

CITATION: *Martin v The Proprietors of Unit Plan*
2009/034 [2026] NTSC 2

PARTIES: MARTIN, Lex Stephen

V

THE PROPRIETORS OF UNIT PLAN
2009/034

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 2025-02098-SC

DELIVERED: 9 January 2026

JUDGMENT OF: Burns J

CATCHWORDS:

NORTHERN TERRITORY CIVIL AND ADMINISTRATIVE TRIBUNAL –
APPLICATION FOR LEAVE TO APPEAL – QUESTION OF LAW

Whether reviewable error of law – Appeal to the Supreme Court restricted to questions of law – Whether monies ordered by NTCAT to be paid by the Applicant to the Respondent were referable to funds which were unlawfully removed from Body Corporate accounts - Whether NTCAT erred in its application of s 46 of the *Unit Titles Act 1975* (NT) - Whether NTCAT failed to give Applicant an opportunity to provide evidence - Whether presiding member of NTCAT was conflicted in deciding the application – Origin of monies irrelevant to the question of the Applicant’s indebtedness to the Respondent – Applicant improperly interpreted s 46 of the *Unit Titles Act 1975* (NT) – No evidence to support application that a question of law has arisen in the NTCAT proceedings disallowing the provision of evidence

– No evidence application for recusal of the presiding member was made by Applicant on or before the proceedings - Applicant failed to identify an error of law in the NTCAT’s decision - Application for leave to appeal refused

Northern Territory Civil and Administrative Tribunal Act 2014 (NT) s 80(3), s 141

Northern Territory Civil and Administrative Tribunal Rules 2016 (NT) r 13, 15

Supreme Court Rules 1987 r 82.18

Unit Titles Act 1975 (NT) s 46

Strata Plan 36131 v Dimitriou [2009] NSWCA 27; The Owners Strata Plan 50276 v Thoo [2013] NSWCA 270, referred to.

REPRESENTATION:

Counsel:

Applicant:	Self-Represented
Respondent:	R Sanders

Solicitors:

Respondent:	Ward Keller
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Martin v The Proprietors of Unit Plan 2009/034 [2026] NTSC 2
No. 2025-02098-SC

BETWEEN:

LEX STEPHEN MARTIN
Applicant

AND:

**THE PROPRIETORS OF UNIT PLAN
2009/034**
Respondent

CORAM: BURNS J

REASONS FOR DECISION

(Delivered 9 January 2026)

Introduction

- [1] This is an application for leave to appeal from orders made by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). The applicant is the owner of a unit in Units Plan 2009/034. Proceedings were brought in the NTCAT by the proprietors of that Units Plan (the respondent) to recover amounts claimed to be owed by the applicant to the Units Plan.
- [2] The NTCAT claim was commenced on 24 November 2024. On 14 March 2025, consent orders were made by the NTCAT requiring the applicant to pay sums of \$12,080 and \$20,337 to the respondent. These sums disposed of

the majority of the respondent's claims against the applicant. One matter, however, remained outstanding. In addition to the sums that were the subject of the consent orders, the respondent claimed an entitlement to recover a sum or sums of money said to have been expended by it for legal costs in the proceedings.

- [3] The respondent asserted that it was entitled to recover these legal costs pursuant to s 46 of the *Unit Titles Act 1975 (NT) (UTA)*, which provides:

Where a corporation has incurred any expenditure or performed any repairs, work or act that it was required or authorised by its articles or by or under this Act or any other law in force in the Territory to perform, the expenditure, repairs, work or act having been rendered necessary by reason of any wilful or negligent act or omission on the part of, or breach of any provision of its articles by, a member of the corporation, the amount of that expenditure or any money expended by it in performing the repairs, work or act is recoverable by it from that member as a debt.

- [4] The consent orders made by the NTCAT on 14 March 2025 did not, therefore, dispose of all of the issues between the parties. On that date the NTCAT made further orders for the filing of further evidence and submissions in relation to the outstanding issue of the respondent's entitlement to claim legal costs pursuant to s 46 of the UTA. The NTCAT also ordered that the hearing of the remaining issue be conducted on the papers.

