

As I see it:

Stockland refuses to accept Umpire's decision in Tribunal matter.

On the afternoon of the 10th January 2011 the Secretary of the Queens Lake Village Residents Association receive a Summons advising that the operator Stocklands (formally Aevum) had lodged an Appeal with the District Court against the Decision of the CTTT Findings in respect to our case where we had rejected the budget because of the lack of detail in two Line Items of Insurance and Corporate Recharge (Management Fees).

The Hearing is set down for the 8th February, in Sydney.

As the operator would not accept the Umpires decision the Residents now have to consider their options.

History of the case:

On the 25 May 2010 the Residents of Queens Lake Village (QLV), Laurieton (at that time operated by Queens Lake Village Pty Ltd, a subsidiary company of Aevum Limited) met and after considering all the information before them voted unanimously to reject the proposed budget and increase in recurrent charges. Aevum was taken over by Stockland in late 2010.

The Direction Hearing, 17 August 2010.

Both the operator and the Residents' Committee had made Applications based on similar issues.

Both matters were dealt with together.

As this was a Directional Hearing no evidence was taken on this day.

The Member stated that he would allow one only spokesperson from each side. After convincing the Member that I had the authority of the Residents and Residents Committee he allowed me to be the Residents spokesperson, he also stated that a copy of the Minutes of any meeting that gave me that authority was to be included in the Application attachments. He also gave certain clarifying directions regarding our Application.

Our Application listed three issues:

1. The non payment of Recurrent Charges for vacant units for the year 2009-10.
2. Insurance.
3. Corporate Recharge (Management Fees).

I advised that the matter of accountability of unpaid Recurrent charges had been resolved. This was achieved by the operator providing an 'Amended Draft Financial Statement' which now recognises that the Financial position for the year 2009-2010 now correctly shows a surplus of \$482, whereas previously the Budget papers had in our opinion incorrectly shown a deficit of \$17,829.

The Member then adjourned the Application and set the three weeks as the deadline for Residents to submit their Application, two copies, one for the Tribunal and one for the operator. The Application has to contain all evidence and arguments and we were advised that additional items would probably not be admissible at a later date.

The operator then had the next two weeks to reply to our evidence.

The Member will then set aside a full day for a Hearing (to be advised), sometime after the date the operators response was to be received.

The operators Representative (a Senior Manager, Operations) and I were then requested to go into an adjoining interview room to try to reach a compromise. No offer was made on the matter of Insurance. As there was no offer additional to the one that had been made one week prior to the Directional Hearing which was to keep Corporate Recharge at the 2009-2010 level of \$27,600 (a reduction of only \$994), no compromise could be reached and we agreed that the Tribunal Member would be requested to make a ruling on both Insurance and Corporate Recharge issues at the full Hearing.

We then returned to the Tribunal room where the above request was made.

I advised the Member that the Residents Representatives were willing to agree that any order handed down by the CTTT will be accepted and not appealed and I suggested that Aevum might agree to the same, however, the operators Representative advised that his options would be left open in this regard.

I then suggested that the Tribunal might consider the matter based on the written evidence with a written decision, thus avoiding the need for the Member and operator's representatives to travel up from Sydney. The Member advised that both parties would have to request this in writing, the operators representative stated that he would not agree to this proposal.

Although I believe that the Application we had prepared for this day would have been sufficient to present our case, the Residents now had the opportunity to review all their evidence and make any appropriate changes deemed necessary prior to submitting an Amended Application by the due date.

Full Hearing Residents v Operator:

Issues: Budget rejected because of the inclusion of Insurance, \$23,100 and Corporate Recharge \$28,594 (Management Fees)

The Tribunal Hearing took 3 hours.

The Senior Member reserved his decision, which is expected in writing in 3 or 4 weeks.

I had the 3 other Budget Sub-Committee members at the Table with me although I did all the speaking. There were also some 45 Residents present. The operator was represented as previously by the Operations Manager, Assistant Operations Manager, Regional Manager and Village manager. Conciliation was the first consideration of the Member, he stated that after a perusal of the Submissions he had not made any decision. He said that if he was to find in favour of the Residents on both counts that this might result in a win for this year's budget but may rebound in next year's budget as the operator might isolate the village from the economies of scale that the operations of a large company give us. Eg; Insurance this year \$23,100 whereas the operator had produced a quotation for the insurance of the village in its own right of \$48,000.

The operator's representative and I retired to a room to discuss a compromise, nothing new was forthcoming, so we were back in the Hearing Room within 5 minutes.

