

SUPREME COURT OF QUEENSLAND

CITATION: *LQ Management Pty Ltd & Ors v Laguna Quays Resort
Principal Body Corporate & Anor* [2014] QCA 153

PARTIES: **LQ MANAGEMENT PTY LTD**
ACN 074 733 976
(first appellant)
LAGUNA AUSTRALIA PTY LTD
ACN 092 398 617
(second appellant)
TURTLE POINT HOTEL AND SPA PTY LTD
ACN 108 479 723
(third appellant)
LAGUNA WHITSUNDAYS AIRPORT PTY LTD
ACN 145 751 300
(fourth appellant)
KUNAPIPI PASTORAL PTY LTD
ACN 111 098 876
(fifth appellant)
ASD LAGUNA INVESTMENTS PTY LTD
ACN 078 360 228
(sixth appellant)
**FULLSHARE INTERNATIONAL (AUSTRALIA)
TURTLE POINT HOTEL PTY LTD**
ACN 164 341 413
(seventh appellant)
**FULLSHARE INTERNATIONAL (AUSTRALIA)
QUEENS HILL PTY LTD**
ACN 164 348 350
(eighth appellant)
**FULLSHARE INTERNATIONAL (AUSTRALIA)
PANDANUS PTY LTD**
ACN 164 339 146
(ninth appellant)
**FULLSHARE INTERNATIONAL (AUSTRALIA)
MARINA PTY LTD**
ACN 164 338 925
(tenth appellant)
**FULLSHARE INTERNATIONAL (AUSTRALIA)
VILLAGE PTY LTD**
ACN 164 347 095
(eleventh appellant)
**FULLSHARE INTERNATIONAL (AUSTRALIA)
TURTLE POINT GOLF & COUNTRY CLUB PTY LTD**
ACN 164 339 682
(twelfth appellant)

v

**LAGUNA QUAYS RESORT PRINCIPAL BODY
CORPORATE**

ABN 75 243 598 244

(first respondent)

**LAGUNA QUAYS RESORT PRIMARY
THOROUGHFARE BODY CORPORATE**

ABN 62 180 246 142

(second respondent)

FILE NO/S: Appeal No 11664 of 2013
SC No 2187 of 2012

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Orders

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 24 June 2014

DELIVERED AT: Brisbane

HEARING DATE: 20 May 2014

JUDGES: Muir JA and Atkinson and Dalton JJ
Judgment of the Court

ORDERS:

- 1. The appeal be allowed.**
- 2. The order dated 7 November 2013 be set aside.**
- 3. The order made by this Court on 27 May 2014 be set aside.**
- 4. The first respondent pay the appellants' costs of and incidental to the application for determination of the separate questions including the costs of the hearing in that regard and the costs of the appeal.**

It is declared that:

- (a) There is currently a total of 950 voting entitlements within the Laguna Quays Resort Primary Thoroughfare Body Corporate.**
- (b) The holders of the voting entitlements within the Laguna Quays Resort Primary Thoroughfare Body Corporate are:**
 - (i) Fullshare International (Australia) Turtle Point Golf & Country Club Pty Ltd (ACN 164 339 682);**
 - (ii) Fullshare International (Australia) Turtle Point Hotel Pty Ltd (ACN 164 341 413);**
 - (iii) Laguna Whitsundays Airport Pty Ltd (ACN 145 751 300); and**

- (iv) **Laguna Quays Resort Principal Body Corporate (ABN 75 243 598 244).**
- (c) **The total number of voting entitlements within the Laguna Quays Resort Primary Thoroughfare Body Corporate are held by the holders of those voting entitlements as follows:**
- (i) **Fullshare International (Australia) Turtle Point Golf & Country Club Pty Ltd (ACN 164 339 682) – 230 voting entitlements;**
- (ii) **Fullshare International (Australia) Turtle Point Hotel Pty Ltd (ACN 164 341 413) – 245 voting entitlements;**
- (iii) **Laguna Whitsundays Airport Pty Ltd (ACN 145 751 300) – 25 voting entitlements;**
and
- (iv) **Laguna Quays Resort Principal Body Corporate (ABN 75 243 598 244) – 450 voting entitlements.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – POWERS OF COURT – COSTS – where following judgment delivery, the first respondent sought and was granted leave to make further submissions on costs – where the first respondent advanced three reasons why it should not be ordered to pay the appellants’ costs – whether the order that the first respondent pay the appellants’ costs should be set aside – whether the part of the order which relates to the second respondent should be set aside

