

Publication Date: 04 June 2019
**YSP Podcast Transcript: Episode 165. Levies unpaid for 18 months | insurance
runaround | lost rent claims**

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Amanda Farmer: Hello and welcome. I'm Amanda Farmer, and I have with me today, Reena Van Aalst from Strata Central. Hi, Reena.

Reena Van Aalst: Hi Amanda, how are you?

Amanda Farmer: I'm doing well. I am very recently returned from a short break with my family, had a little mid-year sojourn, which was very enjoyable.

Reena Van Aalst: Yes, I think it actually does help to have a break during the year, Amanda, especially towards the middle and it's all going by really fast so make sure you enjoy it.

Amanda Farmer: Indeed, that is the plan, and that's why I'm here chatting to you, because I love doing this.

Reena Van Aalst: Yes, me too, Amanda.

Amanda Farmer: Let's jump into your challenge for this week, Reena.

Reena Van Aalst: Yes, so this is a very interesting challenge, Amanda. It's one that I've never really encountered before, I must say, nor have I come across it, but we inherited the scheme, I think, we reluctantly had appointed to us because it was a lot of factions in the building, and it was just one of those things where one of the owners decided to put us forward and a number of owners had put other agents forward, and we were appointed.

The first AGM that we had with them last year, a lot of people had not received the levy notices from the prime manager because that manager was actually managing them even though the agency agreement had expired, but I won't go into that aspect of the subject or the topic, I'll just focus on the levy arrears. So basically, owners had not received their levy notices, obviously the agent couldn't have done that, but in the accounts, the levies had been issued, so everyone was typically in arrears.

So of course, this is a few months after we took over meet the chair person and obviously we didn't get out levy notices even though, again, it's another subject where you have to get one to actually be liable to pay levies. Anyways, at that AGM, they passed a resolution that all owners were required to pay all levies that had been determined up to 31 March 2018 within 30 days but that no interest would be incurred until 30 June 2019. Now I don't know how that could be put forward as a motion, but it was and it was actually adopted. It wasn't on the agenda either, and there was no special resolution and it said in the minutes source that the dates for payment for all levies determined the meeting from 1 April 2018 onwards would be paid in accordance with the advice from the lawyer, which, obviously, was not forthcoming, in the sense that the lawyer couldn't say that the contribution's not due 3 days after the due date. We didn't receive that advice, Amanda.

So one year later, some people had not paid one cent at all in levies, those include some of the committee members, and we also passed a motion at the AGM, which I think most managers may be aware of. It seems to be a motion that everyone seems to have adopted. Where, that the motions of the owners corporation resolved for the purpose of collecting levy contributions, interest and recovery costs to authorise the strata managing agent, and or the committee to do all things necessary to commence and to maintain debt recovery proceedings, et cetera and it is like a hole from A to F of different powers that the community and or the agent have.



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So, my challenge is, Amanda, we haven't done anything because we've been waiting until the 31st of March 2018, and then the Treasurer finally said to us, "Well, I want you to issue letters to all those that haven't paid their levy," and I said, "Well yes, but there's a levy arrears fee for that." Then she said to me, "Well that should be paid for by the owners corporation," and I said, "No. Why should the owners corporation fund the owners that actually haven't paid their levy?"

So my question to you, Amanda, and the challenge that I have is, are we able assumes that resolution that says that the managing agent, and/or the committee, so it actually doesn't say it has to be and, it can be and or. Does that authorise the agent now at us to proceed with an all debt recovery resolutions as per the AGM minutes?

Amanda Farmer: Yes, I think it does, and that's why that motion exists, that's the owners corporation resolving to give you the agent and/or the committee, the authority to take that step. I don't think that you need anything else. My bigger concern in that scenario would be whether or not the levies have been properly struck. Are you comfortable that they have been?

Reena Van Aalst: Yes, they were probably struck at meetings where the agent did have the authority when they were the agent, so the AGM was held in November 2018, and that was the meeting at which the agent's delegation ceased at the end of that meeting. Therefore after that, they had no agent for about 6 months, and that's when all those levies you know, as number of quarters.

