

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Lovel v The Body Corporate for The Reserve (No 2)*
[2018] QCATA 169

PARTIES: **JAMES LOVEL**
(applicant)
v
THE BODY CORPORATE FOR THE RESERVE
(respondent)

APPLICATION NO/S: APL184-18

ORIGINATING APPLICATION NO/S: 0783-2018

MATTER TYPE: Appeals

DELIVERED ON: 12 November 2018

HEARING DATE: 22 October 2018

HEARD AT: Brisbane

DECISION OF: Member Roney QC

ORDERS: **The Appeal is dismissed.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – Body Corporate and Community Management – appeal from order of Adjudicator refusing an interim order restraining giving effect to a committee resolution appointing new committee members

Body Corporate and Community Management Act 1997 (Qld), s 227, s 229, s 289
Body Corporate and Community Management (Standard Module) Regulation 2008 (Qld)

Aqua-Max Pty Ltd & Ors v MT Associates Pty Ltd [2001] VSCA 104
Bodies Corporate for East Village Ridges and The Ridge v Ridges Peregian Springs [2017] QCATA 51
Correa v Whittingham [2013] NSWCA 263
Hossain v Minister for Immigration and Border Protection [2018] HCA 34
Kutlu v Director of Professional Services Review & Ors [2011] FCAFC 94
Project Blue Sky v Australian Broadcasting Authority (1998) 194 CLR 355

The Reserve [2018] QBCCMCmr 376
Wei-Xin Chen v Body Corporate for Wishart Village CTS
 19482, Appeal 4080 of 2000, District Court Brisbane, 29
 May 2001

APPEARANCES &
 REPRESENTATION:

Applicant: Self-represented
 Respondent: F Stewart, Hynes Legal

REASONS FOR DECISION

- [1] The Reserve is a 200 lot scheme on the Gold Coast, and its affairs are of course governed by s 227 and s 229 of the Body Corporate and Community Management Act 1997 ('the BCCM Act') and the Body Corporate and Community Management (Standard Module) Regulation 2008 (Qld) ('the Standard Module').
- [2] There is an unresolved application by way of an appeal to the Office of the Commissioner for Body Corporate and Community Management by a committee member and director of a Corporate lot owner for the Body Corporate for 'The Reserve' CTS from the refusal by an Adjudicator appointed by the Office of the Commissioner for Body Corporate and Community Management, to restrain the committee for The Reserve and its Body Corporate from implementing certain decisions made at a committee meeting held on 24 July 2018. The principal application brought by the Applicant is for orders which in many respects have been overtaken by events because they sought orders restraining the committee from holding a meeting on 24 July 2018 in circumstances in which it is common ground that a meeting actually took place on that day. Therefore, the remaining substantive issue for determination in the principal application is whether motions approved at a committee meeting purportedly called on 24 July 2018 ought to be declared invalid. That has yet to be determined
- [3] The second and third orders sought in the principal application are for declaratory style orders that any purported motions approved by the committee meeting purportedly called for 24 July 2018 be held to be invalid. Other injunctive orders were also sought. In addition to the orders sought in the principal application, the Applicant also applied for an interim order before the Adjudicator that the committee and the Body Corporate be restrained from implementing any decision made at the meeting of 24 July 2018. In her reasons dated 2 August 2018, the Adjudicator determined that she was not prepared to make the interim order sought.¹ The Applicant appealed that decision. These reasons concern that appeal.
- [4] On 21 September 2018 I delivered reasons for refusing an interim application to stay the Adjudicator's orders having regard to the balance of convenience, and the absence of any real prejudice associated with the refusal of that order at this time. I also found that the other injunctive orders were being sought in the the principal application were orders which had prospects which I described in my reasons as being extremely low, and probably non-existent.

¹ *The Reserve* [2018] QBCCMCmr 376.