The Member briefly discussed the submissions. I was given the opportunity to make an opening statement, then the operators representative replied. the Member made comment on a number of

points, particularly in respect to the lack of detail given to Residents with the budget papers. I was then given the opportunity to comment on the operators submission, which I did by pointing out a number of what we considered to be inaccurate or misleading statements.

The operators representative was then given the opportunity to reply but stated that a lot of what I had said was not accurate and which he could refute, but thought that this was not the time or place. My thought was that if this was not the time or place then when will it be appropriate.

The Member then again spoke about conciliation and compromise, and suggested that we again try to reach a settlement only this time with him present and off the record.

During this private meeting the Member again pointed out the danger to the Residents of him making a decision in their favour. I offered a compromise which would have cost the operator \$15,000 for the year, this was not accepted by the representative.

I then returned to the room with only the Residents present and advised that we had 3 options.

1. To withdraw our Application.
2. To accept a compromise of a reduction of \$950 in Corporate Recharge.
3. To leave it to the Member to bring down a decision, and if it were in the Residents favour to accept the consequences either by the decision being appealed to the District or Supreme Court. It had been stated by the operators representative that the company would not accept a decision in favour of the Residents and would pursue the matter because of the possible flow on effect to its other villages.

The Residents decided to wait for the decision to the Member and accept the consequences. I advised the Member of our decision.

The Member and operators representatives then returned to the room. The Member advised that he would reserve his decision and give written findings in three or four weeks. The proceedings were closed.

Five weeks later the Order was received as follows:

Application to the Tribunal concerning Queens Lake Village 349 Ocean Drive, LAURIETON NSW 2443 Australia

On 9/12/10 the following orders were made:

1. By consent of the parties the name of the applicant in proceedings RV 10/28914 and of the respondent in proceedings RV 10/31794 is corrected to Queens Lake Village Pty Ltd (ACN 059 663 106).
- 2, Pursuant to the provisions of the Retirement Villages Act 1999, s.115(2)(e) an order is made that the line item of "insurance" in the sum of \$23,100.00 and the line item of "corporate recharge" in the sum of \$28,594.00 are both excluded from the budget for Queens Lake Retirement Village for the financial year 2010-2011.

The decision came in the form of a 15 page document outlining the arguments made by both sides and Mr Smith's opinion as to the validity of these.

In essence Mr Smith (Senior Tribunal Member) says:

Insurance.

(a) Despite the fact that residents own none of the village property, Aevum has the right to expect that they will be reimbursed the cost of the insurance through our recurrent charges.

(b) However, residents are obliged only to pay for those items of insurance listed under section 100 of the Act i.e. public liability, damage and costs incidental to the reinstatement of buildings to their condition when new. It would seem that we have been wrongly charged for additional insurance in the past.

Corporate Recharge.

Mr Smith is of the opinion that there are functions performed at head office which probably either directly or indirectly provide a service to residents, and that there are others which do not.

Considering the lack of information provided to residents during the budget process and also to the Hearing, it is impossible for him to judge which of the functions performed by head office staff are ones that Aevum can rightly charge us for. He has drawn Aevum's attention to Regulation 17(2) which details the information it is necessary for them to provide if they expect us to fund what they consider to be our share of the Corporate Recharge.

So, we can expect that future Budgets will contain the line items Insurance and Corporate Recharge but we can also expect that the costs involved will be somewhat reduced.

The big win we have had is that, considering that Aevum have been remiss in dealing with these two items, we are not obliged to pay anything this year for either of those line items. This is a saving of \$51,694 for the budget year 2010/11.

On the 24th December the Residents at QLV received a letter from Stockland's Retirement Living Division Operational Manager, Paul Burkett (dated 23rd) which stated that: "***Stockland had just received the information and is currently reviewing it. We will keep you informed once the review is completed.***"

On the 23rd December Stockland's legal representative Mr Koumoukelis of Gadens Lawyers, presumably with the full knowledge and authority of Stockland's senior management lodged the appeal documents with the District Court.

The content of the letter from Paul Burkett, and the timing of its delivery give evidence of the less than transparent intent of the operator, and is indicative of the way in which they treat the residents in their villages.

The Residents believed that by participating in a CTTT Hearing the differences of opinion between them and the operator could be resolved in respect to the two Line Items in dispute. The Residents advised the CTTT both verbally and in writing that they would accept the decision handed down by the experienced Tribunal Senior Member, Mr Smith. The matter before the court shows that the Plaintiff was not willing to accept the Umpire's decision.

John Cooper,

Resident.

Queens Lake Village, Laurieton.

14 January 2011