CONSUMER, TRADER & TENANCY TRIBUNAL
NOTICE OF ORDER

The Secretary, Owners Corporation SP 50785
1–3 McDonald Street
CRONULLA NSW 2230

File No: SCS 12/49745
(Quote in all enquiries)

Application to the Tribunal concerning 1–3 McDonald Street CRONULLA NSW 2230 Australia – SP50785

On 18–JAN–2013, the following orders were made:

1. Special by–law 42.5 made in general meeting on 26 March 2008 and registered on 11 September 2008, to the extent that it amends or repeals by–law 42 that was registered in 1996 is, pursuant to s157(1)(a) revoked.

2. The respondent shall calculate the sum paid by the applicant to the Owners Corporation pursuant to the revoked by–law that is in excess of the sum payable pursuant to the previously existing by–law in that regard and shall credit the excess to the account of the applicant.

3. The respondent shall take all necessary steps to engage suitably qualified tradespeople to repair and maintain the gazebo as necessary to ensure compliance by the respondent with its obligations in that regard under the SSMA s.62. All work to be completed within 60 days of the date of these orders.

4. The application is otherwise dismissed.

Reasons for Decision enclosed.

Please read this information carefully

- **Display of the Order:** Within 72 hours of receiving this order the owners corporation must put a copy on the scheme notice board, unless the order states otherwise or if the by–laws do not require the owners corporation to maintain a notice board. It must stay there for 14 days. If there is no notice board the owners corporation must give a copy to each person shown on the strata roll.
- **Your Rights of Appeal:** If you wish to appeal against a dismissal of an application by an Adjudicator, you must lodge an appeal to the Tribunal within 21 days of the date the order takes effect. The date the order takes effect will vary. See s210 of the Strata Schemes Management Act 1996 and s99 of the Community Land Management Act 1989. An Appeal from any other order must also be lodged within 21 days of the date the order takes effect, although if sufficient cause is shown, time may be extended to 90 days. Section 81 of the Consumer, Trader and Tenancy Tribunal Act 2001 may also apply.
- An order of the Tribunal may be varied or revoked in certain limited circumstances. Such application may only be made with the approval of the Registrar within 28 days. Orders made by an Adjudicator may be clarified or time extended.
- The only right of appeal against an order of the Tribunal made at hearing is to the District Court on a point of law and must be made within 28 days from the date the order is made. In certain circumstances this time may be extended.
- **Penalty for Non–Compliance:** If an order is not complied with an application may be made to the Tribunal to impose a penalty up to $5,500.00.

More Information: If you need more information your rights and responsibilities or Mediation enquiries please contact Fair Trading Information Centre on 13 32 20.

CONSUMER, TRADER & TENANCY TRIBUNAL
NOTICE OF ORDER

M Goyal
Deputy Registrar
22/01/13

Level 3, 4–8 Woodville Street, HURSTVILLE NSW 2220
PO Box 148, HURSTVILLE BC NSW 1481
Ph: 1300 135 399 Fax: 8567 0099
www.cttt.nsw.gov.au

CONSUMER, TRADER & TENANCY TRIBUNAL
Strata and Community Schemes Division

APPLICATION NO:	SCS 12/49745
STRATA SCHEME:	SP 50785
PREMISES:	1-3 McDonald Street, Cronulla NSW 2230
APPLICANT:	Universal Finance Holdings Pty Ltd, owner, lot 21
RESPONDENT:	Owners Corporation SP 50785
LEGISLATION:	*Strata Schemes Management Act 1996* (the SSMA)

ORDERS

1. Special by-law 42.5 made in general meeting on 26 March 2008 and registered on 11 September 2008, to the extent that it amends or repeals by-law 42 that was registered in 1996 is , pursuant to s 157(1)(a) revoked.

2. The respondent shall calculate the sum paid by the applicant to the Owners Corporation pursuant to the revoked by-law that is in excess of the sum payable pursuant to the previously existing by-law in that regard and shall credit the excess to the account of the applicant.

3. The respondent shall take all necessary steps to engage suitably qualified tradespeople to repair and maintain the gazebo as necessary to ensure compliance by the respondent with its obligations in that regard under the SSMA s 62. All work to be completed within 60 days of the date of these orders.

