

## APPELLANT'S SUBMISSIONS ON COSTS

### COURT DETAILS

Court	NCAT Appeal Panel
Division	
Registry	Sydney
Case number	2022/00081736

### TITLE OF PROCEEDINGS

Appellant	<b>Guitang Lu</b>
Respondent	<b>Community Association 270682</b>

### FILING DETAILS

Filed for	<b>[GUITANG LU]</b> [Appellant]
Contact name and telephone	[GUITANG LU] [ 0433251006]
Contact email	[luke@cowise.com.au]

### APPELLANT'S RESPONSE

1. For the reasons outlined hereunder, I object the association's costs application, which is composed of mere allegations and is not supported by evidence and facts.
2. I have more evidence relevant to this submission till date. I seek the Appeal Panel's leave for my attached evidence.

#### The appeal


3. In this appeal, I applied for an order to set aside Tribunal's primary decision of 1 March 2022, for an order to set aside the ancillary costs decision of 7 April 2022, and for any proper order to settle my complaints within the Tribunal's jurisdiction.
4. On 21 July 2022, the Appeal Panel dismissed my application for an order to set aside the Tribunal decision of 1 March 2022.
5. The appeal judgment left the issue of other orders outstanding.
6. The association's costs application was initially raised in their undated written submissions of May 2022.
7. On 26 May 2022 both parties gave oral submissions as to costs during the telephone hearing. While Mr. Ede requested costs and submitted for a costs order, I submitted no order as to costs as there were no special circumstances on my part.
8. On 21 July 2022, the matter was finalised when the Appeal Panel delivered judgment with no order as to costs. The NCAT later confirmed same (evidence attached).

9. If now the Appeal Panel wishes to re-consider the Respondent's re-application for costs, then I submit that the Appeal Panel should fairly re-consider the outstanding issues left in the proceedings, including the issue of an order to set aside the first instance costs order and the issue of equitable orders to settle my complaints.
10. Therefore, I strongly object the association's re-application for costs order after the matter has been finalised, as it would be a frivolous costs application. They have conducted too much.
11. While I wish to re-submit no order as to costs by relying on the circumstances in my previous submissions, I also re-submit that the first instance costs order be set aside. To assist the Appeal Panel, I further submit below:



### **Association's non-compliance**

12. The association did not serve me its costs submission until 5 September 2022 (evidence attached).
  - 1) This is its non-compliance with the Appeal Panel's directions, which specified the deadline of 2 September 2022.
  - 2) This non-compliance is an example of special circumstances on the association's part.

### **Costs motivation**

13. Mr.  encouraged the association to conduct a defence before he was appointed:
  - 1) In August 2021, he advised his endeavor to "have NCAT related cost transferred back" to me (evidence attached), despite that there were no special circumstances identified at all.
  - 2) His advice was circulated to all owners and encouraged a defence rather than an act to change an agent.

### **Costs bullying**

14. The association oppressed me to pay its previous Fair Trading "mediation costs" before I commenced the NCAT proceedings on 27 July 2021, while it was never entitled to same.
  - 1) The association now still asks me to pay such "mediation costs" to which it is not entitled (evidence attached).
  - 2) This is costs bullying. My complaint about this is unsettled despite the full NCAT proceedings within their jurisdiction.
15. The association has oppressed me to pay their first instance directions hearing costs to which it is not entitled:
  - 1) This happened from September 2021 after Mr.  was appointed.
  - 2) This now still happens. This is costs bullying, despite the first instance order.
16. In or about July 2022, the association misappropriated my levy money to pay Mr. 's legal costs for the first instance directions hearing and threatened further action for shortage (evidence attached).

17. The above unconscionable practice of costs bullying is a special circumstance on the association's part.

### **Reckless circumstances**


18. For their above costs bullying, the association recklessly does not care what the Tribunal order is.


19. The association's reckless attitude towards law and even the Tribunal order is appalling, despite that the NCAT has conducted its full proceedings so far.


20. The association, even with the new agent, has not altered their attitude at all and insists on their wrong.

21. On one hand, I complained to the NCAT about their costs bullying; on the other hand, the NCAT dismissed my complaints and demanded me to pay more costs. This would only encourage more practice of bullying.

### **Misleading circumstances**

22. Mr.  attempted in his submission of May 2022 to mislead the Appeal Panel that the association has taken a step to appoint a compulsory managing agent while it proved untrue.

23. Mr.  even denied the existence of the Flick pest report relevant to the association's breach of duties, despite my overwhelming evidence based on the balance of probabilities.

24. Mr.  has never disclosed to the Tribunal as well as the Appeal Panel that the association's "address for service of document" is still the former agent Beaumont Strata.

1) According to the new evidence (attached), the former agent still takes a critical position of receiving confidential, formal or official notices and documents for the association from February 2022 till now.

2) The association has never disclosed this critical information while it may likely mislead the Tribunal and the Appeal Panel in concluding that the new agent would be the solution.

### **Binary circumstances**

25. On one hand, if the primary judgment stands comfortably in public with respect, the only requisite act for the association was to change the agent themselves. Then the matter was over once the change was there, particularly in the Tribunal which can conduct the proceedings inquisitorially. Even if they did not appoint legal representation, they would nevertheless win with a new agent appointed. Therefore, their legal representation was unnecessary and driven by Mr. Ede's costs motivation. It is thus inequitable for me to pay their legal costs.

26. On the other hand, the appeal raised an arguable case that even if the new agent might cure administrative breaches, they did not cure substantial breaches as I complained from the beginning.

27. I have appeared unrepresented throughout the proceedings to minimize potential legal costs for the association all the time.
28. Mr. [redacted] has motivated the association for a defence with his costs shifting promise from the beginning. It was Mr. [redacted] that increased the legal costs in these proceedings. His legal representation does not automatically mean legal costs.
29. Therefore, I should not pay their costs at all for the primary proceedings. Each party should fairly pay each own's costs in both proceedings.

### **Inequitable circumstances**

30. My complaints about the association's breaches are normal, legitimate, and based on facts and law. My complaint is not \$185.90 for fence damage, which is merely a nominal remedy to offset the association's bullying costs claim from the time of Fair Trading mediation to NCAT proceedings. They not only want costs, but they also want everything, including so-called gst money and statutory inspection fee though they have not arranged the inspection for me so far. Even if the NCAT is unwilling to deal with my complaints within their jurisdiction, it would be inequitable to ask me to pay the association's costs relating to complaints about their breaches.
31. I did not make special circumstances; rather, I only suffer from unfair and inequitable circumstances, where as I submitted, I discovered their breaches, complained about their breaches but was asked to pay for my complaints.
32. Therefore, I once again submit that the first instance costs order should be set aside and seek the Appeal Panel's indulgence to order same equitably.

### **Summary**

33. This is not a court proceeding. The NCAT is not a costs jurisdiction normally: s 60 (1) of the NCAT Act.
34. In short, there are no special circumstances on my part, but there are only inequitable circumstances to me.
35. The organisation's land owners should only share their costs and pay for their voluntary legal costs. I should not pay for their breaches.
36. With the reasons above, while I seek orders to set aside the first instance costs order and settle the outstanding complaints, I submit no order as to costs in both proceedings.

### **SIGNATURE**

Signature of

Appellant

Capacity

Date of signature



Guitang Lu

Appellant

08/09/2022