

[Back to Tribunal index](#)

RETIREMENT VILLAGES TRIBUNAL

DATE: 4 JUNE 2001

APPLICATION NO: V001-00

APPLICANT: WALES MR J S, MRS D WILSON, MRS E JARVIS, MRS J YOUNGER, MR & MRS WILLIAMSON, MRS J BARLOW, MRS M VANHAM, MISS M WALIS, MISS G MARTY, MR WATTS, MR & MRS BRANFORD, MRS C MCALLISTER, MRS E A MCDONALD, MRS A BROWN (DECEASED) AND MRS E M WALES

RESPONDENT: LAUREL SPRINGS MANAGEMENT SERVICES PTY LTD

DATE OF HEARING: 28 AND 29 May 2001

REFERENCE: RVT V001-00 4 JUNE 2001

REASON FOR DECISION: (Delivered 29 May 2001)

1. Obviously the parties want and are entitled to a decision as quickly as possible. The Tribunal, therefore, intends to give its decision now, but we reserve the right to add to these reasons for decision, if necessary.

2. By the time this matter came on for hearing by the Tribunal the parties had resolved several issues in dispute by discussion resulting in agreement between themselves.
3. The Tribunal encourages parties who will have an ongoing relationship to attempt to resolve disputes with the help of the Tribunal.
4. There were three (3) issues for resolution by the Tribunal at the beginning of the hearing: Firstly the rent, if any, payable by Laurel Springs Pty Ltd for Unit 54; secondly, the apportionment of the wages and superannuation for the Manager and Gardener between the Body Corporates, Laurel Springs Pty Ltd, the Respondent, and the Residents; thirdly, the charging of the Residents, by levy, for the Frank Carroll Solicitors fees in relation to the Middleton action in Nambour Magistrates Court.

Rent for Unit 54

5. The Tribunal finds that Unit 54 has been completed for approximately 4 years and was occupied at least twice since completion. It is owned by Laurel Springs Pty Ltd and until 1 July 2000 Laurel Springs Pty Ltd was not invoiced by the Respondent for any contribution to General Services which the Tribunal finds were provided it.
6. The Tribunal orders that the Respondent invoice Laurel Springs Pty Ltd in relation to Unit 54 in accordance with Section 105 of the Act from 1 July 2000.
7. The Tribunal has no jurisdiction under the previous Act. The Act and the Tribunal came into effect from 1 July 2000 and on that basis the Tribunal makes no finding or order in relation to any earlier period.

The Respondent's accounts

8. The Tribunal finds that the evidence particularly from the Respondent on this point is far from satisfactory. In fact the Respondents accounting records leave much to be desired. There are discrepancies between the accounts presented by the Respondent for July 1999/June 30 2000 income expenditure account (that being JSW12), the audited statements and the other evidence from the Respondent, including the cheques paid and the Group Certificates.

9. The Tribunal understands the frustration of the Applicants which arose, or may have arisen from the lack of proper accounting standards operating in the village. The lack of transparency as to what the Respondent was doing laid a basis for mistrust. There is no reconciliation between the budget produced to justify the \$99.00 levy (that being JSW12 which showed a projected loss of \$7,329.00); the income expenditure presented to the meeting of the 7 April 2000 which showed a loss of \$6,223.32 (that being LS18) and the audited report which shows a profit of \$17,477.12. These documents, one would have thought, would have been reconciled or would have shown a somewhat similar figure.
10. The audited report does not justify a levy and no attempt was made by the Respondent to explain how the \$99.00 levy was justified in view of the audited accounts showing this profit.

Apportionment of the superannuation and wages.

11. The evidence is somewhat unsatisfactory but, on the basis of what was presented, the Tribunal finds that it is appropriate that the wages and superannuation of the Manager and the Gardener, and we add of any other employees, should be apportioned between the parties for whom they carry out these duties.
12. The Tribunal adopts the 95%-5% apportionment for the Manager and the 60%-40% apportion for the gardener with the on the basis of the evidence, that is, 95% to be charged to the residents and 60% to be charged to the residents. However this percentage breakup needs to be kept under review.
13. The Tribunal orders that the Respondent apportion the wages and superannuation of staff it employees in proportion to the work carried out and charge the Applicants accordingly.

The Frank Carroll Accounts

14. The Tribunal finds that the service agreement upon which the Respondent had to rely to charge the Middletons the \$120.00 levy was terminated on 30 October 1998. It makes this finding on the basis of a notice which is JSW8 and the Magistrates note, which is JSW11.

15. The Tribunal finds that the claim against the Middletons in the Nambour Magistrates Court could not have succeeded on the basis of the pleading and the Respondent knew or ought to have known that on the 25 January when the proceedings were commenced by it.

16. The Tribunal finds that these litigation costs were not reasonably and properly incurred and therefore the Respondent may not on-charge them to the Applicants. The Tribunal orders that the Respondent not charge these costs to the general services account.

The \$99 Levy

17. On the basis of the audited accounts, the Tribunal orders the Respondent to withdraw the \$99.00 levy as unjustified when the accounts record a profit of \$17,477.00 for the year 1999/2000.

Improving the Relationship

18. The Tribunal recommends that the residents consider forming a Residents Committee under Section 127 of the Act and that the Respondent assist to improve the communication within, and information to the residents through this mechanism.

19. The Tribunal orders that this decision and its reasons be published.

.....

MR B COTTERELL - CHAIRPERSON

for the RETIREMENT VILLAGES TRIBUNAL