

Levy Notices for Levy Recovery Actions

The NSW Court of Appeal's decision in *Chua v The Owners – Strata Plan No 40301* [2014] NSWCA 306 (27 August 2014) highlights the importance to a successful levy recovery of being able to prove that a strata manager sent a levy notice for a special levy to the lot owner.

The Strata Schemes Management Act 1996 distinguishes between regular periodic levies (usually the quarterly levies for the administrative and sinking funds) and special levies (usually for one off or unexpected expenses). A lot owner's liability for regular periodic levies arises as soon as the general meeting raises the levies and does not depend on a levy notice being sent out to the lot owner. So an owners corporation can recover an unpaid regular periodic levy even if a levy notice has not been sent. On the other hand, a lot owner's liability for a special levy only arises if a levy notice for the special levy is sent to the lot owner. So an owners corporation can only recover an unpaid special levy if a levy notice has been sent to the lot owner.

In *Chua's* case, not surprisingly, the lot owner denied receiving the levy notice for the disputed special levy. So the strata manager had to give evidence of his office's procedure for sending out levy notices because the strata manager could not give specific evidence that the levy notice for the disputed special levy was actually sent. There was also evidence from two other lot owners that they had received their levy notices for the special levy. The lot owner did not seriously challenge any of this evidence, so the Court was able to accept that the levy notice for the special levy had been sent to the lot owner. The Court ordered the lot owner to pay the special levy.

Some implications from this case for strata managers are:

- Notwithstanding the legal position set out above, lot owners will complain about not receiving levy notices and in any levy recovery action for a regular periodic contribution, this complaint is a distraction but it must be dealt with.
- If the lot owner is going to say they never received the levy notice for the special levy, the strata manager is going to need to give evidence. It would be a very unusual case for a strata manager to recall specifically that a levy notice being posted, but at the very least, the strata manager must be confident in giving evidence of his or her office's procedure for sending out levy notices so that the Court can be convinced the notice was sent.
- Make sure the address for service of notices for a lot owner is up to date and any change of address notice is promptly recorded.
- If Australia Post is returning levy notices unopened, the strata manager should consider that the lot owner's address is no longer current. A phone call to the lot owner may ascertain there has been a change of address which has not yet been notified and may ultimately avoid legal action being taken.

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