Amanda Farmer: Do you know why the committee members or anybody really, is not paying out their levies they know they're due?

Reena Van Aalst: No. I mean, some have paid and some haven't paid not even a dollar. So the ones that use to get your advice-

Amanda Farmer: Yes, because on one view, even though you as the managing agent may have the authority to commence debt recovery proceedings, why would you, without the instruction from the committee? What's in it for you?

Reena Van Aalst: Well, that's my question because I mean we do have a resolution to authorise the managing agent to do so. Now, if you're entering in that scheme, you say well, and you're looking at this resolution, it doesn't say the committee has to do it, it says and/or the committee, so would the owners, Amanda, have a right to say, "Well, hang on, Reena. You're the agent. You have that authority to start getting these levies collected. That has been delegated to you as one of the functions." This is why it's a bit of a dilemma, Amanda, which is why I've thought, well, do we, don't we?

Amanda Farmer: Yes, well as far as I understand that motion, it's not framed in the mandatory that you must, in the event of levy arrears, that you must take these steps. There is nothing that directs you to exercise your authority. Yes, you have it, but you still have the discretion do I exercise it or not.

Reena Van Aalst: Yes, and that's why, Amanda, I haven't. We haven't for that purpose, because we think there's no instruction, it's only now that nearly a year later that the Treasurer has asked us to issue letters, just reminder letters, and that's what I'm asking. Also, this resolution about not paying interests or 30 June 2019, at the moment we're not charging interest on those levies that haven't been paid so because June 2019 is still to come.

Amanda Farmer: So you do have an instruction from the Treasurer to issue reminder letters or arrears notices.

Reena Van Aalst: Yes, and we've done that and we've tried them up on that, and it's to our other date, and if there's an argument about it we'll deal with it at the time.

Amanda Farmer: And are you seeing any traction from those notices? Is anyone paying up?

Reena Van Aalst: I think one person has paid something, but we're talking about levies that haven't been paid for nearly 18 months. We're talking about large amounts of money, even if it wasn't a huge budget, it's such a long period of time, Amanda, that

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levies haven't been paid. Of course, you've got those that are paying on time [crosstalk 00:08:27], subsidising those that haven't been.

Amanda Farmer: Yes. Is the Treasurer in a position to give you an instruction to take the next step, which would be to issue a letter of demand?

Reena Van Aalst: Well, I'm sure that she would be. Obviously, I think there is conflict within that strata committee on all sides. Some of those things where you just have to wait every time you're asked to do something so yes, we'll just wait and see. But I'm glad I've managed that there's nothing that compels us as managing agents to go beyond doing what the Treasurer has asked us to do.

Amanda Farmer: Yes, I would, just for the sake of protecting yourself, I'd make sure that you do have a committee instruction to take steps and that they're not just unilateral steps, even though you probably are covered by that motion. It doesn't mandate, it doesn't force you to take steps, it gives you the authority to take the steps, but I would do that with instruction from at least a committee member.

Reena Van Aalst: Yes, I was thinking about it. I should just send the normal reminder letters anyway, the 30, 60, 90. I mean I've done the first one, we've done the first one but we haven't [crosstalk 00:09:29] and I think we should. Those things are not, we're not citing proceedings.

Amanda Farmer: I imagine that's a normal thing that you do for buildings anyway, as part of your services is to issue those reminder letters.

Reena Van Aalst: Yes, exactly. Most strata schemes would be horrified to see that as an agent we haven't pulled people up who haven't actually you know, and we also ask, "Has that person paid? Have you followed that person up?" So it's usually the other way around, but in this case, it's something happening that we're not aware of, and I'm sure there's a lot more to it than meets the eye. But anyway ...

Amanda Farmer: There always is, isn't there? Well, thank you, for sharing that, Reena. I'm going to jump into my challenge for this week, and it's a challenge that has been faced by a client of mine. It's a really, to me, odd, bizarre situation. I don't know if you've experienced this before, Reena, but my clients were the victims of a flood towards the end of last year when we had some torrential rains in Sydney, and they're ground floor apartment had some very severe flooding. It was a horrible day for them and many others in Sydney.

