



QLD: The committee and the Body Corporate buying lots in its own scheme

This article about a Body Corporate buying lots in its own scheme has been provided by Peter Hunt, Mathews Hunt Legal.

This is the first in a series of articles about two cases concerning a committee. The cases contain many valuable warnings for committees and bodies corporate.

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A body corporate can pass a resolution without dissent to acquire a lot or lots to be incorporated as common property or to be common property for use as a residence or residence and office for a letting agent. It can also have an interest in a lot within the scheme for an easement. A body corporate cannot otherwise have an interest in a lot contained in its scheme. The reason for the prohibition is probably to avoid: conflicts of interest (including who exercises [the voting rights](#)); the manipulation of unit prices; poor investment decisions; and the difficulties in selling any such lot.

However, one committee thought it could avoid those clear restrictions by obtaining an ordinary resolution that authorised the committee to make investment decisions up to \$600,000 per transaction. Somehow, a company was created – the Adjudicator stated that *'the body corporate's submissions are, in my view, evasive and contradictory'* about the formation of the company.

The sole director and shareholder of the company was the chair. \$53,000 was charged to the body corporate (being the owners) for legal advice and the creation of the company – in a great piece of circle work, those fees were later refunded to the body corporate and paid by the company (being the body corporate). The body corporate then proceeded to buy various classes of shares in that company with each class referable to a particular lot in the scheme. About \$1.5M was paid to that company and 4 lots were purchased.

The body corporate's interests in the lots (which is prohibited) was confirmed by the written share subscription agreement which permitted a caveat to be lodged against each of those 4 lots to protect the body corporate's interests.

Interim Orders

The Adjudicator initially issued interim orders to prevent the body corporate purchasing more shares in the company, which effectively stopped the company buying more lots.



The final decision & orders

The Adjudicator found that: the body corporate had an interest in the 4 lots and that the purpose of the company '*was to circumvent the statutory restriction on a body corporate owning lots in its own scheme*'. The Adjudicator ordered that the body corporate divest its shareholding in the company within a reasonable time.

It remains to be seen if:

1. the body corporate complies with the orders or if there is an appeal;
the company seeks a refund of the \$53,000; and
2. the committee's PR efforts manage to again convince owners to vote for its members despite its unlawful conduct.

Orders from the Body Corporate Commissioner's Office have now been published on Austlii. They can be accessed here:

- [Southport Central Residential \[2022\] QBCCMCmr 346 \(16 September 2022\)](#)
- [Southport Central Residential \[2022\] QBCCMCmr 347 \(16 September 2022\)](#)

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