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DON'T FORGET TO DOT YOUR I's AND CROSS YOUR T's

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DON'T FORGET TO DOT YOUR I's AND CROSS YOUR T's

A recent decision by NCAT reinforces the need for strata managers to dot their I's and cross their T's if they want to be paid for work they do for owners corporations. The case sends an important message for strata managers to ensure that they have a strata management agency agreement signed by the owners corporation before providing any services to the owners corporation.

What was the case about?

In September 2019 an owners corporation held an AGM and passed a resolution to appoint a new strata manager on the terms of a proposed strata management agency agreement. The owners corporation did not sign the agreement at the AGM. Instead, after the AGM the strata manager and owners corporation negotiated to make changes to the agreement but could not reach agreement on what those changes would be.

Despite that, the strata manager began providing and charging for services provided to the owners corporation.

In October 2019, the owners corporation held an EGM at which it rescinded the resolution passed at the AGM to appoint the strata manager and passed a further resolution to appoint a different company as its strata manager.

Five days later, the strata manager who thought he had been appointed at the AGM deducted fees in the sum of \$9,300.00 from the owners corporation's trust account that he was (by that stage) holding and (presumably) then handed the books and records of the owners corporation to the strata manager that was appointed at the EGM.

What happened next?

Later in 2019, the owners corporation applied to NCAT for an order to require the strata manager to repay the \$9,300.00 that had been deducted from the trust account. The owners corporation claimed that the strata manager was not entitled to be paid \$9,300.00 in fees because there was no signed strata management agency agreement between the owners corporation and the strata manager.

What happened next?

NCAT agreed with the owners corporation and ordered the strata manager to repay the owners corporation the sum of \$9,300.00. The strata manager appealed against NCAT's decision. The appeal was unsuccessful. The Appeal Panel of NCAT concluded that:



- (a) the strata manager was not entitled to claim fees from the owners corporation without a signed strata management agency agreement;
- (b) the strata manager's invoice did not prove that the strata manager had done any of the work for which he had charged; and
- (c) some of the fees that had been charged by the strata manager related to the AGM at a point in time when a previous strata manager still represented the owners corporation and his agreement provided that any services rendered in connection with the AGM would be included in the base fee as a result of which there could be no additional charges for providing those services.

In the end result, the strata manager was required to repay the \$9,300.00 in fees to the owners corporation.

Lessons to be learned

The case makes clear that any strata manager who provides services to an owners corporation for reward must have in place a signed strata management agency agreement in order to be entitled to retain fees charged to the owners corporation.

The case also makes clear that strata managers must check their schedule of services contained in their agreement to ensure they are entitled to charge extra for providing services and that those services are not covered under the base fee.

Finally, the case reinforces the requirements of the *Property and Stock Agents Act 2002* for a strata manager to have a signed agency agreement in place before he or she is entitled to any fees for services provided to an owners corporation.

Case: *Perpetual Strata Management Pty Ltd v The Owners – Strata Plan No. 97977* [2020] NSWCATAP 228

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JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for over 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of all strata law inclusive of by-laws, building defects and levy collections.

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