They are very quickly and proactively, engaged with their contents insurer, engaged with the owners corporation, the Strata Manager, and the owners corporation's building insurer, and kicked off that process of lodging insurance claims, getting the necessary emergency work done at their property to make sure that they could move back in, because basically they had to move out for a short time. It was so bad.

We're now about 5 or 6 months past the flood event, and the owners corporation's building insurer has taken that length of time to send out one of their builders that sits on their panel of builders that they send out to inspect claims, and produce a comparative quote for work that still needs to be done in the apartment. Now the assessor went out very promptly within a few days of the event and produced a report, and then the insurer had a process where they needed to send their contractor to quote for the work that needed to be done, and that has taken about 5 or 6 months.

Reena Van Aalst: Oh that's ridiculous, Amanda.

Amanda Farmer: Notwithstanding numerous follow ups from me, and from the lot owners, and we're not quite sure where the breakdown was, but it may have been between the committee and the Strata Manager or could have been even between the Strata Manager and the insurer, that the communication just wasn't being passed on. Very, very frustrating, and I was just beside

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myself to think that someone could be left in a situation where their home has not been put back into the state that it should be in after a catastrophic flood.

Reena Van Aalst: So I have a few questions Amanda, after you've just mentioned that particular fiasco, I would call it. Does the owners corporation have an insurance broker?

Amanda Farmer: Yes, there was a broker, and one piece of information that I haven't shared with you, which does explain some delay, is that this building changed Strata Managers towards the end of last year, and I think it was even around December, of course, there was Christmas as well. The change in Strata Managers meant there was a change in broker.

Reena Van Aalst: Well, that's a very interesting point you make because I don't know when the policy would've expired, because normally, you inherit a building from another Manager, but the insurance policy may not expire for another 3 months, 6 months, or the Manager just renewed their insurance, so why would that have happened? Was it to do with the fact that ... I don't understand why a new rec would have been appointed unless the policy had actually expired and the new agent had engaged a different broker.

Amanda Farmer: Well, as far as I'm aware, the policy had not expired, or was not around that end of date, but isn't it possible that the new Strata Manager did not have a relationship with the broker that the old Strata Manager was using? As I think we've discussed before on the podcast, don't they need to have some kind of arrangement with the broker?

Reena Van Aalst: They do, yes, they do have to have it either be a distributor or an authorised representative, that's starting to get commission, Amanda. You can still undertake insurance claims, you don't have to be an authorised representative, as far as I'm aware, for insurance claims.

Amanda Farmer: So they didn't have to change brokers?

Reena Van Aalst: No, as far as I'm aware.

Amanda Farmer: The Managers out there will let us know what they're used to. I think that was a really big cause of the delay, because I was attempting to communicate direct with the insurance through the broker, and then of course, one day I ring the broker, and they say, "No, we don't have this policy under our brokerage anymore. It's been shifted over to this new broker," and then I'm on the ring around with that broker as well.

Reena Van Aalst: But if the insurers remain the same, you would imagine that therefore, they still have carriage of the claim, it's still the same assessor that has been appointed. The insurer appoints the assessor. But I think part of my experience and manner as a manager is that there are some brokers that really push and push and follow up insurance claims, and there are ones where ... One particular one, I've got one similar to yours, the issue isn't flood damage so it's not as bad, but it's been going on since December. We keep continually following it up with the broker.

Then each time, it's a different person responding so the personnel keeps changing with the brokerage. Then we're given different advice saying, and in one case, I thought the owner was going to get a quote. I mean it's going on now similar to what you're talking about, because the broker I mean as far as I'm aware, I don't know what the insurer, and I think maybe sometimes people are unaware that as a lot owner, you have the right to connect to the broker directly. You don't have to actually go through the committee or the Strata Manager, so maybe that might work to expedite the thing, Amanda.

