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ADVANCED LEVY COLLECTION: COLLECTING THE UNCOLLECTABLE – RECOVERING LEVIES FROM AN OWNER WHO HAS DISAPPEARED

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Introduction

In NSW a court judgment obtained against a lot owner for outstanding levies, interest and costs can be enforced in several ways depending on the amount involved and what assets, if any, the owner holds. One way of enforcing a judgment for at least \$10,000 is by issuing a writ against the owner's property. This is very rarely done and until recently this procedure had never resulted in payment of a court judgment for overdue levies.

A Writ Against Land

A writ can be recorded on the title of any property owned by a lot owner in levy arrears once a court judgment for more than \$10,000 is obtained by the owners corporation against the owner. The owners corporation lodges a form with NSW Land Registry Services and requests that the writ be recorded on the title of the property.

Once the writ is recorded on the title of the property, the owners corporation can request the NSW Sheriff to sell the property and then use the sale proceeds to pay the judgment debt.

Once the Sheriff is satisfied that all of the requirements for the sale of the property have been met, the Sheriff will then sell the property on the open market. The sale proceeds are then used to pay the overdue levies.

A Problem with Writs

One issue that can arise after the sale is whether the owners corporation can recover the entire debt owed to it or only the judgment amount that supported the writ. In NSW under the *Uniform Civil Procedure Rules 2005* the Sheriff is only required to pay the judgment amount that supported the writ but not the entire debt that is owed to the owners corporation. For example if the judgment debt was \$20,000 but the lot owner owed in total \$50,000 to the owners corporation, then the Sheriff is only required to pay the owners corporation \$20,000 from the proceeds of sale with some interest.

Judgments obtained in levy recovery matters only cover a certain period and amount and often do not cover the full amount of what is owed to the owners corporation at the time of sale of the property by the Sheriff. Therefore, how can an owners corporation ensure that it can recover the full amount of the debt owed to it from the proceeds of sale of the property? The answer to this dilemma is set out below.

The Law Case

In the recent case of *The Owners-Strata Plan No. 7396 -v- Law* (7 August 2018), judgment was obtained by the owners corporation against a lot owner, Mr Law, in September of 2011 for a specific amount for overdue levies, interest and recovery costs. After September 2011, further levies, interest and costs fell due. The owners corporation arranged for a writ to be recorded on Mr Law's property and the property was subsequently sold by the Sheriff. However the Sheriff did not pay the full amount of the debt to the owners corporation and only paid the judgment amount with some interest. The Sheriff simply refused to pay the remaining debt which was substantial even though the Sheriff was holding a large surplus of funds from the sale proceeds.

In order to pay the entire debt from the proceeds of sale, the Sheriff required the owners corporation to obtain a further judgment or a Court order allowing the payment of the further debt.

Instead of suing the owner again to claim the further overdue levies, interest and costs that had accrued after the 2011 judgment, the owners corporation applied to the Supreme Court for an order that the requirement to sue the owner be dispensed with and an order be made allowing the Sheriff to pay the further debt owed to the owners corporation from the proceeds of sale. The owners corporation was successful because the owner had left Australia and could not be found and the Court came to the view that it would serve no purpose to require the owners corporation to sue the owner again and incur the expense of another round of litigation.

Conclusion

The *Law* case shows that it is possible to collect overdue levies by recording a writ on the owner's land and selling the owner's property. The case also shows that in some circumstances it is possible to avoid the need to sue the owner again, and a court order can be made to require the Sheriff to pay the entire debt owed to the owners corporation from the proceeds of sale of the owner's property.

Muellers acted for the successful owners corporation in the *Law* case.

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