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The Strata Management Tribunal

INSIGHTS

> Criminalising non-payment of service charge



LEGAL INPUT

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THE freedom of "no payment of service charges" will end with the establishment of the Strata Management Tribunal (SM Tribunal). Any parcel owner or tenant who fails to pay service charges can be produced before the SM Tribunal with the implementation of the Strata Management (Maintenance & Management) Regulations 2015 enforced on June 3, 2015, and the Strata Management (SM Tribunal) Regulations 2015, effected July 1, 2015. It is interesting to note that limitation is not applicable to the SM Tribunal and the maximum that can be claimed is RM250,000 per claim. Any non-compliance of an award (decision) of the SM Tribunal is now a criminal offence.

"Any person who fails to comply with an award made by the tribunal commits an offence and shall, on conviction, be liable to a fine not exceeding RM250,000 or imprisonment for a term not exceeding three years, or both. In the case of a continuing offence, to a further fine not exceeding RM5,000 for every day or part thereof, during

which the offence continues after conviction." (Section 123)

JURISDICTION OF TRIBUNAL

The tribunal shall have the jurisdiction to hear and determine any claims where the total amount in respect of which an award of the tribunal is sought, does not exceed RM250,000 or such other amount as may be prescribed to substitute the total amount.

Claims can be filed in relation to the following:

1. A dispute or complaint concerning an exercise or the performance of, or the failure to exercise or perform, a function, duty or power conferred or imposed by Strata Management Act 2013 or the by-laws;
2. A dispute on costs or repairs in respect of a defect in a parcel, building or land intended for subdivision into parcels, or subdivided building or land, and its common property or limited common property;
3. A claim for the recovery of charges, or contribution to the sinking fund, or any amount which is declared by the provisions of this Act as a debt;
4. A claim for an order to convene a general meeting;

5. A claim for an order to invalidate proceedings of meeting where any provision of the Act has been contravened;
6. A claim for an order to nullify a resolution where voting rights has been denied or where due notice has not been given;
7. A claim for an order to nullify a resolution passed at a general meeting;
8. A claim for an order to revoke amendment of by-laws having regard to the interests of all the parcel owners or proprietors;
9. A claim for an order to vary the rate of interest fixed by the joint management body, management corporation or subsidiary management corporation for late payment of charges, or contribution to the sinking fund;
10. A claim for an order to vary the amount of insurance to be provided;
11. A claim for an order to pursue an insurance claim;
12. A claim for compelling a developer, joint management body, management corporation or subsidiary management corporation to supply information or documents;
13. A claim for an order to give consent to effect alterations to any common property or

limited common property; or
14. A claim for an order to affirm, vary or revoke the commissioner of building's decision.

The Order that the SM Tribunal can make include:

1. Pay a sum of money to another party;
2. Order the price or other consideration paid by a party to be refunded to that party;
3. Order the payment of compensation or damages for any loss or damage suffered by a party;
4. Order the rectification, setting aside or variation of a contract or additional by-laws, wholly or in part;
5. Order costs to or against any party to be paid;
6. Order interest to be paid on any sum or monetary award at a rate not exceeding eight per centum per annum;
7. Dismiss a claim which it considers to be frivolous or vexatious;
8. Any other order as it deems just and expedient; or
9. Make such ancillary or consequential orders or relief as may be necessary to give effect to any order made by the tribunal.



EXCLUSION OF JURISDICTION IN COURT

Where a claim is filed with the SM Tribunal and the claim is within the tribunal's jurisdiction, the issues in dispute in that claim, whether as shown in the initial claim or as emerging in the course of the hearing, shall not be the subject of proceedings between the same parties in any court unless — (a) the proceedings before the court were commenced before the claim was filed with the tribunal; or (b) the claim before the tribunal is withdrawn, abandoned or struck out.

This means that a claimant has to decide in advance as to which forum he has to file a case because having filed a case with the SM Tribunal, he will not be able to proceed with the same in the court or vice versa.

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