4. The application is otherwise dismissed.

Jeffery Smith
Strata Schemes Adjudicator
Consumer, Trader & Tenancy Tribunal

18 January 2013

CONSUMER, TRADER & TENANCY TRIBUNAL
Strata and Community Schemes Division

REASONS FOR DECISION

APPLICATION NO: **SCS 12/49745**

APPLICATION

1. This application for adjudication was filed on 27 September 2012. The application was accepted by the Registrar in accordance with s 125(1)(a) and written submissions were invited from interested parties by 20 November 2012.

2. Submissions were filed by the applicant and the respondent by the due date and the application was referred to me today for adjudication.

3. A further submission from Tony Conides (a real estate agent) was filed on 19 November 2012. It is unclear how that submission came into existence but was said to have been prepared on request of an unidentified firm of solicitors and is apparently in support of the applicant's case. The writer does not rely on any authorisation from the applicant and does not appear to have any standing to make a submission in this case. Nor does the submission add anything to the comprehensive submission and documentation already provided by the applicant. I have ignored that submission.

4. The applicant seeks the following orders

   - to rescind or amend by-law 2,
   - to rescind by-laws 42 and 42.5,
   - to clarify by-law 21,
   - to identify the extent of the applicant's responsibilities for maintenance of the lift,
   - to refund levies paid by the applicant that were not calculated in accordance with the applicant's liabilities that relate to extra charges paid pursuant to by-law 42.5 and additional sums paid under by-law 21 for the repair and maintenance of the elevator,
   - details of expenditure of the Owners Corporation relating to the elevator since 2003,

- that the Owners Corporation carry out all necessary repair and maintenance to the gazebo pursuant to its obligations under s 62, and
- an order for costs.

SUBMISSIONS

5. The applicant's submissions were to the following relevant effect.

By-law 2

6. Special by-law 2 was registered on 30 September 2003. It provides for the erection by the owner of lot 21 of "glazing works" (defined in the by-law) on the common property, for the exclusive use of that part of the common property occupied by the glazing works and for the privilege of installing and maintaining an "exhaust system" (also defined in the by-law) on the common property roof.

7. The by-law provides that the owner of lot 21 must properly maintain and keep in a state of good and serviceable repair the elevator and elevator tower, but does not confer any right on the owner of lot 21 to exclusive use of the elevator.

8. The agreement made in respect of maintenance of the elevator was, on the applicant's submission, intended to be a temporary arrangement to cover the eventuality of damage to the elevator or elevator tower that may result from the removal of a wall and erection of the glazing works in accordance with the approval given.

9. Upon completion of the works (which occurred about 10 months after the by-law was registered) it was the undisputed inference that the obligation for maintenance of the elevator and elevator tower would revert to the respondent.

10. Despite the completion of the works the Owners Corporation has insisted on, and the applicant has made, payment for all of the costs of maintenance and upkeep of the elevator and elevator tower.

By-laws 42 and 42.5

11. By-law 42 was registered in 1996. Its purpose is to permit certain lot owners (including lot 21) to utilise common property pursuant to a licence and in return to pay a license fee.

12. By-law 42.5 was made in general meeting on 26 March 2008 pursuant to s 52 and registered on 11 September 2008. That by-law purports to impose on the applicant (and others) an obligation to pay an additional contribution which is inconsistent with the SSMA s 78.

13. Further, by-law 42.5 was not made in accordance with s 52(1)(a) or s 65A(5)(b) in that the applicant did not at any time give its consent to the by-law or to the amendment of by-law 42, the by-law (42.5(b)) purports to permit the executive committee to penalise the lot owners concerned and it is so poorly drafted as to be ambiguous and incapable of clear understanding and can be exercised in a discriminatory manner.

By-law 21

14. Special by-law 21 was registered on 1 August 1996 and provides for the exclusive use by the applicant of an area of common property fronting lot 21 for the purpose of its commercial restaurant. The by-law makes the owner of lot 21 responsible for the proper maintenance and keeping in a state of good and serviceable repair the area concerned but specifically excludes any obligation for maintenance or repair of a structural nature.

15. Despite the exclusion the respondent requires the applicant to maintain and repair a gazebo that is a substantial free standing structure covering much of the common property area and which is attached to the common property eaves overhanging the space to which the by-law applies. Comprehensive photographs of the area and the structure were provided.

16. The maintenance of the gazebo was never intended to be included in the by-law and is in fact specifically excluded by the terms of the by-law.