Amanda Farmer: Yes. Yes, that's definitely something that we were trying out, I do know exactly what you say though, Reena, about certain brokers being better than others and certain staff members within the brokerage or the insurance company. We eventually got some traction when the new Strata Manager said, "Hey, I've got a relationship with so and so. He's not the one managing your claim but I'll give him a ring, and see if he's able to find out what in the world is happening."

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The minute that happened then this new person came onboard, and said, "Yes, it's under control. I'm doing A, B, and C," and you just think, "Why does it have to be who you know? That is just not fair and why do my clients have to go to the expensive and engaging me to then communicate with 3 different people to get only what they're entitled to?" This is not a complicated issue.

Reena Van Aalst: No, and I think, Amanda, for owners corporations, if you look at your financial expenditure in a year, the insurance premium is one of the highest ones in terms of expenses that an owners corporation faces. I mean you get this sort of service, when the broker's also getting a commission from the insurer, so it's all just the Strata Manager that's getting the commission, also the broker's getting the commission. You think, well, what are we paying for? These people are all getting money and yet they're not providing service.

Amanda Farmer: Yes, very frustrating, but as of this week, we've seemed to have had some traction and hopefully going in the right direction but no doubt talking about this issue will agitate a number of people out there to contact us as people do to say, "Yes, we experienced this, too and it's not good."

Reena Van Aalst: No, definitely not good.

Amanda Farmer: All right, let's talk about lighter things. What has been your win for this week, Reena?

Reena Van Aalst: Well, this is a really fantastic win Amanda, because this strata scheme has had a problem with a particular lot owner, not allowing access into the garage where there's been a leak, it's been going on for a long time. An order from NCAT was obtained, and even then, the order wasn't complied with initially, but finally, when that particular owner engaged a lawyer, thankfully, that owner must have been told by the lawyer they have to give access. It's not actually discretionary or I gave it to you back then and now times over. Finally, we got into the garage, so we're so excited.

Finally, this is actually happening, and I know people might think, "Oh well, so what," but we notice corporations have been spending a lot of money, going back and forth to NCAT raising levies to pay for legal fees to be able to do this. I think it's a great victory for that and hopefully we'll now be able to fix the leak that actually is a burst pipe, which is what we always thought was the case but again, when you don't have access it's hard to undertake any repairs in maintenance in common property. So yes, very happy, Amanda. Finally, it happened.

Amanda Farmer: Good news there, and what's interesting, I think, Reena, from that example is that this lot owner received some advice and I imagine it was from someone who understands strata law.

Reena Van Aalst: Yes, he's the strata lawyer.

Amanda Farmer: Yes, and sometimes, that's what it takes, it's that extra level of education, if you like, for owners to understand this is how it works in this part of the world. This is why the owners corporation has the right to go into your property, this is what this order from the Tribunal means, and if you don't comply with it, this is what could happen. Once owners are armed with and have the benefit of that kind of advice and guidance, then these issues can be resolved quite promptly. That is often my experience that when a good lawyer gets involved then we have a resolution.

Reena Van Aalst: Yes, well I don't think it has to be necessarily a good lawyer, I think just having a lawyer, because sometimes when people, Amanda, are unrepresented, they don't know the law, and it's like exposing normal litigation, they're always given far more leniency at the Tribunal because they don't have a lawyer advising, so they're given more time. It doesn't matter they haven't complied with putting things in order and numbering pages, et cetera. So at least in this case when that owner finally engaged a lawyer and then obviously he listened to his lawyer, which is fantastic.

Amanda Farmer: Yes, good result there for you and for that building. Switching over to my win for this week, I have been helping an owner who has an investment property that is on the top floor of a building, and it is an older building, and the roof has been leaking. Very common problem.

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Reena Van Aalst: Very common problem, leaking membranes.

Amanda Farmer: That's right, and this owner's tenants actually had to move out because there was water coming into their bedroom and dripping on them when they were in bed at night.

Reena Van Aalst: Oh, my god.