- [5] The present issue for my consideration and which was the subject of a further hearing on 22 October 2018, and to which these reasons relate, was to consider an appeal from the refusal by the Adjudicator to make the interim order sought. Had the interim orders sought been granted, the effect would be that the resolutions passed at a purported committee meeting called on short notice on 24 July 2018 in which various positions on the Body Corporate committee were allocated to a number of individuals, not be given effect to until the determination of the principal application. Until then it was sought that the Committee be restrained from implementing
- [6] In my 21 September 2018 reasons I held that by s 289(2) of the BCCM Act, the Applicant may only appeal the Adjudicator's order on question of law. As may be seen from what is set out above, the grounds of appeal from the decision not to grant the interim relief raise for determination on a hearing of an application pending the determination of the appeal, whether the Adjudicator made an error of law in refusing to make an order restraining the Body Corporate from implementing any decisions made at the 24 July meeting.
- [7] In my earlier reasons I summarised the facts. In large part those facts remain the relevant facts for the purpose of resolving this appeal. They may relevantly be summarised as follows.
- [8] Until 20 July 2018, the committee for the Body Corporate comprised a Ms Michele D'Arcy, who held the joint positions of Chairperson and Secretary; the Treasurer was a Mr Hollinshead, and there were ordinary members Mr Farr, Mr Redfearn, Mr Steele, Mr Stanojevic, and the Applicant. It seems that, without any prior notice, on 20 July 2018 the Chairperson/Secretary resigned from her position. As the Adjudicator's Reasons make clear, some of the committee members, although not the Applicant, decided that there was an emergency associated with the fact that there was no longer a Chairperson or Secretary for the Body Corporate where there had been proposed that the committee meet to discuss the annual budgets which would in due course be submitted for approval by the Body Corporate at its Annual General Meeting. They were also concerned with the engagement of a new caretaker. The material suggests that there was a possibility of a change in relation to the holder of management and/or caretaker rights in the scheme. During argument before me there was also mention of an issue concerned with the reappointment of the Body Corporate Manager, although the precise details of this were neither apparent from, nor referenced in any useful way in the written material before me.
- [9] It is common ground that the day after the Chairperson and also the holder of the office of Secretary resigned her position, the then Treasurer wrote to all committee members seeking to call an emergency committee meeting for two days later on 23 July. The Applicant was sent that notice but responded that he could not attend because of other commitments, saying there was no urgency, and that other dates should be selected. In the end 24 July was selected as the date for the meeting, and on 23 July the then Treasurer provided an agenda which identified a proposal to appoint a Chairperson, Secretary and ordinary member, and other business.
- [10] As the Adjudicator's Reasons at [10] provide, at the 24 July meeting, the remaining committee members redistributed the executive member positions between them. The treasurer Mike Hollinshead was voted in as chairperson; ordinary member Paul Farr was voted in as treasurer; an ordinary member Kevin Redfearn was voted in as

secretary. Newcomer Kim Irving (also called Kim Irvine in the material) was nominated and voted in as an ordinary member. Colin Steele, the Applicant and Istok Stanojevic, (neither of whom attended the meeting) remained as ordinary members.

[11] The Adjudicator's reasons identify that the calling of the meeting was sought to be justified by the then treasurer on the basis that the normal business of the committee ought continue, that it was currently negotiating a management contract with new caretakers, with the transfer of management by it due to take place on 1 August. The committee had also set 8 August 2018 as the date to conduct its budget meeting.

[12] The Adjudicator held at [11] that:

The Applicant says that because of the breach of legislation, particularly concerning the notice period, the new committee is unlawful and is now conducting body corporate business unlawfully. This requires immediate intervention by this Office and an interim order. There is a committee meeting to be held on 8th August 2018 which the Applicant says may now not be properly called. In addition, the new chairperson, whose word is traditionally accepted as representing the committee, is now giving direction to the caretaker and the body corporate manager.

[13] The Adjudicator identified the approach to be taken in deciding whether to make an interim order is to decide whether:

- (a) the Application raises a serious question of law; and
- (b) at first sight, the Applicant for the interim order has a good chance of success at final order; and
- (c) if so, the inconvenience likely to result to the Respondent from the interim order is outweighed by the potential detriment to the Applicant or others if the orders is not granted.

[14] The Adjudicator then went on to make the following findings (citations omitted):

[21] The Applicant's argument relies on sections of the Standard Module being breached by committee members in the holding of a meeting. He says that such breaches must invalidate the committee meeting held on 24th July 2018.

