

To the Residents of Queens Lake Village.

Re: District Court Hearing – 14 and 15th March 2011

Queens Lake Village Pty Ltd v Queens Lake Village Residents Association

The Hearing was listed for 9.30am on 14/03/11 at 9.30am in Court 16c, John Madison Tower, Sydney before Ms Justice Truss. The case was the first on the list and the Judge advised that the matter was to be heard before His Honour Judge L A Levy SC, in Court 14c at 10.15am.

There were 31 Residents present, including seven of the RVRA Committee.

We were represented by Peter Hill of Hill & Co Lawyers, accompanied by his Para-Legal assistant.

The operator was represented by Ivan Griscti, Council for the plaintiff, with Arthur Koumoukelis from Gadens Lawyers as instructing Solicitor and a Para-Legal. Paul Burkett was present as was a fellow who I presume was from the Stockland legal department.

Both Peter Hill and Ivan Griscti introduced themselves to the Judge and presented copies of submissions that they had exchanged last Friday. Justice Levy advised that he could allow one and a half days for the matter to proceed at this time.

Peter Hill raised the issue of a transcript of the Consumer Trader and Tenancy Tribunal (CTTT) he advised that he had requested a copy from Gadens Lawyers (GL) shortly after the Directional Hearing of the 8th February 2011 to be advised that a transcript was not available. On making his own enquiries he found out last Friday that a recording of the hearing was available. It was agreed that a copy be obtained from the CTTT and a written transcript be produced, this would take at least a week.

Ivan Griscti occupied most of this first day with his opening argument submitting that Mr J. Smith at the CTTT Hearing on the 8th November 2010 had erred at law by not using his discretionary powers to find just what percentage or amount that the Residents should have been required to pay in respect to the two line items, Insurance and Corporate Recharge (Management Fees) that were in dispute. He went to great length to quote various Sections and Clauses from the Retirement Village and CTTT legislation to try and prove his argument.

Judge Levy questioned Ivan Griscti on many of his references to the legislation and also questioned the relevance of some of his statements and how they were in support of his argument. There were several conversations between Justice Levy and Ivan Griscti about the import and meaning of the words “May”, “Must” and “Shall”.

Peter Hill took only 20 minutes to present his opening submission advancing the argument that it was not compulsory for Tribunal Member Smith to make a determination as to the percentage or amount that the Residents should contribute towards Insurance and Corporate Recharge, he also suggested that JS was unable to do so because of the lack of detail available to him in the operators submission.

At 3.30pm the matter was adjourned till 10.30 the next morning, Tuesday, 15th March 2011.

The matter was resumed at 10.30am, Tuesday. Judge Levy advised that he had read both submissions overnight.

Peter Hill occupied about 45 minutes in advancing his arguments in support of our defence of the CTTT decision. He presented copies of the 2000 Regulation, the Report to Parliament of 2005 and Hansard extracts from the time of the introduction of the Amendment Act in 2008.

At 11.30 the matter was adjourned to enable Judge Levy to hand down a decision in another matter. We resumed at 12 Noon.

Ivan Griscti then spent the next 60 minutes further advancing his arguments.

Judge Levy then suggested that the transcript of the CTTT Hearing should be considered before a decision was handed down. It was decided that the matter be adjourned till the 8th April at 10.00am at which time both parties after considering the CTTT transcript would be allowed to make final submissions with the hope that a determination would be made on that day.

I have found this a most interesting experience and am confident that the Residents of Queens Lake Village will receive an outcome that will be just and hopefully favourable to them.

However, I am still concerned that the Residents of a village can be summonsed to defend an action that they were not responsible for; eg: the decision of the CTTT in a Tribunal matter. I am of the opinion that in the case of CTTT decisions that are appealed to a higher authority then the CTTT should be the Defendant or at least named as a joint Defendant in such matters.

I look forward to the 8th April.

John Cooper.

16th March 2011