DISTRICT COURT OF QUEENSLAND

CITATION:	*Hollis Holdings Pty Ltd v Hanley & Ors* [2002] QDC 085
PARTIES:	**HOLLIS HOLDINGS PTY LTD** (appellant)
	-v-
	P J HANLEY (first respondent)
	COMMISSIONER FOR BODY CORPORATE AND COMMUNITY MANAGEMENT (second respondent)
	BODY CORPORATE FOR "NOOSA ON THE BEACH" COMMUNITY TITLES SCHEME 6417 (third respondent)
FILE NO/S:	9/01
DIVISION:	District Court
PROCEEDING:	Appeal
DELIVERED ON:	9 May 2001
DELIVERED AT:	Maroochydore
HEARING DATE:	15 March 2002
JUDGE:	K S Dodds DCJ
ORDER:	**Appeal dismissed with costs**
CATCHWORDS:	*Body Corporate and Community Management Act* 1997,
	ss 98, 99, 197, 220;
	Body Corporate and Community Management (Standard Module) Regulation, s 51(2), s 95(2), 113;
	Body Corporate for "Surfers Waters" CTS 20377 v Angland & Anor, District Court Brisbane, 10.03.2000.
COUNSEL:	Mr P Crisp for Hollis Holdings Pty Ltd
	Mr C J Carrigan for Body Corporate for "Noosa on the Beach"
SOLICITORS:	Klooger Phillips Scott Lawyers for Hollis Holdings Pty Ltd
	Short Punch & Greatorix for Body Corporate for "Noosa on the Beach"

[1] This is an appeal against the decision of the first respondent an adjudicator appointed by the second respondent under the *Body Corporate and Community Management Act* 1997 (the Act). Pursuant to Part 12 of Chapter 6 of the Act, the appellant may appeal to the District Court from an adjudicator's decision "but only on a question of law": s 237(2) of the Act.

[2] There are 31 lots in the third respondent (the Scheme). The appellant is the owner of lot 21. Peter Hollis (Hollis) is the principal of the appellant and is the resident manager of "Noosa on the Beach".

[3] The appellant had made application to the second respondent on 27 March 2001 seeking orders:

1. "That motion 5 of Extraordinary General Meeting (of the third respondent) of 19 March 2001 is a special resolution (as so dealt with) and was lost 9 – 12 (maybe 10 – 11) and/or the motion is invalid;
2. That motion 6 of Extraordinary General Meeting (of the third respondent) of 19 March 2001 is a special resolution and was lost 9 – 12 (maybe 10 – 11) and/or the motion is invalid;
3. That the vote of lot 19 – a proxy to (P Hunter, lot 27 and 31) cannot be counted as the proxy did not personally attend the meeting".

[4] In the application form the second respondent was asked "11. If you are also applying for an interim order state the interim order you are seeking - - ". In response, the appellant wrote "yes, this seems appropriate and necessary as urgent – to stop body corporate issuing levies for motion 5 and paying accounts by motion 6 pending any final determination and also for the committee/body corporate manager to start to respect proper procedures! and the Act".

[5] In support of its application the appellant provided to the respondent a large quantity of material including minutes of the Extraordinary General Meeting referred to, notices for that meeting, minutes of an annual general meeting held 29 March 1999 containing motions passed which were the subject of the disputed motions at the meeting of the 19 March 2001, copies of accounts and letters written by Hollis to the body corporate manager and others regarding refurbishment and maintenance of "Noosa on the Beach".

[6] The second respondent referred the matter to the first respondent as adjudicator under the Act. Pursuant to s 197 of the Act the second respondent may, if considered necessary because of the nature or urgency of the particular circumstances to which an application relates, refer it to an adjudicator to consider whether an interim order is necessary. If the adjudicator considers it necessary an order may be made which has effect for a limited period which may be extended or cancelled by a later order or lapse when a final order is made by the adjudicator.

[7] The adjudicator's reasons directed to the questions posed by the application indicate the adjudicator took the view:

> that the motions (motions 5 and 6) should have been designated on the voting paper as special resolutions;
>
> that they were considered as special resolutions at the meeting and were carried.

No vote was in fact recorded for lot 19. Accordingly, because of the view reached about voting on motions 5 and 6 the adjudicator considered the third order sought by the appellant was irrelevant.

