

CITATION: *Polar Bear Panda Pty Ltd ACN 601 885 821 as trustee for Zhen Family Trust v Body Corporate for Duo on Gordon CTS 48036* [2017] QCAT 382

PARTIES: Polar Bear Panda Pty Ltd ACN 601 885 821 as trustee for Zhen Family Trust (Applicant)
v
Body Corporate for Duo on Gordon CTS 48036 (Respondent)

APPLICATION NUMBER: OCL066-17

MATTER TYPE: Other civil dispute matters

HEARING DATE: 26 October 2017

HEARD AT: Brisbane

DECISION OF: **Senior Member Brown**

DELIVERED ON: 3 November 2017

DELIVERED AT: Brisbane

ORDERS MADE:

1. Upon the undertaking of Polar Bear Panda Pty Ltd ACN 601 885 821 (Polar Bear) as to damages, the Body Corporate for Duo on Gordon CTS 48036 (“the Body Corporate”) whether by its servants, agents, employees or otherwise is restrained from relying further upon, or otherwise acting upon, the purported termination of the Caretaking Agreement dated 8 March 2016 and/or the Letting Agents Agreement dated 8 March 2016 between the Body Corporate and Polar Bear:
 - a) in reliance on the resolution by the Body Corporate to terminate the Agreement arising from the extraordinary general meeting held on 11 September 2017; and/or
 - b) in reliance on the termination notice dated 14 September 2017;

until the earlier of:

- i. the final determination of the proceeding;
- ii. order of the Tribunal;
- iii. agreement in writing between the parties.

CATCHWORDS:

REAL PROPERTY – STRATA AND RELATED TITLES – MANAGEMENT AND CONTROL – BODY CORPORATE: POWERS, DUTIES, AND LIABILITIES – DUTY TO REPAIR AND MAINTAIN COMMON PROPERTY – where parties entered into caretaking and letting agreements – where allegations that the applicant failed to comply with its contractual obligations – where the body corporate purported to terminate the caretaking and letting agreements at an extraordinary general meeting – requirement that the body corporate act reasonably

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – MOTIONS, INTERLOCUTORY APPLICATIONS AND OTHER PRE-TRIAL MATTERS – interim injunction – where there is a serious question to be tried – where the balance of convenience favours the granting of an interim order – where damages are not an adequate remedy

Body Corporate and Community Management Act 1997 (Qld) s 2(1), s 94(1), s 100(5), s 118(2), s 149B, s 318 Schedule 2, Schedule 6
Body Corporate and Community Management (Accommodation Module) Regulation 2008 s 127(1), s 127(2), s 128, s 129
Queensland Civil and Administrative Act 2009 (Qld) s 59(1), s 59(6)(a)

Australian Broadcasting Corporation v O'Neill (2006) 227 CLR 57
Bestjet Travel Pty Ltd v Australian Federation of Travel Agents Ltd [2016] QSC 81
Body Corporate for the Reserve CTS 31561 v Trojan Resorts Pty Ltd [2017] QCATA 53
Highvic Pty Ltd & Ors v Quarterback Group Pty Ltd & Anor [2012] QSC 8

Ranch Frey Pty Ltd v Body Corporate for Quarterdeck [2016] QCAT 252
Sandmoon Pty Ltd v Body Corporate for South Pacific Noosa Apartments CTS 26117 [2008] QCCTBCCM 27
Trojan Resorts Pty Ltd v Body Corporate for the Reserve [2015] QCAT 337
XMR Holdings Pty Ltd v Body Corporate for Xanadu [2016] QCAT 27

APPEARANCES:

APPLICANT: Ms F Stewart, Solicitor, Hynes Legal

RESPONDENT: Mr J Davies of counsel, instructed by Byroms Lawyers

REASONS FOR DECISION

- [2] Duo on Gordon is a scheme comprising 25 lots. By agreements dated 8 March 2016, Polar Bear Panda Pty Ltd ACN 601 885 821 as trustee for Zhen Family Trust ("Polar Bear") was appointed as the caretaker and letting agent for the scheme for a term of 25 years commencing on 4 February 2016.¹ Accordingly, the agreements have in the order of 23 years left to run.
- [3] Polar Bear and the body corporate have fallen into dispute. At an Extraordinary General Meeting ("EGM") on 11 September 2017, the body corporate resolved to terminate the caretaking agreement and the letting agreement. On 14 September 2017 the solicitors for the body corporate wrote to Polar Bear advising of the resolution and purporting to terminate the agreements.²
- [4] Polar Bear has filed an application seeking urgent interim orders restraining the body corporate from relying upon the resolution to terminate the agreements or otherwise taking steps in reliance upon the purported termination.

