

## Debt recovery and strata lot owner goes missing?

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**A strata lot owner goes missing when council rates and strata levies were owed. What happens, you might wonder?**

This is essentially what has happened in the case of *Council of the City of Sydney v Baboon Pty Limited [2020] NSWSC 1480*. Council rates were owed to Council (the plaintiff) of around \$9,500 and strata levies were owed to the owners corporation of around \$26,000 (second interested party). As you may know, both Council and the owners corporation have the power to “force sell” the strata unit to recoup their respective fees and costs, whether or not the owner can be found. In this case, the strata unit owner cannot be found and so, Council in this instance decided to proceed with the sale. The property was sold to (and purchased by) Baboon Pty Limited (third interested party) for \$136,000 in November 2018.

Normal conveyancing practices would require the vendor to pay the outstanding rates and levies to the settlement date (and the purchaser to be liable for the portions after the settlement date). As the owner was missing, this process was not followed. Presumably, the purchaser factored into the outstanding rates, levies and the related risks when it first purchased the property.

Upon completion, the net proceeds of sale (of around \$108,000) were paid into the Supreme Court of NSW and the strata unit owner remained missing / cannot be located.

All-in-all, Council successfully claimed \$15,266.67 from the net proceeds in July 2020. The two remaining interested parties were successfully paid out \$26,729.60 (by the purchaser) and the balance of around \$66,000 (by the owners corporation) later in 2020. In passing, it is interesting to note that the solicitor and counsel’s fees initially claimed were exceeding \$110,000, almost the price of the property at Auction. The Court rejected the initial commercial compromise between the purchaser and the owners corporation (which was favouring more the owners corporation in terms of the costs split) and exercised its discretion under the Uniform Civil Procedure Rules 2005 (NSW). That said, even with that outcome, the purchaser appeared to have benefitted a windfall to the decision.

### Takeaway

It simply does not work if you go missing over rates and/or strata levies. Both Council and the owners corporation have the power to “force sell” the strata unit. In this case, it is unsure what has happened to the original strata lot owner. It may well be a genuine case of a missing person, noting the original amounts owing was under \$36,000 and there is no indication that a mortgage was involved. We wish him well. In any case, it is a good example that defending (or at least responding to) the rates and strata levies claim in a timely and diligent manner would



achieve a far better financial outcome for the debtor.

### **More Information**

Please contact our **Strata Team** at **Matthews Folbigg Lawyers** on **9635 7966** if you would like advice or assistance.

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