- [5] On 30 April 2025, the applicant applied to reopen that part of the proceedings to which the consent orders related. This application was

apparently made pursuant to s 80 (3) of the *Northern Territory Civil and Administrative Tribunal Act 2014* (NT) (**the NTCAT Act**), which provides:

- (3) A party to the proceeding may apply to the Tribunal for the decision made by the Tribunal in the proceeding to be set aside and the proceeding reopened if the party:
 - (a) consented to the making of the decision; and
 - (b) considers that there are grounds for the decision to be set aside by the Tribunal, including that the party's consent to the decision was obtained by reason of fraud, duress, the suppression of evidence or the giving of false evidence.

[6] Such an application must be made within the time specified, and otherwise in accordance with the *Northern Territory Civil and Administrative Tribunal Rules 2016* (NT) (**the Rules**). Regulation 15 of the Rules provides that a party may apply to reopen a proceeding by an ordinary application filed with the Registrar no later than 4:30 PM, 28 days after the date of the relevant proceeding¹. That time may be extended under rule 13 only in exceptional circumstances.²

[7] I will assume for present purposes that the making of the consent orders on 14 March 2025, in the absence of those orders resolving all issues between the parties in the proceeding, entitled the applicant to seek an order under s 80 (3) of the NTCAT Act. If that were not the case, then his entitlement to make that application is unclear.

¹ *Northern Territory Civil and Administrative Tribunal Rules 2016* (NT) r 15(2) ('NTCAT Rules').

² *Ibid* r 15(3).

- [8] It follows from the assumption which I have made in favour of the applicant in the previous paragraph that the period of 28 days for the commencement of an application to reopen the proceedings commenced from the date on which the consent orders were made, being 14 March 2025. This period expired well before the applicant lodged his application to reopen the proceedings on 30 April 2025. It follows that the applicant was obliged to seek an enlargement of the time for commencing the application to reopen pursuant to rule 13 of the Rules, which could only be granted if the applicant could demonstrate exceptional circumstances.
- [9] The grounds relied upon by the applicant in the application to reopen the proceedings were:
- (a) A lawyer then representing the applicant at the hearing on 14 March 2025 went against the applicant's "express instructions" in agreeing to the consent orders.
 - (b) The Body Corporate did not maintain an accurate ledger regarding the applicant.
 - (c) Amounts claimed by the Body Corporate had already been paid by the applicant.
 - (d) No claims for amounts of "2 x \$3850" in legal costs were made against the applicant prior to 14 March 2025.

- (e) No claims for Ward Keller's legal costs were made against the applicant before 14 March 2025.
- (f) An amount of \$1100 had been unlawfully removed from the Unit Plan Sinking fund.
- (g) Inconsistent statements had been made by the Treasurer and the Secretary of the Unit Plan regarding this sum of \$1100.

[10] On 8 May 2025 the NTCAT dismissed the application to reopen the proceedings. Before doing so, the presiding member of the Tribunal gave the applicant an opportunity to demonstrate that exceptional circumstances existed which justified the enlargement of time to commence the application to reopen the proceedings. The applicant, who at that time was not represented by a lawyer, spoke of having been let down by his previous lawyer. The applicant also suggested that he had been unaware of the period of 28 days prescribed for the commencement of the application.

[11] The presiding member did not accept that the applicant had demonstrated exceptional circumstances justifying the enlargement of the time permitted to lodge an application to reopen the proceedings, and the application to reopen was dismissed.

[12] On 26 May 2025, the applicant filed a further ordinary application seeking to reopen the proceedings in order to set aside the consent orders made on 14 March 2025. Although this application traversed some of the material

that had been dealt with in the previous application of 30 April 2025, the presiding member of the Tribunal, who was also the member who presided during the earlier proceedings on 14 March 2025 and 8 May 2025, treated the second application to reopen the proceedings as an application that he disqualify himself from a further hearing of the proceeding on the ground of apprehended bias.

[13] Before the application of 26 May 2025 could be heard by the Tribunal, on 11 June 2025 the applicant filed a further ordinary application seeking leave to file a counterclaim.