The legislative and legal framework

- [5] The dispute between the parties is governed by the relevant enabling Act, the *Body Corporate and Community Management Act 1997* (Qld) ('BCCM Act') and *Body Corporate and Community Management (Accommodation Module) Regulation 2008* (Qld) ('the Module').

¹ Caretaker's Agreement dated 8 March 2016 and Letting Agents Agreement dated 8 March 2016.

² Letter Byroms to applicant dated 14.09.17.

- [6] A body corporate may terminate a person's engagement as body corporate manager or service contractor, or authorisation as a letting agent: under the BCCM Act; by agreement; under the engagement or authorisation.³ The termination must be approved by ordinary resolution of the body corporate.⁴ The body corporate may also terminate an engagement or authorisation if the manager or service contractor is convicted of particular offences, carries on a business contrary to law, transfers an interest in the engagement or authorisation without body corporate approval, or fails to comply with a remedial action notice.⁵
- [7] A body corporate must act reasonably in carrying out its functions.⁶ The body corporate committee must act reasonably in making a decision.⁷
- [8] A party may apply to the Tribunal about a claimed or anticipated contractual matter about the engagement of a person as caretaking service contractor or the authorisation of a person as a letting agent.⁸
- [9] The Tribunal may grant an interim injunction if it is just and convenient to do so.⁹ An undertaking in an appropriate form may be required by the Tribunal.¹⁰
- [10] As a general statement of principle, it will be just and equitable to grant an interim injunction if the Tribunal is satisfied that:
1. There is a serious issue to be tried; and
 2. The balance of convenience favours the granting of the injunction; and
 3. Damages are otherwise not an adequate remedy.

What the parties say

- [11] Before considering what the parties say about the application for an interim order, it is appropriate to consider some aspects of the relevant factual background to the dispute.
- [12] The dispute arises principally out of two separate issues, which I will refer to as 'the lift issue' and 'the expenses issue'.
- [13] The lift issue was first raised in a letter from the solicitors for the body corporate to Polar Bear on 8 February 2017. It was said by the body corporate that Polar Bear had amended and issued a 'Comprehensive Maintenance Agreement' prepared by the elevator contractor in respect of another scheme managed by Polar Bear ('the lift issue'). Following receipt

³ Module, s 127(1).

⁴ Module, s 127(2).

⁵ Ibid, s 128, s 129.

⁶ BCCM Act, s 94(1).

⁷ Ibid s 100(5).

⁸ Ibid, s 149B.

⁹ *Queensland Civil and Administrative Act 2009* (Qld) ("QCAT Act"), s 59(1).

¹⁰ Ibid, s 59(6)(a).

of that letter Polar Bear emailed the solicitors for the body corporate querying what the body corporate was seeking. The email from Polar Bear was perhaps understandable given that the letter from the solicitors for the body corporate did not specifically ask Polar Bear to do anything. There ensued various communications between Polar Bear, the body corporate and the solicitors for the body corporate that principally relate to what the body corporate said was Polar Bear's failure to engage in a discourse about the lift issue. These communications culminated in an email from the solicitors for the body corporate to Polar Bear advising that the body corporate would be 'taking steps to terminate your engagement'.¹¹ From the material before me, it appears that this was the last communication between the body corporate or its solicitors and Polar Bear regarding the lift issue until 14 September 2017 when the body corporate's solicitors wrote to Polar Bear advising that on 11 September 2017 the body corporate had resolved to terminate the caretaking agreement and that as a consequence of that resolution, the letting agreement was also terminated.