[22] That is not necessarily the case, even if breaches are found. In the often-quoted case of *Wei-Xin Chen v Body Corporate for Wishart Village* the Court commented that non-compliance with the regulation modules that is of an insubstantial nature should not be allowed to imperil the actions of bodies corporate or their committees. A failure to comply with the regulation modules will generally not result in invalidity except where there is a lack of good faith or the applicant suffers some real prejudice. The meeting was held without the required period of notice for a committee meeting, that is 7 days. Notice of the meeting was also not given at the same time to lot owners, although it seems that it was given to the caretaker and the body corporate manager, that is, non-voting members of the committee.

[23] The meeting was held without the required period of notice for a committee meeting, that is 7 days. Notice of the meeting was also not given at the same time to lot owners, although it seems that it was given to the caretaker and the body corporate manager, that is, non-voting members of the committee.

[24] The governing legislation makes provision for emergencies by which business may be carried on outside a committee meeting by the committee, or as many members as may be contacted, who may vote on a particular motion or motions. Owners must be informed "*as soon as reasonably practicable*".

[25] Minutes now exist for the meeting.

[26] The Applicant says that owners have been deprived of their right to oppose the committee's decisions carried at the meeting because they have not had notice, or sufficient notice, of the meeting. I am of the view that a notice of opposition may still be given if required and relevant, since a notice of opposition may be given to the secretary within 7 days after the secretary gives a copy of the minutes or a copy of the resolution to owners. A notice of opposition may not be given for a motion which is "*of a routine, administrative nature*".

[27] In respect of a committee decision to appoint a member of the committee in order to fill a casual vacancy, the legislation is silent as to when the appointment takes place. If the casual vacancy is filled at a general meeting, the election of the person commences at the close of the general meeting. Whether a notice of opposition is returnable for the choosing of a committee member by the committee to fill a casual vacancy is open to argument. It might be a motion "*of a routine, administrative nature*" or fall under other exceptions noted at *section 57* Standard Module eg. it was necessary to deal with an emergency.

[28] The committee must within one month appoint a new member of the committee in order to fill a casual vacancy, such as occurred when the chairperson/secretary. Michele D'Arcy (Ms D'Arcy) resigned. There is little formality described in the section relevant for this process, but it is clear that it may be done by the committee, presumably at a committee meeting or by a vote outside a committee meeting; or by the committee calling a general meeting and inviting nominations.

[29] The Applicant says that the situation was not an emergency but the committee members attending the meeting on 24th July 2018 disagree. The remaining committee members were concerned about a forthcoming budget meeting and the engagement of a new caretaker. It seems to me at first sight, that whatever the current business of a body corporate, a committee should have a chairperson and a secretary if possible. The resignation of Ms D'Arcy left two executive positions vacant.

[30] The Applicant knew of the proposed date and time of the meeting and if he was unable to attend, he might have voted in writing or by proxy. He might also have nominated himself or others for the positions if he wished to do so. His point however, is that the meeting itself was unlawful. I am not at first sight satisfied that there is any evidence of this. As stated I am not satisfied that it is a foregone conclusion that a meeting called at short notice is unlawful or invalid. There is at first sight no evidence of a breach of *section 44* (the treasurer may call a committee meeting in the absence of the chairperson and the secretary). There is at first sight no evidence of a breach of *section 46* (place of committee meeting).

[31] There is at first sight insufficient evidence of a breach of *section 47* (agenda for a committee meeting). A committee does not have to have a fixed agenda, but might consider other matters at a meeting.

[32] It seems to me that those committee members instigating the meeting, without the assistance of the body corporate manager, as they are entitled to do, may have thought they were conducting a vote outside a committee meeting. They talk about decisions being “ratified” at the next meeting of the committee.

[15] On the same day as the committee meeting was held, namely on 24 July 2018, indeed on the afternoon of that day, even before the meeting took place at 6pm that night, the Applicant filed the principal application, which he then amended the next day, seeking a restraint on the implementation of the decisions of the purported committee.

[16] The specified grounds of appeal are that:

1. The Adjudicated (sic) erred in law in failing to find that the purported meeting held on 24 July 2018 was unlawfully called and therefore invalid due to non-compliance with section 45(2) of the BCCM (Standard Module) Regulation 2008.
2. The Adjudicator erred in law in finding that decisions made at the purported meeting held on 24 July 2018 were validly made by ‘voting outside committee meetings’ under section 54 of the BCCM (Standard Module) Regulation 2008, despite non-compliance with section 54(1)(b) of the BCCM (Standard Module) Regulation 2008.
3. The Adjudicator erred in failing to find the purported decisions made on 24 July 2018 were unlawful and invalid.

