



The Protection of Body Corporate Management Rights Agreements

Situated in Varsity Lakes and across from Bond University, The Reserve is home to many students and locals. With the strategic location and constant demand for accommodation in the area, management rights to the Reserve and neighbouring apartment units are said to be valued at well into the millions.

The recent Queensland Civil and Administrative Tribunal (**QCAT**) decision ([2015] QCAT 337), between Trojan Resorts Pty Ltd (**Trojan**) and Body Corporate for the Reserve (**The Reserve**), follows the notion of difficulty in terminating management rights agreements and QCAT's protection of management rights agreements.

The focus of this decision was based on whether The Reserve had properly terminated management and letting agreements (**Agreements**) assigned to Trojan. On 12 February 2013, a director of Trojan resigned and accordingly created a deemed assignment under the Agreements. The Reserve gave notice to Trojan outlining that there been a change of control without consent. The Reserve passed a resolution to terminate the Agreements based on the purported breach of the Agreements at general meeting.

Date	Event
5 December 2012	The Reserve consents to the assignment of the Agreements to Trojan, agent for Knipe Family Trust & Le & Chen Share Trust & The Trustee for Kiwichick Family Trust & The Trustee for The Reserve Retreat Cape Unit Trust.
12 February 2013	One of the directors resigns.
8 July 2014	The Reserve gives notice to Trojan outlining that there had been a change of control without consent.
30 July 2014	The director who resigned is reappointed as a director of Trojan.
6 August 2014	The Reserve notifies Trojan's financier of their belief of the right to terminate the Agreements for Trojan's failure to obtain consent on the change of control.
30 September 2014	The Reserve, at the AGM, passes a resolution to terminate the Agreements based on the alleged breach.

Member Browne of QCAT considered the following questions:

1. Was there a resignation by the director of Trojan?
2. Was the resignation an event that gave The Reserve a right to terminate under the Agreements?
3. Has The Reserve acted '*reasonably*' for the purposes of s 94 of the *Body Corporate and Community Management Act 1997* (Qld) in respect of any termination?
4. Should the Tribunal grant the relief sought by Trojan?

In light of these questions, the findings are as follows.

Based on the letter of resignation and the updated ASIC database, the director resigned from her position at Trojan on 12 February 2013.

The Agreements provided that an *'alteration to the board of directors'* was an event for which The Reserve could terminate. Trojan as the Assignee was deemed to be the 'manager' and 'letting agent, of the Agreements. At the time the Agreements were entered into, Trojan consisted of two directors. Member Browne found that the resignation of one director did alter the board of directors and that the alteration does alter the control of 'manager' for the purposes of the Agreements. As a result of the resignation, The Reserve was entitled to take steps to terminate the Agreements.

Although Member Browne found that Trojan did breach the Agreements and The Reserve did have a right to terminate, however, QCAT found that The Reserve did not act reasonably in the circumstances. With reference to *Luadaka v Body Corporate for the Cove Emerald Lakes* [2013] QCATA 183, the test for reasonableness is an objective one that requires a balancing of factors in all of the circumstances. The Tribunal considered the Agreements, the notices that The Reserve issued to Trojan, the resolution

and the recommendations of the Body Corporate Committee, all followed the correct procedure in terminating the Agreements. However, QCAT found that The Reserve did not act reasonably because:

1. The state of affairs was restored on 30 July 2014 when the director was reappointed. The breach was remedied prior to the issuance of the notices and resolution to terminate the Agreements.
2. There was no evidence of any loss or damage suffered by The Reserve as a result of the breach.
3. After the resignation, the director continued to be involved in the scheme and attended meetings, and as such, there was no change in the daily management of The Reserve.
4. It would have been unreasonable for The Reserve to refuse consent to the deemed assignment of the Agreements absent of any prejudice, loss or damage.

QCAT ultimately found in favour of Trojan, ordering the resolution of The Reserve to terminate the management and letting agreements to be invalid and of no effect. The Reserve was also restrained from taking steps to terminate the agreements on reliance of the resignation of the director.

In essence, this decision portrays the careful path and need for practical legal advice considering if a Body Corporate should terminate the Management Agreement. It should be obvious that the reinstatement of the Director "restored" the control of the company and it is difficult to see how the Body Corporate could argue it was disadvantage given the steps taken to rectify. Rather than being opportunistic, Body Corporate's need to properly consider how such a breach impacts them and consequently is it reasonable that they be allowed to terminate in those circumstances. Here, a clear breach of the Agreement was recognised and QCAT acknowledged The Reserve's right to terminate the Agreements But as the breach did not result in any loss and was remedied, terminating the Agreements was deemed not to be reasonable in the circumstance.

This notion of QCAT's hesitation in terminating the Agreements for minor breaches seems to be the norm and adopted position of the Tribunal. The balance of the breach against the foreseeable damage or harm attributed to each party must be taken into account for actions of this nature. Although Body Corporates may have the right to terminate agreements, this right can be lost in the circumstances that surround the facts.

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