- [14] On 31 July 2017 the solicitors for the body corporate wrote to Polar Bear raising the expenses issue. From time to time Polar Bear incurred expenses in carrying out its duties under the agreements. Receipts for those expenses were submitted to the body corporate managers by Polar Bear for reimbursement. Polar Bear was the caretaking contractor for another, unrelated, scheme. The letter of 31 July 2017 raised issues relating to what the body corporate said were 'duplicated claims' for expenses seeking reimbursement from the body corporate in respect of items that were identical to claims made for expenses relating to the other scheme managed by Polar Bear. The body corporate sought an explanation from Polar Bear in relation to the allegedly duplicated claims.¹² A series of email exchanges ensued between Polar Bear and the body corporate's solicitors in which Polar Bear sought to explain the claims made. The body corporate subsequently relied upon what they asserted to be these 'unlawful claims for reimbursement of expenses' in resolving to terminate the caretaking agreement.¹³
- [15] Polar Bear says that the body corporate failed to act reasonably in purporting to terminate the agreements based upon unproven allegations relating to matters that have not been the subject of investigation by the Office of Fair Trading ("OFT") or the Queensland Police Service. Polar Bear says that the lift issue was immediately rectified and explanations provided. Polar Bear also raises issues in relation to the drafting of the motion to terminate and the explanatory note, and the fact that in the relevant correspondence from the body corporate to Polar Bear no allegations are made as to specific breaches of the agreements or the code of conduct. Polar Bear says that the body corporate itself concedes that there is a serious issue to be tried in relation to the allegations against the applicant.

¹¹ Email Byroms Lawyers to Polar Bear dated 27.04.17.

¹² Letter Byroms Lawyers to Polar Bear dated 31.07.17.

¹³ Minutes of Extraordinary General Meeting dated 11.09.17.

- [16] Polar Bear says that the body corporate did not serve it with a remedial action notice, that the process for termination in the Module must be followed and that the parties cannot contract out of the BCCM Act.
- [17] Polar Bear says that the balance of convenience favours the granting of the order sought, that if the order is granted the status quo will be maintained and that, as Polar Bear will continue to discharge its functions and duties under the agreement, no prejudice will be suffered by the body corporate. The consequences of not granting the order says Polar Bear, is that it will lose the ability to derive income and the ability to sell the management rights in the future. Polar Bear points to this in support of its argument that damages are not an adequate remedy and says that it is difficult to quantify its claim for damages at this point in time given that there is the possibility that it may wish to sell the management rights in the future.
- [18] The body corporate says that the director of Polar Bear, Mr Zhen, did not provide any substantial response to the lift issue until this proceeding was commenced, referring to Mr Zhen deposing to the fact that the amendment of the lift contractor quotation was an error and an honest mistake.¹⁴ The body corporate says that the question of whether or not the presentation of the lift quote amounted to fraudulent or misleading conduct will be a principal issue in the dispute. In relation to the expenses issue, the body corporate says that Polar Bear has provided no adequate explanation regarding the allegedly duplicated claims.
- [19] The body corporate says that the agreements have been terminated and that the balance of convenience favours the retention of the current status quo. It says that damages are otherwise an adequate remedy, that there is no evidence of income to the applicant under the letting agreement and that the remuneration payable under the caretaking agreement is modest.
- [20] The body corporate says that it is undesirable that the individuals representing each party, the chair and the committee of the body corporate on the one hand and Mr Zhen on the other, be forced to maintain a relationship in the particular circumstances of the matter. The body corporate says that the appropriate course of action is to confine Polar Bear to damages if it is able to establish a contractual claim.

Consideration

- [21] An applicant seeking interlocutory relief must establish that there is a serious question to be tried. The applicant must show that there is a prima facie case of sufficient merit to justify the grant of interlocutory relief.¹⁵ It is sufficient for an applicant to show that there is a sufficient likelihood of success to justify the preservation of the status quo pending the trial.¹⁶ The governing consideration is that the requisite strength of the probability

¹⁴ Affidavit of Vincent Zhen sworn 03.10.17 at [12] and [13].

¹⁵ *Bestjet Travel Pty Ltd v Australian Federation of Travel Agents Ltd* [2016] QSC 81.

¹⁶ *Australian Broadcasting Corporation v O'Neill* (2006) 227 CLR 57 per Gummow and Hayne JJ at 27.

of ultimate success depends upon the nature of the rights asserted and the practical consequences likely to flow from the interlocutory order sought.¹⁷