Integrated Resort Development Act 1987 (Qld), s 9(1), s 30, s 32, s 109, s 116

COUNSEL: No appearance for the appellants, the appellants’ submissions were heard on the papers
No appearance for the first respondent, the first respondent’s submissions were heard on the papers
No appearance for the second respondent, the second respondent’s submissions were heard on the papers

SOLICITORS: McKays Solicitors for the appellants
Nicholsons Solicitors for the first respondent
Tucker & Cowen Solicitors for the second respondent

[1] **THE COURT:** When judgment was delivered in this matter on 27 May 2014, the first respondent sought and was granted leave to make further submissions on costs. The first respondent advanced three reasons why it should not be ordered to pay the appellants’ costs. It was submitted that the separate questions posed for determination by the primary judge, and then by this Court, raised matters of fundamental importance

for the Laguna Quays Resort and that it was in the interests of all members of the Resort that the questions be answered. The separate questions, it was said (accurately), concerned the membership of the Laguna Quays Resort Primary Thoroughfare Body Corporate (PTBC) and the voting entitlements of each member. Those matters needed to be determined in order to enable PTBC to issue levies under s 109 of the *Integrated Resort Development Act 1987* (Qld) (the Act). Also, because PTBC could not issue levies, it was unable to raise the funds necessary to meet its obligations under s 116 of the Act.

- [2] The receivers and managers appointed to PTBC were uncertain about the number of voting entitlements. They were ordered to provide a report to the Court on that issue. The report failed to resolve the uncertainty. The first respondent commenced and prosecuted this action in order to ensure that PTBC complied with and was able to comply with its obligations under the Act. Some of the appellants also owned land in Stage 1 of the Resort. Their liability to pay PTBC's costs was also likely to decrease if the number of voting entitlements was found to be greater than 950. Those appellants also enjoy the fruits of having the PTBC operating properly and in accordance with its obligations under the Act.
- [3] However, as the first respondent accepted, the appellants have a commercial interest in the litigation, being the owners of land either within a commercial precinct in the Resort or of land to be developed. The first respondent was also attempting to secure its financial interest in the litigation. The appellants consistently maintained that the total number of voting entitlements was 950. Their stance was vindicated on appeal. The matters referred to by the first respondent are insufficient to warrant depriving the appellants of their costs.
- [4] The second point agitated by the first respondent was that the appellants succeeded on a basis agitated for the first time on appeal, namely, that the approvals for Stages 2 and 3 were not approvals of amendment to approved schemes but approvals of the Stages 2 and 3 schemes. It was submitted that the failure on the part of the appellants to ventilate this issue before the primary judge was partly responsible for the decision that was overturned on appeal. The costs of the appeal, it was contended, may have been avoided had the issue been fully and properly raised before the primary judge.
- [5] It is reasonably clear from the appellants' written submissions at first instance that the appellants contended that the Stages 2 and 3 approvals were not approvals of amendments to an existing scheme but approvals of subsequent stages and that the reference to s 9(1) in the relevant Gazette notices was erroneous.
- [6] The appellants' written submissions at first instance may not have followed the precise line of reasoning of this Court on appeal but the case pursued at first instance was not inconsistent with the case argued on appeal and it did not cause or contribute to the errors in the primary judge's approach identified on appeal.
- [7] The final argument advanced was based on the non-registration of the initial plans of subdivision for Stages 2 to 5. This was said to be non-compliance with the appellants' obligation under s 30 and s 32 of the Act to register initial plans of subdivision. Had such plans been registered, it was submitted, there would have been no need for the determination of the separate questions. The difficulty with this submission is that the existence of the alleged obligation to register, although an

issue in the proceedings, was not one of the issues selected for separate determination. It is inappropriate to attempt to determine it as a side issue on a costs argument such as this.

- [8] For the above reasons, the order that the first respondent pay the appellants' costs should not be set aside.
- [9] That part of the order which relates to the second respondent, however, should be set aside. All parties are agreed in that regard and the notice of appeal sought no order for costs against the second respondent.
- [10] The parties have agreed on appropriate declaratory relief. It is desirable that all orders made by this Court be contained in the one document and accordingly it is ordered that:
1. The appeal be allowed.
 2. The order dated 7 November 2013 be set aside.
 3. The order made by this Court on 27 May 2014 be set aside.
 4. The first respondent pay the appellants' costs of and incidental to the application for determination of the separate questions including the costs of the hearing in that regard and the costs of the appeal.

It is declared that:

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