[14] On 13 June 2025, the presiding member dismissed the application that he disqualify himself on the ground of apprehended bias and indicated that written reasons would be provided at a later time.

[15] On 25 June 2025, the presiding member of the NTCAT made orders allowing the Body Corporate's claim for additional legal costs in the sum of \$4,510 pursuant to s 46 of the UTA. In addition, the applicant's application of 11 June 2025 seeking leave to file a counterclaim was dismissed. Reasons were also delivered for the decision of 13 June 2025 refusing the application that the presiding member disqualify himself.

[16] It is against this background that on 8 July 2025 the applicant filed the present Application for Leave to Appeal, on its face purporting to seek leave to appeal from a judgment given on 30 June 2025. There appears to have been no orders or judgment made by the NTCAT on 30 June 2025 in the

proceedings between the parties. It appears that this is an error in drafting by the applicant, and the application is intended to seek leave to appeal from the orders made by the NTCAT on 25 June 2025. The respondent has not taken any issue regarding this apparent error.

[17] Leave to appeal is required in the present case as the entitlement to appeal to this Court from a decision of the NTCAT is governed by s 141 of the NTCAT Act which provides that a party to a proceeding may appeal to this Court against a decision of the NTCAT on a question of law only, and only with the leave of this Court.

[18] Annexed to the application for leave to appeal and marked “A” and “B” respectively are the proposed Notice of Appeal and written submissions in support of the application. The Grounds of Appeal set out in the proposed Notice of Appeal are as follows:

Orders contain amounts that have been unlawfully removed from UP 2009/034 accounts by others. Costs have been levied against the appellant on the grounds of false interpretation of section 46 of the Unit Titles Act 1975.

Member Baldry disallowed the respondent Martin to provide evidence at a 14 March 2025 NTCAT hearing.

Mr Baldry failed to recuse himself from presiding over 14 March NTCAT hearing.

[19] The relief sought by the applicant in the proposed notice of appeal is expressed as follows:

The appellant respectfully seeks a clear and definitive interpretation of the intended purpose of section 46 of the Act particularly with relevance to the application to the recovery of legal costs incurred in the pursuit of unpaid BC (semble, “body corporate”) contributions.

Overturn all orders issued by Mr Baldry given the failure by him to allow the hearing of evidence by the respondent at a NTCAT hearing on 14 May 2025.

[20] The written submissions filed as annexure “B” to the application for leave to appeal are as follows (original grammar retained):

1. Presiding member Baldry denied the applicant’s Ordinary Application for a rehearing; asserting that the application made on 13 June was beyond time allowed. Final decisions re 2024 – 03473 were not brought down until 30 June 2025.
2. Mr Baldry failed to recuse himself from hearing the proceedings given his position could reasonably be seen as conflicted and possibly biased due to his close association, (past and present), with members of legal firm William Forster Chambers.
3. Mr Baldry overlooked assertions (given in evidence by the applicant) of the misappropriation of UP to thousand 9/034 corporate funds.
4. Mr Baldry incorrectly decided that the current unlawful & exclusive occupation of an area of common property by one owner had no bearing on the application. The respondent claims the common property at 13 Deviney Road Pinelands continues not to be intact.

5. The applicant maintains that the interpretation (within NTCAT) by Member Baldry of s 46 (UTA 1975) can apply to legal expenses incurred by the owners corporation in pursuit of unpaid contributions by an owner is not unlawful. With the exception of the right of a corporation to add interest to unpaid levies, no specific provision is made within the Act to allow for legal costs relating to unpaid contributions to be applied to an owners ledger. Had those who drafted that legislation at the time intended legal costs to be applied to unpaid contributions, that intention and purpose would surely have been articulated in the legislation. The applicant contends that pursuit of a relatively minor amount in unpaid contributions by an owner can therefore quickly escalated into claims of tens of thousands as a result of what is a too broad an misinterpretation of s46. The applicant contends that owners contributions are a necessary given within a unit owners' plan. The application of s46 relates to extraordinary expenses exclusive of unpaid contributions.