- [22] The only sworn evidence before the Tribunal in the present application is the affidavit of Polar Bear's director, Mr Zhen. During the hearing of the present application the body corporate declined an invitation to seek an adjournment in order to place its own evidence before the Tribunal.
- [23] In relation to the lift issue, Mr Zhen denies any attempt to deceive the body corporate. He says that the issue arose as a result of his entering onto the quote the address for the body corporate rather than the address of the other scheme managed by Polar Bear. He deposes to the fact that upon discovering the error he worked with the lift contractor to rectify the situation and that within approximately 2 weeks of the quote being submitted he considered the matter to have been resolved.¹⁸
- [24] The letter of 8 February 2017 from the body corporate's solicitors to Polar Bear refers to the intention of the body corporate to lodge a complaint regarding the lift issue with the OFT. Mr Zhen deposes to a conversation he had with an officer from the OFT who advised him that no complaint had been lodged by the body corporate and that the OFT did not consider there to be an issue and therefore nothing for the OFT to look into.¹⁹
- [25] When asked during the hearing of the present application whether a complaint had been lodged with the OFT, counsel for the body corporate advised that no complaint had been made and that the body corporate (or its solicitors) had been advised by the OFT that the subject of the complaint was beyond the remit of the OFT.
- [26] In relation to the expenses issue, Mr Zhen deposes to his having provided to the solicitors for the body corporate an explanation for the alleged duplicated claims.²⁰ The invoices complained of by the body corporate are said to have been submitted by Polar Bear over the period from March 2016 to May 2017. There are thirteen invoices for amounts varying from \$2.80 to \$862.00 and total \$1,635.26.
- [27] The caretaking agreement provides that Polar Bear, among other things, must act honestly, fairly, and professionally, and not engage in fraudulent or misleading conduct in performing the caretaking duties.²¹ The body corporate was entitled to terminate the agreement upon Polar Bear defaulting under the agreement. The agreement sets out the events that constitute a default which include, pursuant to clause 10(a)(ii) the non-observance by Polar Bear of the terms of the agreement which is substantial and cannot be remedied or compensated for²² and, pursuant to

¹⁷ Ibid at 29.

¹⁸ Affidavit of Vincent Zhen at [12] and [13].

¹⁹ Ibid at [19].

²⁰ Ibid at [24].

²¹ Caretaking Agreement at [6.1].

²² Ibid at 10.1(a)(ii).

clause 10.1(c) if Polar Bear engages in misconduct or in circumstances where Polar Bear is grossly negligent in carrying out or failing to carry out its obligations under the agreement.²³

- [28] The resolution to terminate the caretaking agreement relied upon clause 10(a)(ii) of the agreement and breaches of the provisions of the Code of Conduct for Caretaking Service Contractors relating to duties to act honestly, fairly and professionally and not engaging in fraudulent or misleading conduct.
- [29] Schedule 2 of the BCCM Act contains a code of conduct for body corporate managers and caretaking service providers. The provisions of the code are taken to be included in the terms of a caretaking contract.²⁴ Among other things, the code requires a caretaking contractor to act honestly, fairly and professionally in performing their functions under an engagement.²⁵
- [30] Before turning to the relevant considerations in making the interim order sought by Polar Bear I will deal briefly with the submission by the body corporate that the agreements having been terminated, the dispute is essentially a claim by Polar Bear for damages for breach of contract and that the balance of convenience tells against the making of the interim order sought on the basis that the status quo at present is that the contractual relations between the parties are at an end.
- [31] The dispute, the subject of this proceeding, is one about a contractual matter²⁶ in relation to which the Tribunal has jurisdiction.²⁷
- [32] It is well established that the Tribunal, in deciding a dispute about the termination of management or caretaking service agreements, may make declaratory orders, including declarations to the effect that a resolution by a body corporate to terminate an agreement is invalid and of no effect.²⁸ The Tribunal has the power to make orders that will finally determine the rights of the litigating parties in a binding fashion, and imports the power to make declarations in respect of such rights.²⁹ A specialist adjudicator may make an order that is just and equitable in the circumstances to resolve a dispute. The orders a specialist adjudicator may make are broad and include, for example, the power to declare that a resolution passed at a meeting of a body corporate was at all times void.³⁰ The power of the Tribunal to make orders include the making of orders that can be made by

²³ Ibid at 10.1(c).

²⁴ BCCM Act, s 118(2).

²⁵ Ibid, Schedule 2, s 2(1).

²⁶ Ibid, Schedule 6.

²⁷ Ibid, s 149B.

²⁸ See for example *Trojan Resorts Pty Ltd v Body Corporate for the Reserve* [2015] QCAT 337.

²⁹ *Sandmoon Pty Ltd v Body Corporate for South Pacific Noosa Apartments* CTS 26117 [2008] QCCTBCCM 27.