Amanda Farmer: There were significant mold growing, and the tenants, of course, nobody likes to see mold and tenants were very concerned about their health when it came to this stuff that was spreading rapidly, and of course, simply having water come into your home is not a good idea. So the tenants had terminated the lease and had moved out. That was some months ago, and my client had been communicating with the owners corporation through the Strata Manager, trying to get a fix in place so that the property could be cleaned and could be rented again.

Of course, week after week of an empty investment property, there is lost rent that is mounting up so, unfortunately, for quite some time my client did not get anywhere with the owners corporation. They were quite convinced that this was a matter of simply properly ventilating and cleaning the unit. They didn't seem to accept that there was a problem with the membrane, and to the extent there may have been a water leak, they felt they had fixed that up with some patchwork and some temporary repairs. But we had provided some evidence from a roofing expert that showed that the leak was still ongoing and that the entire roof membrane needed replacement.

Now we did commence the Tribunal process with mediation and I might've talked about this mediation a few episodes ago, and we did get a few steps in the right direction, but the particular win I have to report today is that the AGM for this building, which was a couple of weeks ago, they have finally resolved to replace their roof membrane in its entirety. So a big job, going to cost a fair bit of money, but they've accepted that it needs to be done. That's been a real change of position, where previously they said, "No, we've got another 5 years of this roof. We'll just do the patch repair."

They finally agreed it needs to be done, and they're taking steps to issue that work order, which is great, and so now the remaining issue is my client's loss of rent claims. So we are now entering into some discussions, let's say, with the strata committee about reimbursing my client for having her investment property empty for some time.

Reena Van Aalst: Oh, dear. That's not a good thing, so that's a great win, Amanda, because I think that many schemes that we manage have this problem with the roof membrane. It's not uncommon, but what I think what is probably uncommon is when strata committees try and not deal with the actual reality of the expenditure that's needed to fix it, so sometimes we've had occasions where you know, you don't know about it because the tenant hasn't told their agent, and then on to the deflection of some time and a lot of damage then you find out, Amanda.

But on the whole, I think sometimes people don't want to do the work, strata committees because they're concerned about the expenditure, they may not have the funds, and they may have to raise a special levy, but we all know from the Act that we have to repair and maintain current properties, which is such a true provision in the Act, and I think this is a good lesson for all committees out there. It ends up costing you a lot more and as you said, Amanda, there's going to be a damages component to this whole process, loss of rent and perhaps a lot of damage to people's contents that has to now be addressed, which could have been sort of mitigated had they just undertaken the work in the first place.

Amanda Farmer: Yes, absolutely. This is a claim that increases by the week so I know sometimes ... And look I'm on a strata committee, I know how hard it is to keep up sometimes with what's going on in the building and the requests that are made by lot owners and the various decisions you've got to make. But putting your head in the sand and hoping that it will go away or it'll get better is not the solution. As you say, Reena, it does get worse over time, whether that's because of property damage or whether that's because of loss rent claim. We do need to be really careful that when owners are saying, "Hey, there's a problem," that we are taking the steps we need to take to fix it.

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Reena Van Aalst: Exactly, and sometimes you may need to get more than one opinion on the matter, you may need to engage an Engineer, sometimes a Manager, because sometimes you have contractors coming to give you advice. Obviously, they have a vested interest in telling you something that has need to be done, so it's a concern. We had this issue at another scheme where we ended up getting an Engineer because we had 3 different quotes saying the repairs should be done 3 different ways, obviously all costing a lot of money. An Engineer come in, sets the whole situation, and then gives us specification, and then we put that specification out and we got those requoted again, so that's another way that a strata committee may consider if they're not really sure what the problem is if they're being told conflicting or different advice from contractors.

Amanda Farmer: Really good tip there. Okay, another jam packed episode, love that one.

Reena Van Aalst: Yes.

Amanda Farmer: Thank you, Reena. I will catch up with you again soon. Anything to add before we wrap up?

Reena Van Aalst: Nothing, Amanda. Catch you next time.

Amanda Farmer: That is it. See you, bye.

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