17. The gazebo is now in a state of disrepair and will cost in the order of $87,000.00 to restore to proper condition.

18. The application in regard to this issue is for a declaration that the responsibility for maintenance of the gazebo lies with the Owners Corporation and for orders that the Owners Corporation now carry out necessary maintenance and repair of the gazebo in accordance with s 62.

19. The applicant provided extensive documentation in support of the application including copies of the strata plan, the relevant by-laws, photographs, references and extracts to relevant case law and correspondence.

20. A submission in reply was filed by J.S.Mueller & Co. solicitors, on behalf of the respondent. That submission was to the following relevant effect.

21. The strata scheme consists of a multi-level residential tower plus two separate buildings (blocks A and B) comprising restaurants and apartments. Lot 21 is situated on the second floor of block B and is leased by the applicant for use as a restaurant.

22. A large partly uncovered balcony forming part of the common property is situated adjacent to the restaurant and is used in part by patrons of the restaurant. Access to the restaurant is by a staircase or by a lift that runs only between the first and second floors of block B.

23. The gazebo referred to by the applicant is a large steel framed structure covering the elevator tower and staircase and has been *in situ* since completion of the building in March 1996.

24. A history of the relevant by-laws to the following effect was provided. The strata plan was registered with special by-law 1 which gave the commercial lots exclusive use of certain areas of common property.

25. Special by-law 21 was registered in April 1996 and provided for the exclusive use by the owner of lot 21 of an area adjacent to lot 21 and imposed an obligation on the owner of lot 21 in regard to maintenance and repair.

26. A license agreement entered into between the Owners Corporation and a previous owner of lot 21 expired in September 2002. Following expiry of that license agreement special by-law 2 was made which gave the owner of lot 21 a special privilege in respect of roof top exhaust system (previously covered by the license agreement) and rights for the owner of lot 21 to carry out the "glazing works". That by-law imposed on the owner of lot 21 an obligation in respect of the maintenance of the glazing works, the elevator and the elevator tower. Clauses C(iii) and C(iv) of that by-law provides that the obligation shall continue until such time as the bridge over Gerale Street is commissioned and constructed.

27. Special by-law 42 was made on 23 March 2005 and clause 42.5 provided for a license fee to be paid by the owners of the lots concerned (including lot 21) in return for consent to install an exhaust system on common property and to share common property grease traps.

28. On 26 March 2008, special by-law 42.5 was amended by increasing the license fee to $2,500.00 (+GST) per quarter.

By-law 2

29. By-law 2 C(iv) imposes on the applicant the obligation to repair and maintain the elevator tower. The gazebo is part of the elevator tower as it provides the roof to the elevator tower. Further, by-law 2C(vii) imposes on the applicant the obligation to comply with the terms of the

license agreement, one of which terms (cl.H in the attachment to the license agreement) requires the owner of lot 21 to be responsible for *"the upkeep of the structure above the lift"*.

30. As a consequence of the above, the Owners Corporation has no obligation pursuant to the SSMA s 62 for the repair and maintenance of the gazebo.

31. By virtue of the operation of the SSMA s. 157(5) the applicant, who was not a lot owner at the time by-law 2 was made, has no standing to seek an order repealing or amending the by-law.

32. In regard to the argument that the obligation imposed by the by-law is of a temporary nature, the respondent's submission was that it is conditional upon the building of the bridge over Gerrale Street, which has not occurred.

33. It cannot be said that the by-law is unfair or unjust as it existed at the time the applicant purchased lot 21 and the applicant would therefore have been on notice that it would be responsible for the maintenance of certain parts of the common property and the by-law gave the owner of lot 21 the right to extend the operation of the restaurant onto common property which is commensurate with the obligations imposed.

By-laws 42 and 42.5

34. By-law 42 confers special privileges on six commercial lot owners who are not parties to the application. The repeal of the by-law would be procedurally unfair to those lot owners.

35. By-law 42.5 is not inconsistent with s 78 as claimed by the applicant. It does not purport to impose a levy but requires the applicant (and others) to pay a license fee in consideration for the use of common property grease traps and roof top exhaust systems. The SSMA s.53 clearly contemplates a by-law requiring the payment of a sum at stated intervals and that principle was confirmed by the Court of Appeal in *Owners SP 3397 v Tate [2007] NSWCA 207.*

36. The by-law is neither discriminatory nor unclear. It simply gives the executive committee the discretion to waive the fee if there is no breach of the by-law. By-law 42.5 is quite clearly intended to simply increase the pre-existing license fee from $1,000.00 to $2,500.00 per quarter (despite the typographical error in the amending by-law).