[8] The written decision of the adjudicator is dated 12 April, 2001. It seems to me to summarise the effect of material provided to the adjudicator by the appellant through Hollis, by the body corporate manager, by some members of the committee of the body corporate past and present, by some lot owners and the project manager for building and maintenance work to which the motions in dispute related. That the first respondent summarised the effect of this material in his decision was criticised on the hearing of the appeal. It was submitted that having read the large quantity of material accompanying the application, having sought a response (from the third respondent) as was required under the Act the adjudicator should then have sought a reply from the appellant. The appellant requested to reply but the decision was brought down before he did that. It was submitted that the appellant had been denied natural justice. It was submitted that by summarising this material and in referring to Hollis as an "enthusiastic supporter of the project" in the beginning and "now a vociferous critic of almost everything associated with the refurbishment notwithstanding that he professes to want the project completed", the first respondent reached his decision on that basis.

[9] I reject the submission. It seems plain that Hollis at the time of the 1999 meeting supported the motions thereat, but that since his support has diminished. The reasons for that and the rights and wrongs of it are not presently particularly relevant. Nor were those reasons and the rights and wrongs other than incidentally relevant to the adjudication. From a reading of the whole of the adjudicator's reasons it seems to me that the adjudicator summarised this material for two reasons; firstly, so that the parties would understand it had been read, and secondly, as a component of the decision that facsimile voting papers delivered to the secretary at the Extraordinary General Meeting should not be accepted as valid votes. I do not think that the adjudicator was diverted from the real issues for adjudication or that the appellant was denied natural justice.

[10] Regarding motions 5 and 6, the adjudicator noted two voting papers Calambee Nominees Pty Ltd (Lot No. 14) and Mr and Mrs D J Wood (Lot No 18) were not allowed because they were not delivered to the secretary personally. He referred to the decision of Robin QC DCJ in *Body Corporate for "Surfers Waters" CTS 20377 v Angland & Anor*, District Court Brisbane, 10.03.2000 (*Angland*), where his Honour found that voting papers delivered by an intermediary, a relative of the letting manager, to the secretary were not delivered personally as required by s 51(2) of the *Body Corporate and Community Management (Standard Module) Regulation* 1997 (the Standard Module Regulation). The adjudicator concluded that in view of Hollis's involvement in the ongoing disputation about the refurbishment program revealed in all the material put before him, that the two voting papers which were against these motions and were delivered by Hollis to the secretary of the body corporate at the meeting should not be allowed. Consequently, the motions were capable of being carried as special resolutions. The adjudicator also noted in the reasons for the decision that further submissions was not invited since the decision, although an interim one as sought by the applicant, was final in its determination of the matter.

[11] Apart from the denial of natural justice contention, the appellant's grounds of appeal put simply were that the adjudicator's decision regarding the voting papers was wrong.

[12] The application before the adjudicator called up the following questions:

- were motions 5 and 6 at the Extraordinary General Meeting of 19 March 2001 required to be special resolutions?
- if the motions were required to be special resolutions, but were shown on the voting paper as ordinary resolutions, did it invalidate the motions?
- if the motions were required to be special resolutions and were valid, were they lost?
- were the two votes which were ruled invalid in fact valid, and if counted would it result in defeat of the motions as special resolutions?

[13] Motion 5 at the Extraordinary General Meeting of 19 March 2001 was shown on the voting paper as an ordinary resolution. It was in the following terms:

> "Project Manager – During the course of the building project and in accordance with the motion numbers 12, 13, 14 and 15 of the Annual General Meeting held on 29 March 1999 – Allan MacKechnie of Jaral Pty Ltd was appointed as project manager; his duties in this role were listed as follows:
>
> 1. To co-ordinate and supervise all works;
> 2. To obtain at least two quotations for all works and select the most appropriate;
> 3. To commission any drawings required for the works;
> 4. To rectify all accounts before payment is made.

Jaral Pty Ltd were to be paid an hourly rate of $50.00 for the performance of these duties, the total of the invoices submitted to date (14.02.01) for the project are $92 733.00 – representing $44 303.00 in the last financial year and $48 430.00 this financial year. All invoices are shown on appendix "C". A complete set of invoices is available at the meeting for inspection if so required or by request.

