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E-Alert: Unpaid Body Corporate Levies – What are the time limits for recovery?

Bodies corporate have been anxiously awaiting the recent decision of the Queensland Court of Appeal in *Body Corporate for Mount Saint John Industrial Park Community Title Scheme 18632 v Superior Stairs & Joinery Pty Ltd* [2018] QCA 173 which has overturned a District Court decision last year regarding time limitations for commencing proceedings to recover levies and penalties under body corporate legislation.[1]

District Court Decision

In the District Court decision of *BC for Mount Saint John Industrial Park CTS v Superior Stairs & Joinery Pty Ltd* [2017] QDC 245, the Defendant (a lot owner) argued that the body corporate's action for recovery of unpaid levies, penalty sums and recovery costs[2] should be struck out on the basis it was brought outside the limitation period. The defendant submitted the applicable time limitation period for bringing a body corporate debt recovery action was contained in section 145 of the Body Corporate and Community Management (Standard Module) Regulation 2008 (Qld) ('**Standard Module**').

Section 145 of the Standard Module provides as follows:

"145. Payment and recovery of body corporate debts
1) If a contribution or contribution instalment is not paid by the date for payment, the body corporate may recover each of the following amounts as a debt –
a. The amount of the contribution or instalment;
b. Any penalty for not paying the contribution or instalment;
c. Any costs (recovery costs) reasonably incurred by the body corporate in recovering the amount
2) If the amount of a contribution or contribution instalment has been outstanding for 2 years, the body corporate must, within 2 months from the end of the 2-year period, start proceedings to recover the amount."

Pursuant to this provision, the Defendant argued that the time limit for debt recovery by body corporates was two years and two months from the date the contribution became outstanding. In the alternative, the Plaintiff submitted that the applicable time limit to commence an action was six years from the date the contribution became outstanding pursuant to section 10 of the *Limitations of Actions Act 1974* (Qld).

The District Court agreed with the Defendant's arguments, ruling that the limitation period for bodies corporate to recover debt was prescribed by section 145(2) of the Standard Module, taking precedence over the general limitation period contained in the *Limitations of Actions Act 1974* (Qld).

The Appeal

The Court of Appeal, however, has since overturned the District Court's decision, in *Body Corporate for Mount Saint John Industrial Park Community Title Scheme 18632 v Superior Stairs & Joinery Pty Ltd* [2018] QCA 173. In this decision, McMurdo JA stated that the issue was not one of competing limitation periods. The correct question was whether section 145 of the Standard Module prescribes a limitation period.[3]

The Outcome

McMurdo JA, with Mullins and Bond JJ concurring, concluded that section 145(2) of the Standard Module which

provides that recovery action must be taken within two years and two months is not a limitation period barring legal action after that time. Rather, the purposes and effect of section 145(2) is to compel a body corporate to bring proceedings.

In his judgment, McMurdo JA reasoned that the provision does not serve any of the purposes for which limitation periods are enacted.[4] Further, the Court found that it would be unusual for a limitation period to operate upon the condition that a cause of action has accrued.[5]

The Consequences

Pursuant to this Court of Appeal decision, it is now clear that bodies corporate in Queensland have six years under section 10 of the Limitations of Actions Act 1974 (Qld) to bring an action for recovery of unpaid levies, penalty sums and recovery costs. Time accrues from the date the contribution becomes outstanding.

While relevant sections of the various regulation modules compel a body corporate to bring proceedings, they do not impose a limitation period for recovery of levies and any associated interest and costs.

This position will stand in Queensland unless it is overturned by the High Court or legislation is enacted to clarify that Parliament's intention is to shorten the limitation period from the six year period that applies to debt recovery.

Parliament may decide to enact amendments to make its intentions clear, but given industry surprise when the first decision was made, we do not expect this to happen quickly.

There are some salutory points to be observed. Bodies corporate should not unduly delay in collecting unpaid contributions. Irrespective of limitation periods, delay is unfair on lot owners who have paid on time. There may be genuine reasons for late payment and, if so, a body corporate can agree to a repayment plan.

Also, merely because a statutory rate of interest applies to late payments (at a very generous rate of 30% per annum), it is not (in our view) an incentive to allow delay to occur.

[1] Section 312 *Body Corporate & Community Management Act 1997*(Qld); section 145(2) *Body Corporate & Community Management ("Standard Module") Regulation 2008*.

[2] *Body Corporate for Mount Saint John Industrial Park Community Title Scheme 18632 v Superior Stairs & Joinery Pty Ltd*[2018] QCA 173 [2].

[3] *Body Corporate for Mount Saint John Industrial Park Community Title Scheme 18632 v Superior Stairs & Joinery Pty Ltd* [2018] QCA 173 [2].

[4] Ibid [19]-[22].

[5] Ibid [23].

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