37. As more than two years has elapsed since the by-law was made it is conclusively presumed (pursuant to s 52(3)) that the applicant did give its consent to by-law. The respondent relies on the decision of the Supreme Court *James v Owners Corporation SP 11478 (No.4)* [2012] NSWSC 590 in support of that proposition.

38. There is no power for an Adjudicator to order the refund of monies paid pursuant to by-law 42.5 (SSMA s 138(3)(d)).

39. Even if the Adjudicator made orders to repeal the by-law, the repeal would not operate retrospectively hence the applicant's obligations to make payments under that by-law would continue up to the date of the repeal.

40. The SSMA s.157(3) does not permit an Adjudicator to order compensation on repeal of a by-law but is intended to provide for compensation to be paid to a lot owner for a right lost by such a repeal.

41. Similarly, there is no power for an Adjudicator to order payment of monies to the applicant in respect of sums paid for the repair and maintenance of the elevator (SSMA s 138(3)(d)).

42. The by-law clearly makes the applicant liable for the payments made for the repair and maintenance of the elevator and there is no basis in law for ordering a refund of those sums. Again, the respondent's argument is that should the by-law be repealed it would not operate retrospectively to entitle the applicant to a refund of sums already paid.

43. The applicant is entitled (pursuant to SSMA s 108) to inspect the books of the Owners Corporation at any time. His request for orders for details of expenditure in relation to the elevator going back to 2003 is unreasonable and vague.

44. The application for costs should be dismissed as not within the power of an Adjudicator.

45. The respondent further argued that the application should be dismissed pursuant to s 163(4)(d) as the applicant is in arrears in the sum of $16,533.13.

DECISION

46. The applicant is a corporation which owns lot 21 in the strata scheme which it leases to the operator of a commercial restaurant. Part of the common property fronting the applicant's lot is used for the purpose of placing tables and chairs for the restaurant clientele. That is, the applicant's tenant operates part of its business on the common property of the strata scheme.

47. Starting from that premise it is not unreasonable to expect that the applicant will have some obligations to the Owners Corporation that are commensurate with the benefits obtained and that the by-laws are intended to reflect that.

48. The respondent has argued that the application should be dismissed pursuant to s 163(4)(d) because the applicant is un-financial.

49. Firstly, that power is discretionary. Secondly, in the circumstances of this case the dispute relates to whether the applicant is entitled (or not) to substantial refunds and/or relief of obligation to pay money. In my view it is appropriate to deal with the application on its merits rather than to dismiss it pursuant to s 163(4)(d)

50. The respondent's submission on costs is quite correct. An Adjudicator simply has no power to make an order in that regard.

By-law 2

51. Special by-law 2 was registered on 30 September 2003. It expanded on the earlier privileges given to the applicant by allowing the demolition of a wall and the encroachment onto common property for use by restaurant clientele and for the erection of the *"glazing works"*.

52. The applicant complains that it imposes an obligation on the owner of lot 21 for the repair and maintenance of the elevator and elevator tower without giving in return any exclusive use of those areas of common property. It is said that the obligation was temporary and was only intended to bind the applicant during the course of the construction works.

53. I do not accept that argument. Clearly there were substantial benefits to the applicant from the by-law. The *"quid pro quo"* for those benefits was (partially) that the applicant would take responsibility for the maintenance and repair of not only the glazing works as defined but also of the elevator and elevator tower. The latter obligation was, however, limited to the period up until council approval, construction and the commissioning of a bridge over Gerrale Street.

54. There is no disagreement that the bridge as contemplated has not been constructed, and in accordance with the by-law Clauses C(iii) and C(iv) the applicant remains responsible for the repair and maintenance of the elevator and elevator tower.

55. It is therefore apparent that the clarification of the applicant's responsibilities in respect of the lift that is sought in the application, must be that the applicant continues to remain responsible for the repair and maintenance pending any building of the bridge over Gerrale Street.

56. The question of a refund of sums paid relating to the maintenance of the elevator therefore does not arise.

By-law 21

57. The applicant seeks clarification of by-law 21 in relation to the obligation for repair and maintenance of the gazebo.

58. The by-law again makes provision for exclusive use of common property for the benefit of the owner of lot 21. The by-law also places a clear obligation on the applicant to keep the common property in a state of good and serviceable repair and to ensure that it remains clean and tidy.