[17] The orders sought in the Appeal were:

1. That the Order made by Adjudicator J.D.M. Underdown on 2 August 2018 be substituted for (sic) an order that the Body Corporate for The Reserve CTS 31561 and its Committee be restrained from implementing any decision made at the purported meeting held on 24 July 2018, including, but not limited to, the following purported decisions:
 - (i) Appointing Mike Hollinshead as Chairperson;
 - (ii) Appointing Paul Farr as Treasurer;
 - (iii) Appointing Kevin Redfearn as Secretary; and
 - (iv) Appointing Kym Irving as Ordinary Member.
2. The Adjudication Application otherwise be remitted to the Adjudicator for determination according to law.
3. An Order that the Respondent pay the costs of the Appeal.

[18] There was a later committee meeting held on 8 August 2018. As I observed in my earlier reasons, the minutes of the 8 August committee meeting are lengthy, and it would appear from notes in the minutes that the meeting ran for several hours. The minutes make clear that the participants, including the Applicant and the new officeholders resolved unanimously that no Chairman be appointed but that the committee would collectively chair the meeting. There was widespread discussion about a range of general business issues which affected the Body Corporate and resolutions put in relation a wide range of those issues and, were passed unanimously except with occasional dissent or abstention.

- [19] In paragraph [33] of my earlier reasons I noted that that the Adjudicator was told that there was a proposed AGM to be held on 21 September 2018. In argument before me on the earlier application it was explained that in fact no such meeting has been called. The material before me on this appeal established that an AGM has been called for 17 November 2018, and that notices in that regard were posted out to lot holders on the day of the hearing, namely 22 October. The Agenda items referenced in the Notice material include an agenda for the election of new committee members. There is more than one nomination for each of the positions of Chairman, Secretary and Treasurer and nine nominations for positions as ordinary members. The Applicant nominated for positions as Treasurer and ordinary member, in the event he is not elected to treasurer.
- [20] Despite the fact that appeals to this Tribunal are limited to appeals on errors of law, and that the appeal related to a relatively narrow point concerning whether the Adjudicator ought in effect have resorted the status quo ante prior to the calling of the alleged irregular meeting so that only those who were formerly on the committee continued to be on the committee, or were capable of making decisions purportedly as committee members, there were lengthy submissions filed on behalf of both parties to the appeal, and the parties addressed those written submissions with oral submissions which engaged the Tribunal for some five hours of argument. In large part this arose because the Appellant disputed the proposition that the purported calling of an AGM for 17 November 2018 was a bona fide act and suggested that it was at risk of not in fact being held, or that there was a risk that the notices calling it might be revoked.
- [21] After hearing specific evidence about that issue from the Body Corporate Manager, I am satisfied that the calling of that meeting has occurred and has been done in a bona fide way, and that there is no real tangible, or material risk of those notices being withdrawn. There is no suggestion on the evidence that it was not called inter alia to bring about the election of a new committee. Demonstrably, if that meeting proceeds and a new committee is elected, the issue of how the Body Corporate will be managed from that time on will have been resolved by the democratic process which stands behind lot owners' entitlements to elect their own committee. The question of whether any decisions made by the committee purportedly established pursuant to the resolutions at the 24 July 2018 meeting are valid is an issue which has yet to be, and will be determined in the principal application before the Adjudicator.
- [22] The Applicant's primary submission is that the calling of that meeting contravened the requirements of s 45 of the Standard Module in relation to the notice period, and that the result for practical purposes was that the meeting, and the resolutions which flowed from it, were invalid. He submitted that there was a statutorily imposed procedural requirement which meant that requisite notice was mandatory. He submitted that read in context, against a background of common law authority which identifies that for a meeting to be properly held and resolutions passed, the requirements of s 45 of the Standard Module are such that for a meeting to be properly convened, notice of the meeting should have been given in such time as to give those attending a reasonable opportunity to attend. He submitted that s 45 operated in the same manner as s 145(2) and that placed the Body Corporate under a duty to give all committee members seven days notice unless the other alternative procedural requirements under s 45(2) had been met, namely the giving of at least two days notice before the meeting or all voting members agree in writing to the reduced notice period, otherwise everything that occurs at the meeting is invalid.

