor or letting agent for the scheme and the application is brought by the body corporate. The amendment of by-laws sought does not relate to such an exclusive use by-law and the Body Corporate is not the applicant.

(b) section 47AA, section 47B, section 385, section 387, section 405 or section 412, which all relate to a dispute about contribution schedule lot entitlements.

(c) section 48, which relates to a dispute about an interest schedule.

(d) section 133, which relates to disputes arising out of a review of terms of service contracts.

(e) section 149A, which relates to disputes about the transfer of a letting agent's management rights.

(f) 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.

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

[10] 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.

[11] 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.

[12] 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.

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

[14] Schedule 6 of the Act 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.

- [15] The Tribunal is not part of the dispute resolution process as defined. Section 229(3) of the Act 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.
- [16] I find that the proceeding is misconceived as the Tribunal does not have jurisdiction to hear it.
- [17] 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.

**Should the matter be transferred rather than dismissed? Should the filing fee be refunded?**

- [18] I am not satisfied that the matter should be transferred. I therefore dismiss the Application. I am not satisfied that the filing fee should be refunded.
- [19] The submissions on behalf of Ms Moore do not clearly set out why the Tribunal should transfer the proceedings rather than dismiss them. The Body Corporate submits that it does not consider that the Tribunal may transfer the matter to an adjudication, conciliation or another dispute resolution procedure but does not clearly set out why.
- [20] The Tribunal has a discretion as to whether it makes an order transferring a matter outside of its jurisdiction.
- [21] If the tribunal considers it does not have jurisdiction to hear all matters in a proceeding, the Tribunal may by order transfer the matter or matters for which does not have jurisdiction to a court of competent jurisdiction or another tribunal or entity having jurisdiction to deal with the matter or matters.<sup>4</sup>
- [22] The jurisdictional issue was raised at an early time in the proceeding. The Body Corporate’s submissions indicate that a motion requisition form for the 2023 General Meeting had been sent out.<sup>5</sup> There is no information before the Tribunal as to whether some or all of the issues raised were dealt with by the 2023 General Meeting.
- [23] I am not satisfied on the material before me that there is any particular or significant prejudice to Ms Moore if she is required to commence an appropriate application managed by the Office of Commissioner for Body Corporate and Community Management should she wish to do so.

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<sup>4</sup> QCAT Act, s 52(2).

<sup>5</sup> Filed 20 June 2023.

[24] The submissions on behalf of Ms Moore do not clearly set out why the Tribunal should refund the filing fee paid. An applicant is responsible for the choices it makes in deciding to commence proceedings. The Tribunal has been required to deal with the Application.

**Should a costs order be made?**

[25] I find that there should be no order as to costs.

[26] If the Tribunal considers a proceeding is misconceived the Tribunal has a discretion to make a costs order against the party who brought the proceeding to compensate another party for any reasonable costs, expenses, loss, inconvenience and embarrassment resulting from the proceeding.<sup>6</sup>

[27] Unless the QCAT Act or an enabling Act otherwise provides, the starting position is that each party is to bear their own costs.<sup>7</sup> The QCAT Act does provide for the awarding of costs where it is in the interests of justice to do so.<sup>8</sup>

[28] In addition to section 47 I consider the factors referred to in section 102(3) of the QCAT Act, to the extent they are relevant, to determine if the interests of justice point to a costs award.<sup>9</sup> Those considerations are largely in the nature of what may be regarded as 'entitling' or 'disentitling' factors.

[29] The matters raised by the Body Corporate relate to claimed time and inconvenience in dealing with the issues raised by or on behalf of Ms Moore prior to the commencement of the Application rather than costs, expenses and inconvenience resulting from the proceeding. There is no suggestion that Ms Moore commenced these proceedings despite the Body Corporate alerting her to its view that the Tribunal lacked jurisdiction to determine these matters. As noted earlier the jurisdictional issue was raised at an early time in the proceeding. I am not satisfied that I should exercise my discretion to make a costs order.

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<sup>6</sup> QCAT Act, s 47(2)(c).

<sup>7</sup> Ibid, s 100.

<sup>8</sup> Ibid, s 102.

<sup>9</sup> This is not a review of a reviewable decision and therefore section 102(3)(d) of the QCAT Act is not relevant.