[21] Following the filing of this material, on 4 August 2025 the applicant filed a document headed "Written Submissions of the Applicant in Relation to Settlement Proposal". On its face, the document purports to be filed pursuant to Rule 82.18 of the *Supreme Court Rules 1987* (SCR). Rule 82.18 of the SCR is found within Chapter 2 of the SCR dealing with Appeal Rules. Rule 82.18 provides that if served with an application for leave to appeal, a respondent must file and serve on the applicant the respondent's written

submissions. I do not understand how this Rule can be said to relate to any “settlement proposal” within the document filed by the applicant, nor how the Rule itself can be said to apply to the applicant. There are aspects of the document, to which I refer below, suggesting it was drafted by AI.

[22] This document was filed after the respondent filed its written submissions opposing the granting of leave to appeal on 29 July 2025. Leaving aside the dubious nature of this document and acknowledging that the applicant is not represented by a legal practitioner, I will consider its contents. Despite the heading of the document, it contains no real settlement proposal. It states that the applicant consents to the payment of any outstanding and undisputed body corporate contributions validly levied in accordance with the UTA and applicable by-laws. This is simply a concession of the inevitable. The document further states that the applicant does not consent to the enforcement of legal costs awarded by NTCAT.

[23] In the document, the applicant purports to set out the text of s 46 of the UTA. The applicant submits that the text of the section is: “The body corporate may recover as a debt from a proprietor any amount payable by the proprietor to the body corporate under this Act.” This, of course, is not the text of s 46. I have set out the text of s 46 at [3] above. The first submission made by the applicant regarding the application of s 46 is based on the incorrect form of the section quoted by him. He submits that this provision authorises recovery only of debts “under this Act” which properly includes validly levied contributions and amounts statutorily due.

[24] In support of this submission the applicant purports to cite the decision of the New South Wales Court of Appeal in *Owners of Strata Plan 36131 v Dimitriou* [2009] NSWCA 27. The purported quotation from that decision set out by the applicant is not to be found within that decision, certainly not in the paragraph cited by the applicant. To the extent that the case is relevant, it supports the decision of the NTCAT. In any event, the applicant has incorrectly cited the text of s 46 and there is no merit in his submissions.

[25] The applicant then proceeds to assert that the NTCAT erred in law in its application of s 46 for the following reasons:

- (a) The NTCAT failed to determine whether the claimed legal costs were authorised by a proper resolution of the body corporate. The applicant then purports to cite a decision of the Queensland Court of Appeal in *Ri-Con Contractors Pty Ltd v Body Corporate for Sun City Resorts CTS 24670* [2021] QCA 89 as authority for the proposition that a body corporate may only expend funds where those expenditures are properly authorised. No such decision exists. The citation provided by the applicant refers to a criminal decision. In any event, whether this expenditure was properly authorised by the Body Corporate is a question of fact, or at best a question of mixed fact and law.
- (b) The NTCAT failed to assess whether the costs were reasonable, necessary and directly connected to the body corporate's statutory

powers. In support of this proposition, the applicant cited *The Owners Strata Plan 50276 v Thoo* [2013] NSWCA 270 as warning against interpreting statutory powers as allowing recovery for legal costs incurred in private disputes or enforcement not reasonably necessary for the administration of the scheme. While this case at least exists, I can find no reference in that case to the proposition asserted by the applicant. In any event, the matters raised by the applicant are not questions of law.

- (c) The NTCAT failed to examine whether the legal costs were incurred in the exercise of a lawful statutory function, or merely in “pursuit of discretionary enforcement” against the applicant. The applicant referred to *Owners Corporation No 1 PS 613436T v Octavia Pty Ltd* [2021] VSC 543 as confirming that legal costs recovery is not permitted “where action is taken without proper authorisation or outside the reasonable scope of corporate responsibilities”. This case also does not exist. In any event, the matter which the applicant seeks to raise involves, at best, a mixed question of law and fact. It is also abundantly clear that the applicant had notice of the claim for legal costs well before that issue was determined by the NTCAT and had an opportunity to address the issue in that forum. There is no merit in this complaint.