It is necessary to implement a special levy to cover the cost of this work:

Levy Period	$ Per Lot Entitlement	GST	Total Per Lot Entitlement	Due Date for Payment
20.04.01	$48.29	$4.83	$ 53.11	20.04.01
02.07.01	$48.30	$4.83	$ 53.12	02.07.01
Total	$96.59	$9.96	$106.23".	

[14] Motion 6 at the Extraordinary General Meeting of 19 March 2001 was also shown as an ordinary resolution. It was in the following terms:

"Ratification of Building Accounts –

> That the body corporate confirm the accounts for the major renovations conducted at "Noosa on the Beach" and authorised at the Extraordinary General Meeting held on 29 March 1999. All invoices are shown on appendix "D". A complete set of invoices is available on request and will be available for inspection at the meeting. A copy of the minutes from both meetings is also enclosed.
>
> NB: All items approved are listed in the minutes while other items such as the transit lounge have been discussed at committee level. They must be costed and presented to the Body Corporate at General Meeting where the owners have the opportunity to vote, until this has occurred these items are not approved. While additional work may be authorised at a future date it is the priority of the committee to complete the existing authorised works."

Motions 12 and 13 of the annual general meeting of 29 March 1999 related to stages 1 and 2 respectively of building maintenance work to be paid for out of funds raised by the special levies of $843.75 and $319.17 per lot entitlement. As required by s 95(2) of the *Standard Module Regulation*, the motions were ordinary resolutions and were passed. Each included that the cost of the work to be paid by the special levy was subject to –

> "(a) That the body corporate retains Jaral Pty Ltd to co-ordinate and supervise all works;
> (b) At least two quotations are to obtained for all works and the most appropriate quotation to be selected;
> (c) Any drawings required for works to be commissioned by Jaral Pty Ltd;
> (d) The cost of any fees, permits, drawings are not included in the above costs but are estimated to be $4 000.00 which is to be paid from the sinking fund;
> (e) All amounts due and payable to contractors are to be certified by Jaral Pty Ltd, the project supervisor, before payment is made by the body corporate".

[15] Motions 14 and 15 of the annual general meeting of 29 March 1999 related to stages 1 and 2 respectively of common area improvements to be paid by special levies of $354.17 and $235.42 per lot entitlement. As required by s 113 of the *Standard Module Regulation*, the motions were special resolutions and were passed. Each included that the special levies per entitlement were subject to –

> "(a) That the body corporate retains Jaral Pty Ltd to co-ordinate or supervise all works;

(b) At least two quotations are to obtained for all works and the most appropriate quotation to be selected;
(c) Any drawings required for works to be commissioned by Jaral Pty Ltd;
(d) The cost of any fees, permits, drawings are not included in the above costs but are estimated to be $4 000.00 which is to be paid from the sinking fund;
(e) All amounts due and payable to contractors are to be certified by Jaral Pty Ltd, the project supervisor, before payment is made by the body corporate".

[16] Jaral Pty Ltd's fees do not appear to have been a part of the cost of building maintenance or of improvements in the common areas set out in the body of motions 12, 13, 14 and 15. The only reference to fees is in subparagraph (d) of the motions. It indicates fees are to be paid from the sinking fund. There is no reference to an hourly rate of $50.00 for Jaral Pty Ltd in the motions. There is an estimate of the cost of fees. It is implicit that Jaral Pty Ltd would be paid for its work. Motions 12, 13,14 and 15 authorised Jaral Pty Ltd to undertake the work.

[17] Motion 5 required an ordinary resolution. It was to implement a special levy to pay the account of Jaral Pty Ltd for work it had authorised Jaral Pty Ltd to do.

[18] Motion 6 sought that the body corporate confirm the accounts for the major renovations conducted at "Noosa on the Beach" authorised at the meeting of 29 March 1999. Resolutions 12, 13, 14 and 15 passed at the meeting of 29 March 1999 authorised the renovations. The accounts related to that work. Motion 6 sought the Extraordinary General Meeting's authority to pay them. All that was necessary was an ordinary resolution.

