EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS]

IN THE DISTRICT COURT
AT AUCKLAND

I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKAURAU

CIV-2018-090-001099
[2019] NZDC 7370

BETWEEN	ZHAN LI TANG Appellant
AND	BODY CORPORATE 183930 Respondent

Hearing:	On the papers
Appearances:	Z Tang in Person K and M Wakelin for the Body Corporate
Judgment:	29 April 2019

DECISION OF JUDGE P A CUNNINGHAM RE COSTS

Introduction

[1] Following my reserved decision dated 14 January 2019, the respondent has applied for costs. The respondent's memorandum as to costs is dated 12 March 2019. Mr Tang responded in a statement that is undated but which appears to have been sent to Court at 10.55 pm on 20 March 2019. This was acknowledged by a registrar the following morning at 8.33 am. The respondent filed a reply memorandum dated 26 March 2019.

The substantive decision

[2] The Tenancy Tribunal decision (held at Waitakere) is dated 26 April 2018. It related to levies and other costs in relation to [Unit deleted], Tuscany Towers, 1 Ambrico Place, New Lynn, which Mr Tang owns together with Hui Wang.

[3] The amounts claimed by the Body Corporate related to levies in large part in relation to remedial works as a result of weathertightness issues with the 97 townhouses in the residential complex.

[4] In my decision dated 14 January 2019 there is an overview of the various steps and legal action taken by the owners, including proceedings in the High Court and the Court of Appeal. At paras [10]-[12] of my decision I set out Mr Tang's concern about how the contributory negligence figure in relation to his unit was worked out. This was the same issue was pursued by Mr Tang at the Tenancy Tribunal hearing and the appeal before me.

> [10] Mr Tang wanted to know how the assessment of his contributory negligence figure was reached in the remedial works agreement, the figure of 67%. He had been trying to get information about this from the Body Corporate. He stated there must be a document with the 67% in it. He said that if the figure was right then he would pay the levy but if the levy was based on wrong information he would not pay it.
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> [11] Ms Wakelin advised me that she was unaware whether or not such a document exists. From her knowledge of the file she was of the view it could be a figure that came out of the mediation. Ms Wakelin was able to tell me how the reduction to 41% occurred. When Mr Tang purchased [the Unit] he was paid $17,250 by the previous owner. When the method of calculation on the first Schedule 3 was replaced with the revised Schedule 3 plus a further amount being credited to Mr Tang as a result of claims brought by him and another unit holder against a building inspector. This resulted in a 26% reduction from 67% to 41%.
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> [12] The reason for this appeal is that the Adjudicator in the Tribunal did not give Mr Tang the legal document that supports the Body Corporate levy and the remedial works agreement he signed.

[5] At para [16] of my decision I noted the following point made by the respondent in the appeal:

> The first point made in written submissions is that the levy of $30,628.79 was recoverable under the s 74 scheme that was sanctioned by the High Court and varied in relation to revised Schedule 3 in the Court of Appeal. So too is Mr Tang bound by the terms of the s 74 scheme. A time for raising any issues about how the shortfall in funding for the remedial works was to be met including how the contributory negligence figures are calculated was during the High Court or Court of Appeal proceedings. Consequently this appeal is an abuse of process and ought to be struck out.

[6] At para [23] of my decision of 14 January 2019 I said:

> Solicitor-client costs in defending this appeal are approved pursuant to s 124 of the Unit Titles Act.

The respondent's application for costs

[7] The appellant seeks:

(a) solicitor-client costs of $18,118.80 inclusive GST and disbursements of $583.60; and

(b) costs of the secretary in the sum of $1,221.30 inclusive of GST.

This claim is supported by schedules which contain solicitor attendances and invoices.

[8] Indemnity costs are sought, including on the basis that if they are not, the Body Corporate would have to turn to other unit owners to carry the costs of responding to this appeal. It is submitted that the Court should award the costs sought provided that the Court is satisfied that those costs have been reasonably incurred.

[9] In support of that submission reference was made to the hourly charge out rates of Ms Wakelin on the one hand ($400 per hour) and Mr Kelly, a junior solicitor who also worked on this matter, ($190 per hour). In *Bradbury v Westpac Banking Corp*[1] the Court said that an hourly rate of $400 may seem high to a layman but was considered reasonable based on the market rates charged by leading counsel and leading commercial law firms. This decision is now 10 years old and hourly charge out rates have increased since then.