[26] In the applicant’s submissions he asserts that s 46 does not confer a general entitlement to recover legal costs. This submission, however, is based upon the incorrect text of the section cited by the applicant. There is nothing in

either the text of s 46 or its statutory context which supports the limited interpretation urged by the applicant. The interpretation of the provision adopted by the NTCAT was plainly correct.

[27] I now turn to the applicant's proposed Grounds of Appeal. The applicant's initial complaint is that the amounts the NTCAT ordered the applicant to pay "contain" amounts that have been unlawfully removed from the Body Corporate accounts. By the word "contain", I understand the applicant to mean "are referable to". To the extent that the applicant's complaint is that monies were removed unlawfully from the Body Corporate accounts, this is irrelevant to the question of the applicant's indebtedness to the respondent. If the applicant's complaint is that the respondent was not entitled to claim the amounts referred to because payment of those amounts by the respondent had not been authorised by the Body Corporate, this is not a question of law.

[28] The applicant's proposed second Ground of Appeal relates to the proper interpretation of s 46 of the UTA. I have already addressed that issue and determined that the decision of the NTCAT was unquestionably correct.

[29] The third proposed Ground of Appeal is cryptic. It alleges a failure on the part of the NTCAT to allow the applicant to provide evidence at a NTCAT hearing on 14 March 2025. That was the date on which consent orders were made. There is nothing in the material filed by the applicant in support of the present application providing background to this proposed Ground of Appeal. It is incumbent on the applicant to demonstrate that there is a

question of law arising from the proceedings in the NTCAT which justifies a grant of leave. The third proposed Ground of Appeal is not supported by any material which demonstrates that a question of law has arisen in the NTCAT proceedings of the type suggested.

[30] The fourth proposed Ground of Appeal is also cryptic. It alleges a failure by the presiding member of the NTCAT to recuse himself from presiding over the 14 March 2025 hearing. There is no evidence before me that any application was made to the presiding member that he should recuse himself from the proceedings prior to the applicant lodging the second application to reopen the proceedings on 26 May 2025. There is no evidence of any application for recusal being made to the presiding member on or before 14 March 2025.

[31] To the extent that the applicant in this Ground seeks to challenge the decision made by the presiding member not to recuse himself after the application of 26 May 2025, the material filed by the applicant does not demonstrate a question of law which is said to arise. It appears that the applicant is simply dissatisfied with the decision made by the presiding member. This is not a question of law.

[32] The final matter which I will address is the issue of when time commences to run for the purposes of the limitation period for lodging an application to reopen a proceeding provided by regulation 15 (2) of the Rules. The text of regulation 15 (2) is susceptible of at least two meanings. The word

“proceeding” may refer either to a discrete part of an action before the NTCAT or it may refer to the whole of the action. The word is not defined in either the Rules or the NTCAT Act.

[33] Bearing in mind the objectives of the NTCAT as found in s 10 of the NTCAT Act, I lean towards the first of these possible interpretations. It would be inconsistent with the stated objectives of the NTCAT to ensure that proceedings are processed and resolved as quickly as possible and while keeping costs to a minimum to permit parties to a proceeding, part of which has been finally determined by orders made by the NTCAT, to withhold an application to reopen that part of the proceeding where it is alleged that grounds under s 80 of the NTCAT Act exist justifying such a course. It should be remembered that this section addresses the reopening of a proceeding and is not an appeal provision. Appeals are separately addressed in Part 5 Division 2 of the NTCAT Act.

[34] It is, however, unnecessary for me to formally determine this issue. Even if the applicant had possessed a right to make the application to reopen the proceedings under s 80 (as opposed to requiring an enlargement of time based on exceptional circumstances), nothing that the applicant put before the NTCAT by way of submission could, even if supported by evidence, have justified an order reopening the proceedings. Nothing that the applicant has filed in support of the present application changes that position.

[35] For these reasons, the application for leave to appeal is refused. Unless either party seeks a different order within 14 days of the publication of my decision and reasons, I order that the applicant pay the costs of the respondent on the application on the usual basis.
