

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Perrin v Ernst Body Corporate Management* [2024] QCAT 87

PARTIES: **VINCENT PERRIN**  
(applicant)

v

**ERNST BODY CORPORATE MANAGEMENT**  
(respondent)

APPLICATION NO/S: OCL075-23

MATTER TYPE: Other civil dispute matters

DELIVERED ON: 19 February 2024

HEARING DATE: 16 February 2024

HEARD AT: Brisbane

DECISION OF: Member Deane

ORDERS: **The Application to resolve a complex dispute (excluding lot entitlement disputes) filed 28 November 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 misconceived and ought to be dismissed 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 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] Mr Perrin filed an Application to resolve a complex dispute (excluding lot entitlement disputes) on 28 November 2023 (the Application) against Ernst Body Corporate Management seeking orders:

To have the committee not abuse me and harass me.

To be paid compensation for the stress, humiliation and distress that the body corporate and committee has caused.

- [2] The Application claimed it was a dispute about a claimed or anticipated contractual matter.<sup>1</sup>
- [3] The Tribunal directed Mr Perrin and Ernst Body Corporate Management, the named respondent to file submissions, including as to whether Ernst Body Corporate Management is the proper 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 13 February 2023.<sup>2</sup>
- [4] No submissions were received. I proceed to determine these matters.

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

- [5] I find that the Application is not about a complex dispute.
- [6] 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.

- [7] On the limited information before me I am not satisfied that the dispute falls within any of the following:
- (a) 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. The dispute appears to be between Mr Perrin, a lot owner, and the body corporate, being the Body Corporate of Lake Hills CTS 26051 or the body corporate committee. The evidence is that Ernst Body Corporate Management is the body corporate manager. I therefore find that Ernst Body Corporate Management is not a proper respondent.
  - (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.

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<sup>1</sup> *Body Corporate and Community Management Act 1997* (Qld), s 149B (the Act).

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

- (f) 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.

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

- [8] 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. Even if the application had named the Body Corporate of Lake Hills CTS 26051 or the body corporate committee the Tribunal would still not have jurisdiction.
- [9] 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.
- [10] 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.
- [11] Section 229A of the Act does not apply as it relates to actions by a body corporate to recover debts from a lot owner.
- [12] 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.
- [13] 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. If Mr Perrin wishes to pursue this dispute he should make enquiries with the Office of Commissioner for Body Corporate and Community Management.
- [14] I find that the proceeding is misconceived as the Tribunal does not have jurisdiction to hear it.
- [15] 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.

**Costs**

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

- [17] 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>3</sup>
- [18] Unless the QCAT Act or an enabling Act otherwise provides, the starting position is that each party is to bear their own costs.<sup>4</sup> The QCAT Act does provide for the awarding of costs where it is in the interests of justice to do so.<sup>5</sup>
- [19] 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>6</sup> Those considerations are largely in the nature of what may be regarded as 'entitling' or 'disentitling' factors.
- [20] Ernst Body Corporate Management did not file any submissions in this matter and did not seek a costs order. 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>3</sup> QCAT Act, s 47(2)(c).

<sup>4</sup> Ibid, s 100.

<sup>5</sup> Ibid, s 102.

<sup>6</sup> This is not a review of a reviewable decision and therefore section 102(3)(d) of the QCAT Act is not relevant.