³⁰ BCCM Act, Schedule 5(8).

a specialist adjudicator. As was observed in *Sandmoon Pty Ltd v Body Corporate for South Pacific Noosa Apartments CTS 26117*:³¹

I do not think that the relevant BCCM and CCT Acts have been drawn with such precision as to require an inference that the use of such words in describing a power of the adjudicator and their non-inclusion in the words describing the powers of the tribunal shows an intention that the tribunal was not to have such powers.³²

- [33] The final relief sought by Polar Bear in its application includes declaratory relief that the resolution to terminate the agreements is invalid and of no effect and that the termination notice was valid and of no effect. Polar Bear also seeks a permanent injunction restraining the body corporate acting in reliance on the resolution and termination notice. I do not understand the body corporate to contend that the final relief sought by Polar Bear is not within the jurisdiction of the Tribunal. If, in the final result, Polar Bear is successful in the proceeding and is granted the relief sought, the body corporate's submissions regarding the maintenance of the status quo will become otiose.
- [34] There are, in my view, a number of aspects of the dispute that clearly indicate there is serious issue to be determined in the proceeding, principally whether the body corporate acted reasonably in its conduct leading to the resolution to terminate the caretaking agreement and in subsequently terminating the caretaking and letting agreements.
- [35] The final determination of the dispute the subject of this proceeding will turn to a large extent on findings of fact in relation to the alleged actions of Polar Bear and the subsequent actions by the parties including the manner and form in which the motion to terminate the caretaking agreement was placed before the body corporate at the EGM. In addition to the matter I have referred to previously regarding whether a complaint had been made to the OFT regarding the lift issue and/or the expenses issue, the Explanatory Notes to the minutes of the EGM on 11 September 2017 refer to the lift issue having been reported by the elevator contractor to the Queensland Police Service. There is no evidence before the Tribunal as to whether there has in fact been such a referral and, if so, the status of any investigation. These matters raise questions as to just how seriously the body corporate considered the lift issue and the expenses issue to be when acting to terminate the agreements in circumstances where there is no evidence to suggest that threatened referrals for further investigation have been otherwise pursued.
- [36] As I have observed, a body corporate is required to act reasonably in the carrying out its functions. A decision by a body corporate to initiate the termination of an agreement, to issue notices, and to place a resolution

³¹ Op cit 29.

³² Ibid, [37].

before the lot owners is subject to the reasonableness requirement at s 94 of the BCCM Act.³³

- [37] Polar Bear asserts that it is entitled to the continued benefit of the agreements which, in the absence of a valid termination by the body corporate, have in the order of 23 years to run. Whether there has been a valid termination of those rights is at the heart of the dispute. I am satisfied that there is a serious question to be determined in the proceeding.
- [38] Does the balance of convenience favour the granting of the orders sought by Polar Bear? Whether damages are an adequate remedy may be an independent criterion for consideration or a factor that goes to the balance of convenience.³⁴ I will deal with both considerations together.
- [39] In relation to the question of whether damages would be an adequate remedy, the Tribunal has previously observed, in circumstances involving the termination of management and caretaking agreements:

As to whether damages would be an adequate remedy, the body corporate conceded at the hearing that the quantification of damages would be difficult but not impossible. In my view, damages would not be an adequate remedy. There is no sworn evidence before the Tribunal as to Ranch Frey's future intentions regarding the caretaking and letting rights. They may intend to sell those rights at some time in the future. Evidence would be required of the value of the rights at some future point in time. Evidence would also be required of the loss of income suffered by the applicant up until any intended sale of the caretaking and letting rights. All of this is uncertain. There is also the issue of whether the body corporate would be in a position to satisfy a damages award. Counsel for the body corporate submitted that the body corporate would levy the lot owners to meet a damages award. This pre-supposes, among other things, that lot owners will pay a levy promptly and in full. Again, all of this is uncertain. All of these factors lead me to the view that damages would not be an adequate remedy.³⁵

- [40] Here, Polar Bear says that it is entitled to the fruits of the agreements that, in the absence of a valid termination, do not expire until 2041. Polar Bear says that it may intend to sell the management rights in the future. If the interim relief sought is not granted and, ultimately, Polar Bear is successful in establishing that the body corporate acted unreasonably in terminating the agreements, the only remedy Polar Bear will have is one in damages. Putting to one side the question of whether the Tribunal has the power to award damages in disputes about a claimed or anticipated contractual matter,³⁶ the considerations identified in *Ranch Frey Pty Ltd v Body Corporate for Quarterdeck* are of direct relevance in the present application. The monetary benefit accruing to Polar Bear under the caretaking agreement is \$2,500.00 per month or \$30,000.00 per annum

³³ *Body Corporate for the Reserve CTS 31561 v Trojan Resorts Pty Ltd* [2017] QCATA 53, [37].