Voting at the Meeting of 19 March 2001

[19] There were 31 lots. For an ordinary resolution where no poll is required for counting of votes, a simple majority carries the motion: s 99 of the Act. For an ordinary resolution it is irrelevant that two votes were disallowed as according to the voting they could not have affected the result. For a special resolution one vote may be exercised for each lot included in the Scheme "whether personally, by proxy or in writing". The motion is passed if more votes are counted for than against the motion and the number against is not more than 25 percent of the number of lots included in the Scheme and the total of the contribution schedule lot entitlements for the lots for which votes are counted against the motion is not more than 25 percent of the total of the contribution schedule lot entitlements for all lots in the Scheme: s 98 of the Act. Thus, if there were eight or more votes against a motion for a special resolution it must fail.

[20] The minutes of the meeting of the Extraordinary General Meeting of 19 March 2001 record that motion 5 was carried 11 – yes, 7 – no, no abstentions and motion 6 carried 10 – yes, 7 – no, and 1 abstention. Lot 14 - Calambee Nominees Pty Ltd voting paper was ruled an invalid voting paper. Lot 18 - Mr and Mrs D J Wood was ruled an invalid voting paper. Both of these votes were "no" to the motions. A facsimile copy of each voting paper had been delivered to the secretary by Hollis at the Extraordinary General Meeting. It may be accepted that these unit holders sent their completed voting paper by facsimile to Hollis before the meeting.

[21] Section 51 of the *Standard Module Regulation* provides:

> "(1) A voter for a general meeting may vote on a motion personally by proxy or by casting a written vote.
>
> (2) A written vote is cast by completing the voting papers as required by the accompanying instructions and giving them to the secretary (personally by post or by facsimile) before the start of the meeting."

[22] In *Angland*, Judge Robin QC considered what s 51(2) of the Standard Module Regulation required. In that case, the respondents held the letting and management rights in respect of the Scheme. Motions for a meeting of the body corporate were of a nature potentially affecting the economic interests of the respondents. The respondents or a family member had canvassed lot owners for written votes and supplying facsimile copies of voting papers to persons entitled to vote then collected the completed voting papers and delivered them to the offices of the secretary. His Honour considered that what was required by s 51(2) was that there be a personal commitment by the voter "to his or her vote to the extent of personal and particular steps being taken in relation to that voting paper to get it to the secretary in a way that indicates to the secretary the voter's personal considered imprimatur and implies a warranty to the secretary that the vote is an enthusiastic, free and genuine one". In the event he held that the votes in question were void. In reaching that view His Honour had regard to the second reading speech in the Legislative Assembly to the Building Units and Group Titles Bill delivered on 18 November, 1994. An identical provision to s 51 of the Standard Module Regulation became s 81 of the *Building Units and Group Titles Act* 1980. The speech dealt with the desirability of curtailing persons such as letting managers who may have an ability to cause detriment to unit holders, canvassing and collecting votes for motions at meetings and delivering them to the secretary to achieve a desired outcome.

[23] In s 51 the phrase "giving them to the secretary" is both enlarged and limited by the bracketed words to giving them "personally, by post or by facsimile". I agree with Judge Robin QC that the words refer to the voters' actions. Giving to the secretary personally involves at least personally delivering the voting paper to the secretary's return address. Giving to the secretary by post involves posting the completed voting paper addressed to the secretary at the return address. Giving by facsimile involves sending the completed voting paper to the secretary at the secretary's return facsimile address by means of facsimile equipment. These means provide a wide range of means by which a vote may be counted and are easily complied with. They may be seen as minimising the undue influence of persons such as letting managers referred to in the second reading speech and as maximising the "personal commitment" to an "enthusiastic, free and genuine" vote referred to by Judge Robin QC.

[24] I think the adjudicator was correct in upholding the ruling that the two votes were invalid. The votes were not given to the secretary before the start of the meeting as required by s 51(2). The adjudicator's reference to the material suggesting that Hollis was an opponent and critic of the refurbishment program was with the decision of *Angland* in mind. The fact situation in *Angland* was in one sense more extreme than the present case but it cannot be said that the principle behind s 51(2) was not called up here when it came to recording valid votes.

[25] In answer to the questions posed above, motions 5 and 6 at the Extraordinary General Meeting of 19 March, 2001 were not required to be special resolutions. Even if they had been, the decision to hold the two votes delivered by Hollis to the secretary at the meeting invalid was correct with the consequence that the motions were capable of being passed as special resolutions.

[26] The appeal is dismissed with costs.