- [23] He referred also to s 54 of the Standard Module. That concerns voting outside of committee meetings and provides that a resolution on a motion before a committee is valid if notice of the motion is given to all committee members, or in an emergency, as many members as it is practicable to contact, and a majority of all voting members of the committee entitled to vote on the motion agree to the motion. That section, which has no direct application here because this did not purport to be a vote taken outside of a committee meeting, makes clear that in some circumstances the BCCM Act permits of a situation where not all committee members have been notified of a proposal for the committee to meet and/or to consider and pass a motion. It provides an exception to what might otherwise be seen as a mandatory requirement to give appropriate notice of a motion, and/or a meeting at which motions are proposed. It does imply that it is not in every circumstance that the Standard Module requires that notice be given to all members of a committee before a resolution which is passed by a committee can be treated as valid. Even insofar as it refers to a situation which is an emergency situation, it in any event requires the majority of all voting members of the committee to agree to the motion. That is, that there is unanimity amongst those who do vote. It is a clear example of a circumstance in which the legislative intent departs from the notion that there must be strict compliance with the requirements for giving notice to committee members before a committee can act.
- [24] The Applicant submitted, by reference to a number of decisions which do not concern themselves with this legislation or indeed even the decisions of bodies corporate, and do not necessarily concern themselves with the validity of meetings called and resolutions passed in irregular circumstances, that the question of whether decisions made are invalid or as he put it, are a 'nullity', depends upon whether there is substantial prejudice flowing from the non-compliance. The Applicant made reference to the High Court decision in *Project Blue Sky v Australian Broadcasting Authority* (1998) 194 CLR 355, *Correa v Whittingham* [2013] NSWCA 263 at [74]-[77], *Aqua-Max Pty Ltd & Ors v MT Associates Pty Ltd* [2001] VSCA 104 at [95]-[100]; in relation to the question of surprise, *Hossain v Minister for Immigration and Border Protection* [2018] HCA 34 at [72], which the Applicant relied on for its oblique reference to circumstances in which a person could be treated as having been deprived of the possibility of a successful outcome as a result of an alleged error in the exercise of a decision making power, and *Kutlu v Director of Professional Services Review & Ors* [2011] FCAFC 94 at [35]-[37].
- [25] Further he contended that the question here was whether there was substantial prejudice to the himself resulting from the irregular calling of the meeting. He contended that in this case, the prejudice to him was that it could possibly have brought about a different outcome at the meeting had he had proper notice and been able to attend. He submitted that the mere possibility that he could have achieved a different outcome was substantial prejudice.
- [26] It is unnecessary for the purposes of deciding this appeal to determine whether any of the decisions to which reference was made and upon which reliance was placed have application or whether 'substantial prejudice' need to be established before meetings irregularly called can result in resolutions passed at the meetings can be held invalid. The question of what effect a non-compliance with arguably mandatory procedural requirements for the calling of a committee meeting is caused to be determined by reference to the particular legislative provisions, and the scheme of the BCCM Act and the Standard Module which is a regulation to it. I have not found reference to the

case authorities that the Applicant has referred me to have been useful in casting light upon the meaning and operation of the particular provisions that this appeal, and the adjudication below, is to consider.

[27] Adjudication decisions which concern the effect of non-compliance with procedural requirements in this Act have often referred to the decision in *Wei-Xin Chen v Body Corporate for Wishart Village*.² Indeed it was cited by the Adjudicator in this case, and referred to at [22] of the reasons. The Adjudicator here cited it as authority for the proposition that that where there was non-compliance with the regulation modules in circumstances in which the non-compliance is insubstantial, the non-compliance should not be allowed to imperil the actions of bodies corporate or their committees. She went on to hold that the failure to comply with the regulation modules will not generally result in invalidity except where there is a lack of good faith or there is real prejudice to the Applicant.

