

BODY CORPORATE NEWSLETTER

RECENT UPDATE – DEFAMATION AND BODY CORPORATE MANAGERS

The recent unreported judgment of *Walden v Danieletto* concerned a District Court appeal against the determination of a Magistrates Court of Southport whereby the appellant's claim for damages for defamation was dismissed.

The Alleged Defamation

The District Court stated that 'the defendant in the original proceedings, who was the body corporate manager for a high rise tower in Runaway Bay, of which the plaintiff was a lot owner, said at an extraordinary general meeting "a voting paper for lot ... was not admitted because the lot was un-financial". This was said in the presence of a number of other unit holders present at the meeting. It is said that the plaintiff later approached the defendant saying he was in fact financial. The defendant subsequently sent to all members of the body corporate minutes of the meeting that included a statement that the voting paper for the lot was not admitted because the lot was un-financial, and that the lot owner had said he had paid but those monies had not yet been received in the body corporate account'.

The lot owner claimed that those statements amounted to imputations that:

- 1) The lot owner was a delinquent payer;
- 2) The lot owner could not afford to pay his body corporate levies;
- 3) The lot owner had financial difficulties.

The Magistrate in the original proceedings concluded that the statements of the body corporate manager in the meeting, and those published in the minutes, were not defamatory.

District Court Appeal

The appellant appealed on four grounds, including a submission that use of the word 'un-financial' was important, and that those statements were likely to result in a real possibility of harm to the appellant's reputation.

If the appeal was successful, it could have had serious ramifications for body corporate managers and their statements made in meetings and published in meeting minutes.

However, the District Court struck out all four grounds of the appeal, dismissing the appeal, and awarding costs in favour of the respondent.

Body Corporate Defences Against Defamation

Certain parts of the body corporate legislation also provide for a defence in certain circumstances against defamation for body corporates and body corporate managers.

If you would like to discuss defamation with respect to body corporates, or any aspect of strata or body corporate law, please feel free to contact Sam or Shane using the contact details below.

***Sam Marsh** is an Associate of Holman Webb Lawyers Brisbane. His practice includes insolvency, commercial litigation, dispute resolution, director and company officer duties, and all aspects of body corporate and strata law.*

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