³⁴ *Highvic Pty Ltd & Ors v Quarterback Group Pty Ltd & Anor* [2012] QSC 8.

³⁵ *Ranch Frey Pty Ltd v Body Corporate for Quarterdeck* [2016] QCAT 252, 11 [41].

³⁶ *XMR Holdings Pty Ltd v Body Corporate for Xanadu* [2016] QCAT 27.

which increases in accordance with the CPI.³⁷ Any assessment of damages on present day values based on the contractual entitlement to remuneration will be potentially significant. There is no evidence before the Tribunal as to whether the body corporate could and/or would satisfy an award of damages.

- [41] If the interim relief sought by Polar Bear is not granted the first and most immediate consequence is that Polar Bear will cease to perform its functions under the agreements and will lose the benefit of the income derived therefrom. During the course of the hearing of the application there was some suggestion by Polar Bear that there may be a financier involved. The body corporate says that there is no evidence of a financier and in the absence of any evidence of the involvement of a financier in relation to the agreements I do not propose to consider this aspect any further.
- [42] Polar Bear says that it is prepared to continue to undertake its duties and obligations under the agreements and wants to continue its role as caretaking service contractor for the scheme.³⁸ The body corporate says that the parties should not be forced back into a relationship which will be the result of the granting of the orders sought by Polar Bear. Apart from this submission and the general submission that the maintenance of the contractual relationship between the parties could be problematic³⁹ the body corporate does not point to any specific harm it will suffer if the interim relief is granted. On the other hand, the consequences for Polar Bear if the relief is not granted will be immediate and significant. I am satisfied that the balance of convenience favours the granting of the interim relief and that damages would not otherwise be an adequate remedy.
- [43] Finally, I turn to the question of the undertaking as to damages required to be given by Polar Bear. Again, there is something of a dearth of evidence on this point before the Tribunal. The body corporate says that Polar Bear has a paid up capital of only \$2.00 and that any undertaking as to damages will be valueless. At the hearing of the application, Ms Stewart for Polar Bear submitted that Polar Bear has a significant asset in the form of the management rights for another scheme. The body corporate in this application does not point to any specific loss it will suffer if the interim relief is granted other than the problematic nature of the ongoing relationship between the parties. In circumstances where Polar Bear has said that it will continue to discharge its duties and obligations under the agreements, and where there is no evidence before the Tribunal to suggest that, other than the lift issue and the expenses issue Polar Bear has not performed its duties under the agreements, it is difficult to identify what loss the body corporate might suffer as a result of the granting of the interim relief. I consider this a relevant factor in determining whether any undertaking as to damages given by Polar Bear is worthwhile given the

³⁷ Caretaking Agreement at [4.1].

³⁸ Affidavit of Vincent Zhen at [27].

³⁹ Body corporate submissions at [10].

lack of specific evidence as to the value of the management rights for the other scheme held by Polar Bear.

[44] I am satisfied based upon the Affidavit of Mr Zhen, the correspondence between the parties and the submissions filed in the application that Polar Bear in fact holds the management rights in another scheme. In the circumstances I am satisfied that the undertaking as to damages by Polar Bear is worthwhile. If the body corporate wishes to place before the Tribunal further evidence as to the value of Polar Bear's undertaking and seeks to argue further whether the undertaking is worthwhile it may do so by filing the appropriate application.

[45] I order as follows:

1. Upon the undertaking of Polar Bear Panda Pty Ltd ACN 601 885 821 (Polar Bear) as to damages, the Body Corporate for Duo on Gordon CTS 48036 ("the Body Corporate") whether by its servants, agents, employees or otherwise is restrained from relying further upon, or otherwise acting upon, the purported termination of the Caretaking Agreement dated 8 March 2016 and/or the Letting Agents Agreement dated 8 March 2016 between the Body Corporate and Polar Bear:
 - a) in reliance on the resolution by the Body Corporate to terminate the Agreement arising from the extraordinary general meeting held on 11 September 2017; and/or
 - b) in reliance on the termination notice dated 14 September 2017;until the earlier of:
 - i. the final determination of the proceeding;
 - ii. order of the Tribunal;
 - iii. agreement in writing between the parties.