[28] The decision in *Wishart Village* is an unreported decision of Judge Bolton in the District Court at Brisbane and was handed down 17 years ago on 29 May 2001. It was an appeal from an Adjudicator's decision under the BCCM Act. The factual background was that appellant had the management and letting rights at *Wishart Village*. The Body Corporate held an EGM which the reasons identified as involving the performance of tasks associated with an AGM, including the election of a committee. After the EGM, a committee meeting was held as a result of which the Body Corporate wrote to the Appellant complaining about breaches of managing obligations. Another EGM was called in which the Body Corporate resolved to terminate the management agreement. There was a question about irregularities in having convened the EGM. So the issue before the Court there did not concern the validity of decisions made at a committee meeting, or in relation to the calling of a committee meeting, but did concern the requirements for the calling of an EGM. The Adjudicator held that the EGM should be presumed valid notwithstanding arguable irregularities.

[29] Judge Bolton considered that factual background and then went on as follows:

[19] It should be noted that parts 3 and 4 of the *Body Corporate and Community Management (Standard Module) Regulation 1997* provide extremely detailed regulations governing a body corporate committee and the conduct of general meetings. It is noteworthy that regulation 19 (1) provides that the ballots for all positions on the committee must be conducted as the last items of business at the Annual General Meeting. Section 91 (2) provides that the members of the committee are elected annually by ballot of members of the body corporate in the way provided for in the regulation module. Section 92 (4) of the Act provides:-

“92.(4) If persons, honestly and reasonably believing that they are the committee for the body corporate, make a decision while purportedly acting as the committee, the decision is taken to be a decision of the committee despite a defect in the election of one or more of the persons.”

[20] Under the Act an adjudicator has quite sweeping powers to resolve disputes. Section 223 (1) refers to disputes about –

² Appeal 4080 of 2000, District Court Brisbane, 29 May 2001.

“(a) a claimed or anticipated contravention of this Act or the community management statement; or

(b) the exercise of rights or powers, or the performance of duties, under this Act or the community management statement; or

....”

[21] Section 223 (3) provides instances of an adjudicator’s powers. These include-

“223(k) Declare a meeting of the committee for the body corporate or a general meeting of the body corporate, void for irregularity; or

(l) Make an order declaring that a resolution purportedly passed at a general meeting of the committee for the body corporate, or a general meeting of the body corporate was, at all times void; or

(m) Make an order declaring that a resolution purportedly passed at a meeting of the committee for the body corporate, or a general meeting of the body corporate, is a valid resolution of the committee or body corporate meeting;

....”

[30] Section 223(3)(k), (l) and (m) set out at paragraph 20 and 21 of His Honour’s reasons may now be found by a combined reading of the provisions of s 276(3) of the current reprint, the s 9 of Schedule 5 of the BCCM Act. In other words, the Adjudicator’s powers which His Honour regarded as relevant in that case and which are set out in his reasons, remain in the Act, although not in the same sections to which His Honour was then referring.

[31] Section 276 of the BCCM Act presently provides as follows:

(1) An adjudicator to whom the application is referred may make an order that is just and equitable in the circumstances (including a declaratory order) to resolve a dispute, in the context of a community titles scheme, about—

(a) a claimed or anticipated contravention of this Act or the community management statement; or

(b) the exercise of rights or powers, or the performance of duties, under this Act or the community management statement; or

(c) a claimed or anticipated contractual matter about—

(i) the engagement of a person as a body corporate manager or service contractor for a community titles scheme; or

(ii) the authorisation of a person as a letting agent for a community titles scheme.

(2) An order may require a person to act, or prohibit a person from acting, in a way stated in the order.

- (3) Without limiting *subsections (1) and (2)*, the adjudicator may make an order mentioned in *schedule 5*.
- (4) An order appointing an administrator—
 - (a) may be the only order the adjudicator makes for an application; or
 - (b) may be made to assist the enforcement of another order made for the application.
- (5) If the adjudicator makes a consent order, the order—
 - (a) may include only matters that may be dealt with under this Act; and
 - (b) must not include matters that are inconsistent with this Act or another Act.

[32] At paragraph [27] of his reasons, Judge Boulton went on to conclude that:

[27] The very detailed provisions of the standard module regulation to which I have referred above make it almost inevitable that from time to time there will be non-compliance. Equally though the provisions of the Act make it clear that non-compliance of an insubstantial nature will not be allowed to imperil the actions of bodies corporate or their committees, particularly in the instance of committees where actions are taken *bona fide*. Mr Meek said as much in his reasons of 2 December 1999 and indicated that the actions of the EGM should be presumed valid.