59. However, the by-law specifically excludes from that obligation repair and maintenance of a structural nature.

60. The respondent's submission is that the applicant's obligation in respect of repairing and maintaining the gazebo arises under by-law 2. The gazebo is said by the respondent to be a part of the elevator tower and the applicant is obliged to repair and maintain it pursuant to the obligation to repair and maintain the elevator tower.

61. I am not satisfied that is the case. The gazebo was in existence as a separate and substantial structure from the time of registration of the strata scheme. It may provide a covering to the elevator tower, but to suggest that it therefore forms part of the elevator tower is incorrect in my view. Its purpose and extent goes far beyond that usage. Hence, the applicant is not obliged pursuant to by-law 2 C(iv) to repair and maintain the gazebo.

62. The respondent also relies in this regard on the obligation imposed in by-law 2 to comply with the license agreement which refers, as one of the applicant's responsibilities, to *"the upkeep of the structure above the lift"*.

63. The license agreement, on the respondent's own submission, expired in about September 2002 prior to the making of by-law 2. By-law 21 was in existence at the time of making by-law 2 and by-law 21 specifically dealt with the issue of maintenance of common property of a structural nature.

64. In my view, any by-law created after by-law 21 that sought to impose on the applicant an obligation that did not already exist needed to deal expressly with the exclusion provided under by-law 21 rather than indirectly by reference to an expired agreement.

65. I am not satisfied by-law 2 does anything to alter the obligations imposed on the applicant pursuant to by-law 21.

66. The words and intent of by-law 21 in regard to excluding maintenance obligations are quite clear. Furthermore, it is perfectly clear from the description and photographs of the gazebo that it is of a structural nature.

67. I am therefore satisfied that the applicant, by the wording of by-law 21 is specifically exempted from any obligation in regard to the repair or maintenance of the gazebo.

68. It follows that, pursuant to the provisions of s 62, the respondent is responsible for keeping the gazebo in a state of good and serviceable repair.

69. On the respondent's own evidence the gazebo is in a state of disrepair.

70. Accordingly, the applicant is entitled to orders for the immediate repair of the gazebo by the respondent.

By-laws 42 and 42.5

71. From the applicant's submissions I take it that no objection is taken to the original by-law 42 that was directed at providing special privileges for the lot owners mentioned. The payment provided for under the original cl.42.5 was expressed as a license fee.

72. On this issue I am satisfied the respondent's submission is quite correct. That is, the obligation to make the payment mentioned (subject to the possibility of its waiver by the executive committee) did not in my view impose a levy that was in any way contrary to the provisions of the SSMA s 78.

73. The SSMA s 53 clearly contemplates the type of by-law concerned and allows for the payment of money to the Owners Corporation in return for the privilege given or to compensate for loss of some other right.

74. It is the amendment of the by-law at 42.5 to which the applicant takes objection on the basis that no consent was given for it.

75. There is no dispute that the requisite consent was not given. Despite that failure the Owners Corporation certified at the time of registration that the necessary consent had been given.

76. The respondent relied on the decision of the Supreme Court in *James v Owners SP11478 (No.4)*[2012]NSWSC 590 per Ball J. for the proposition that obtaining the written consent of a lot owner concerned is a step in the process of an Owners Corporation making a by-law. Accordingly, on the reasoning of the Court in that case, a failure to obtain the written consent is not a matter to which objection can be taken after the expiry of two years (pursuant to s 52(3)).

77. With the greatest respect to His Honour, I do not agree with that proposition and in view of the decision in that case having been made for other reasons (the by-law was in fact defeated because consent was not given), the proposition is *obiter dicta* and I do not feel bound by it.

78. In my view s 52(1) places two obligations on an Owners Corporation when it contemplates the making of a special privileges by-law. The obligation is to obtain the written consent of concerned lot owners *and* to resolve for the adoption of the by-law by special resolution. That is, the obtaining of written consent is not a condition precedent to the making of the by-law but is an indispensible part of the process. The by-law is not "made" by the adoption of it by special resolution. The bylaw is "made" when the Owners Corporation does what it is required to do by s 52(1).

79. Having "made" the by-law, it can have no force or effect until it is registered (s 48(1)). At the time of registration the Owners Corporation must certify that it has been made in accordance with the provisions of s 52. That is exactly what happened in this case despite the consent not having been obtained. The corporate seal of the Owners Corporation has been affixed to the Change of By-Law form certifying the fact.

