

## TERMINATED CARETAKING AGREEMENTS - IS IT THE COURTS' PROBLEM?

We all know that disputes about terminated caretaking and letting agreements are heard by QCAT. However the Supreme Court of Queensland has recently considered whether the Courts have jurisdiction to hear claims arising out of a terminated caretaking and letting agreement (**Dunlop Case**).

If they do, it would appear likely that access to litigation by caretakers and letting agents may increase.

### The facts

- Mr Dunlop conducted a caretaking and letting business at an apartment complex in Port Douglas;
- Mr Dunlop was subsequently convicted of an offence, and at the time of the conviction, Mr Dunlop's property licence was cancelled;
- The Body Corporate made enquiries in to Mr Dunlop's cancelled licence and, upon confirmation, resolved to terminate the caretaking and letting agreement;
- Mr Dunlop filed a claim in the Supreme Court for the lost value of the caretaking business, alleging that there was a breach of contract and *Australian Consumer Law*;
- Mr Dunlop's claim was against the Body Corporate, committee members and solicitor;
- The Body Corporate sought an order setting aside Mr Dunlop's claim on the basis that the Supreme Court did not have jurisdiction, as the claim should be considered a "complex dispute" within the meaning of the *Body Corporate and Community Management Act 1997* (Qld) (**BCCMA**);
- The Body Corporate alleged that the "only remedy" for resolution of the dispute is by an order of a specialist adjudicator or QCAT.

### What did the Supreme Court think?

The Supreme Court largely agreed with the Body Corporate's position, given the very precise wording of the BCCMA, by commenting:

*"The applicants submit the claim against the body corporate is a complex dispute ... namely a dispute between the body corporate and a caretaking service contractor and letting agent about a contractual matter, namely the termination of the engagement of the contractor and letting agent. From this it follows... that pursuant to s 229 the "only remedy" for resolution of the dispute is by an order of a specialist adjudicator or QCAT."*

The Judge further commented that "these conclusions trend in favour of granting the application to set aside the claim and statement of claim in respect of the body corporate for the reason that it is a complex dispute to be resolved pursuant to s229(2)".

The Court considered that some aspects of the claim may be heard in QCAT and the remainder heard in the Supreme Court. However this outcome would be less than desirable, given that each claim has some connection to the other claims put forward by Mr Dunlop.

In these uncertain circumstances, the Courts ultimately refrained from reaching a conclusion on the matter of jurisdiction pending further submissions on the matter.

### **What does this mean?**

Whilst the outcome of this case is yet to be determined, it is of particular note to any Strata Manager that should the Courts take the view that such matters are within the jurisdiction of the Courts, it would appear likely that access to litigation may increase for a terminated caretaker/letting agent.

Regardless of the outcome, the case serves as a timely reminder to ensure that any Body Corporate considering taking such steps to terminate a caretaker/letting agreement seek the professional advice of a Body Corporate lawyer.

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