[33] His Honour also went on to identify that it was clear that the procedure for appointment of a committee under the Standard Module envisages that being done at an AGM, not an EGM, and that the Adjudicator had recognised that level of non-compliance. He resolved the issue by concluding at [36] that there were however provisions for committee members to be appointed at an EGM in certain circumstances, and then went on to reference the fact that there were ‘the powers also in an Adjudicator under the dispute resolution provisions to which I have already referred’ as the basis for concluding that the Adjudicator was correct in arriving at his conclusion.

[34] It does not appear from those reasons that His Honour was taken to any particular authority in expressing the conclusions that he did as to the operation of those provisions. Nor does the reference in [27] of His Honour’s reasons to the Act make it clear that the proposition discussed concerning non-compliance ‘of an insubstantial nature’ was based upon or referenced to any identified legal principle or authority. It appears to me that His Honour was really paraphrasing and identifying an example of one of the circumstances in which an Adjudicator might decide to declare a meeting or a resolution passed as valid, notwithstanding that there were irregularities. One of those might be that the non-compliance was of an insubstantial nature, however it does not follow that it is only in circumstances in which the non-compliance is in insubstantial nature that an Adjudicator might exercise any of the powers vested in Adjudicators to validate irregular acts.

[35] Section 9 of Schedule 5 to the Act also gives express power to an Adjudicator to make orders validating meetings held and also other validating orders. One of the matters

which the Adjudicator on a hearing of the principal application will undoubtedly consider, is whether to invoke and apply any of those powers.

- [36] It was the prospect of those powers being invoked that prompted the Adjudicator to decline to make the interim order sought in this case. She also gave other reasons for declining to make that order, including a finding which she described as having been made ‘at first sight’, that she was not satisfied any detriment had been caused to any committee member or to the Applicant or to any owner in consequence of the non-compliance, if there was one.
- [37] There were other reasons why the Adjudicator decided not to make the interim order, apart from not necessarily having been persuaded that there was any substance to the argument that there had been contraventions of s 44 to s 47 of the Standard Module. The reasons do not specifically refer to the requirements in s 45 of the Standard Module for the calling of committee meetings, however it is clear that the Adjudicator considered the operation of those sections in deciding whether to make the interim order. She identified the Applicant’s contention that contravention of each of those sections meant that the meeting and the members of the committee were ‘unlawful’. She did not conclusively decide whether the calling of the meeting on short notice meant that the meeting was unlawful or invalid, instead expressing it as not being satisfied ‘that it is a foregone conclusion’ that a meeting called at short notice is unlawful.
- [38] In my view, the Adjudicator did not make any error of law, nor was it inappropriate for the Adjudicator to have regard in the present case to the fact that even if breaches or non-compliances with the notice provisions under s 45 or any other provision of the Standard Module is made out, the meetings or resolutions which result might still be held to be valid. The relevant bases upon which the Adjudicator expressed the view that it was not appropriate, having regard to the strength of the argument as to invalidity, but also concerning where the balance of convenience lay in the present circumstances has not been shown to have been based on any error of law. The Appeal therefore must be dismissed.
- [39] In the course of argument before me, submissions were also made which reference the prospect of applications for costs being made in respect of this appeal. I indicated that I would give the parties an opportunity to make submissions on that issue should either of them later decide to seek costs. Demonstrably, the Applicant’s actions here are well motivated, and the bringing of his application before the Adjudicator, and also his appeals here, are based on a genuine concern that other persons who are members of the committee are not acting rationally or within the law. He clearly sees his role as being astute to ensure that the committee, and its Body Corporate generally, are not “hijacked”. There was evidence before me from the Body Corporate manager’s representative, Ms Manning. She said she regarded some of the conduct of the Body Corporate and its committee in recent times as dysfunctional. Indeed, the Body Corporate Manager has made a submission to an Adjudicator in support of an application to appoint an administrator to the Body Corporate on the basis that some members of the committee are acting in a way which is dysfunctional. I express no view about the legitimacy of any of these concerns, but it seems to me that they would be relevant to the question of whether this is a case in which costs ought be ordered, irrespective of the outcome of the appeal.

[40] I therefore dismiss the Appeal from the refusal to grant an interim order.