80. To interpret the provisions of s 52 in the manner proposed by the respondent would provide a very simple way for any Owners Corporation to avoid the necessity of obtaining the consent required by s 52(1)(a). Following adoption of a by-law by special resolution an Owners Corporation could then sit on its hands for 23 months and 29 days, then register the by-law and the concerned lot owner would be powerless to object to it.

81. Section 52 (3) is intended in my view to preclude a challenge to the validity of a registered by-law more than two years after the Owners Corporation has met its obligations under s 52(1) because of some alleged irregularity at the meeting (such as the counting of votes) or some alleged irregularity in the notice given for the meeting. It is not intended, in my view, to be used as a means of avoiding the statutory obligation imposed by s 52(1).

82. In the event that consent to a proposed by-law has been withheld, the Owners Corporation is not without a remedy. The SSMA s 158(1)(b) provides that the Owners Corporation may seek the orders of an Adjudicator that the concerned lot owner has unreasonably withheld its written consent.

83. However, if a by-law is passed by special resolution without the consent of a concerned lot owner, that lot owner is without any remedy until such time as the by-law is registered. Until then, there is nothing for the lot owner to challenge and if the two years has expired, the concerned lot owner, on the respondent's submission, is without any remedy at all.

84. It is not disputed that the written consent of the applicant to the proposed amendment of by-law 42 was not given to the Owners Corporation. It is quite clear, and it is not in dispute, that the applicant is a lot owner "concerned" as the by-law purports to impose a pecuniary liability on it larger than existed under the previous by-law. There is no suggestion that the Owners Corporation sought the orders of an Adjudicator pursuant to s 158(1)(b).

85. The respondent argues that the repeal of by-law 42.5 would be procedurally unfair to the other six lot owners involved as they are not parties to these proceedings.

86. I do not accept that proposition. If by-law 42 as it was purported to have been amended is repealed, the effect would be that the rights, privileges and obligations existing prior to the purported amendment would remain *in situ*.

87. Furthermore, I do not accept the respondent's argument that the effect of the repeal is not retrospective.

88. If the by-law was invalid because the Owners Corporation did not meet its obligation under s 52(1)(a) then it was invalid *ab initio*.

89. I am satisfied in the circumstances that the appropriate order is that the amendment of by-law 42.5 purportedly made in September 2008 is revoked pursuant to the SSMA s 157(1)(a).

90. The respondent relies on s 138(3)(d) for the proposition that an Adjudicator has no power to make an order for refund of monies over-paid in accordance with an invalid by-law.

91. The SSMA s 138(3) provides

> (3) An Adjudicator may not make an order under subsection (1) for the settlement of a dispute or complaint:
>
> (a) dealt with in another section of this Chapter, or
>
> (b) referred to the Tribunal or only within the jurisdiction of the Tribunal, or
>
> (c) relating to the exercise, or the failure to exercise, a function conferred on an owners corporation by this Act or the by-laws if that function may be exercised only in accordance with a unanimous resolution or a special resolution (other than a special resolution under section 62 (3), 65A or 65B), or
>
> (d) that includes the payment by a person to another person of damages.

92. Section 138(3)(d) precludes an order of an Adjudicator that requires the payment of damages. I am not satisfied that the payment sought in this case is by its nature "damages".

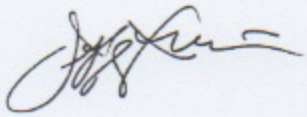
93. The applicant seeks a refund. The sum sought is indeterminate but capable of accurate calculation. It is true that s 157(3) does not empower an Adjudicator to make an order of the nature sought. However, I am satisfied that an Adjudicator does have the power pursuant to the general power under s 138 to settle disputes to make the necessary orders.

94. I am satisfied that the appropriate order is for the sum to be calculated and applied as a credit to the applicant's account with the Owners Corporation.

Provision of expenditure records

95. I decline to make the order sought by the applicant for the provision of detailed information on expenditure by the respondent.

96. As the orders do not encompass any refund of monies paid by the applicant for repair and maintenance of the elevator, there now seems little utility in the order. The sums paid by the applicant have been in response to invoices issued by the Owners Corporation from the elevator maintenance people. Hence, the information should already be with the applicant. Further the applicant may inspect the respondent's books of account to satisfy itself, if necessary, of the sums expended.





Jeffery Smith
Strata Schemes Adjudicator
Consumer, Trader & Tenancy Tribunal

18 January 2013