[10] Section 124(2) of the Unit Titles Act ("UTA") provides that the amount of any unpaid levy together with any reasonable costs incurred in collecting it are recoverable as a debt due to the Body Corporate[2].

[11] It is submitted that the fees are reasonable, including that the time spent was proportionate to the issues raised by Mr Tang and was charged out by counsel at an appropriate level and charge out rate.

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[1] (2009) 18 PRNZ at 859 (High Court) at [210]
[2] Unit Titles Act 2010 and Body Corporate 162791 v Gilbert [2015] NZCA 185 at para [78]

[12] In relation to the Body Corporate costs these included charges by its secretary Boutique Body Corporate East Ltd, directly associated with responding to the appeal. Those too are payable pursuant to s 124 of the UTA.

Response by Mr Tang

[13] Mr Tang repeats his concern about not being given "important legal information" by the Body Corporate secretary. He expressed concern that despite the number of court actions involved in this matter both in relation to the apportionment of the levy itself and the Tenancy Tribunal, no one was listening to him.

[14] Mr Tang referred to some particular matters. The first was there were three appeal conferences on 6 September 2018, 24 October 2018, 15 November 2018.

[15] In relation to the conference of 6 September 2018 Mr Tang queried why the respondent's lawyer was not able to answer any questions he asked, but she still charged $2,274 and he queries what work she did.

[16] In relation to the court conference on 24 October 2018 he noted that the respondent's lawyer did not attend.

[17] In relation to the court conference of 15 November 2018, that Mr Tang was still asking for the information he sought but the court officer was not able to help him.

[18] In relation to the appeal hearing itself on 13 December 2018 he stated "… the Judge refused my request, and I understand that maybe no this legal document exist."

[19] Mr Tang disputed that he had been ordered to provide security for costs for the appeal and said that "… I already paid to the court officer given account, why the court said I faild to pay the security cost?"

[20] Further he said that he did not accept the loss caused to other unit holders was his fault. He asked the Body Corporate to show him the information relating to his unit and he still cannot get the information. If he could not get this then he needed to

get involved in the court system. He referred to spending over $100,000 (presumably on legal fees) to get the information.

Reply by respondent

[21] The respondent replied to all of the points made by Mr Tang in relation to various court hearings. That included what attendances had occurred in relation to these. I do not intend to repeat them all here except to say that, due to an oversight by the registry, counsel for the respondent was not notified of the date of the second appeal conference and it was adjourned. As counsel for the respondent did not attend the court appeal conference no fees were incurred. However during the time there were numerous communications between Mr Tang and the Body Corporate in an attempt to identify and provide the documents sought by Mr Tang.

[22] Judge Harrison ordered Mr Tang to pay security for costs of $890, to be paid within seven days of 16 November 2018. Whether or not it has been paid is not relevant to any award of costs I make.

Discussion and decision

[23] In my decision of 14 January 2019 I did my level best to explain to Mr Tang what is known about the contributory negligence figure of 67%. The best explanation Ms Wakelin was able to give was set out in the second sentence of para [11] of my decision which was that the figure could have come out of the mediation. (See para [4] herein).

[24] I am satisfied that the Body Corporate and solicitors acting for it in this appeal and in the Tenancy Tribunal have done their level best to explain things to Mr Tang from the knowledge they hold. His issue about where the figure of 67% came from was not a matter the Tenancy Tribunal were able to assist with, nor this Court on appeal. That issue is relevant to the proceedings in the High Court and Court of Appeal which is now at an end.

[25] Section 124(2) of the Unit Titles Act 2010 says:

> The amount of any unpaid levy, together with any reasonable costs incurred in collecting the levy, is recoverable as a debt due to the body corporate by the person who was the unit owner at the time the levy became payable or by the person who is the unit owner at the time the proceedings are instituted

[26] The High Court has held that this enables recovery of actual reasonable costs on an indemnity basis for collecting any unpaid levy[3]. Having considered the submissions of both parties and having perused the bills of costs including disbursements of the Body Corporate including the secretary's costs of $1,221.30, I make an award of costs in favour of the respondent as follows:

(a) Solicitor client costs in the sum of $18,118.80 with disbursements of $583.60; and

(b) Costs incurred by the secretary in the sum of $1,221.3

P A Cunningham
District Court Judge

[3] *Butcher v Body Corporate 324525* [2017] NZHC 1061