IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA57/2023
[2024] NZCA 33

BETWEEN	HWD NZ INVESTMENT CO LIMITED Appellant
AND	BODY CORPORATE 392418 Respondent

Hearing:	3 May 2023 (further submissions received 24 August 2023)
Court:	Katz, Hinton and Churchman JJ
Counsel:	J D Haig and S J Wong for Appellant T J G Allan for Respondent
Judgment:	27 February 2024 at 11.30 am

JUDGMENT OF THE COURT

A Leave to adduce further evidence is declined.

B The appeal is dismissed.

C The appellant must pay the respondent costs for a standard appeal on a band A basis together with usual disbursements.

REASONS OF THE COURT

(Given by Hinton J)

[1] On 16 December 2022 Associate Judge Brittain declined to set aside a statutory demand served by the respondent, Body Corporate 392418, on the appellant, HWD Investment Co Ltd (HWD) under s 289 of the Companies Act 1993 (the Act).[1]

[1] *HWD NZ Investment Co Ltd v Body Corporate 392418* [2022] NZHC 3472 [judgment under appeal].

The statutory demand related to non-payment of building repair levies under a scheme of arrangement ordered by Robinson J in the High Court on 18 March 2022.[2] HWD appeals.

[2] By consent order, the parties have agreed that the decision on this appeal will apply also to a second judgment of Associate Judge Brittain dated 17 March 2023 declining to set aside a second statutory demand for building repair levies.[3]

[3] Subsequent to the hearing of this appeal, on 16 May 2023 HWD filed a further memorandum as to the merits of a separate substantive claim brought by it against the Body Corporate in light of the recent High Court decision in *Body Corporate 207624 v Grimshaw & Co*.[4] HWD also filed updating submissions and evidence setting out a revised calculation of its claim against the Body Corporate on 15 August 2023. The Body Corporate filed memoranda in response on 18 May and 23 August 2023 respectively. Leave is required in respect of these matters.

Background

[4] The scheme under which the relevant levies were issued relates to a unit title development at 132 Stancombe Road, Flat Bush, Auckland. The development consists of 47 units spread across three blocks, referred to as A, B and C. Blocks A and C were developed by HWD which retained nine of the units in those blocks.

[5] The development had weathertightness and fire issues. The Body Corporate alleged those defects were attributable to negligence by Auckland Council, HWD and other parties involved in the development's construction. In November 2016, the Body Corporate commenced proceedings against those parties (the negligence proceeding), claiming approximately $13.6 million in repair costs. The unit owners, bar HWD, were included as second plaintiffs. They claimed general damages and consequential losses of approximately $2.6 million.[5]

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2 *Body Corporate 392418 v Chan* [2022] NZHC 503.
3 *HWD NZ Investment Co Ltd v Body Corporate 392148* [2023] NZHC 526.
4 *Body Corporate 207624 v Grimshaw & Co* [2023] NZHC 979. The judgment was issued on 28 April 2023.
5 The quantum sought was finalised only in a fourth amended statement of claim dated 22 October 2021.

[6] The Body Corporate advised HWD at the outset of the negligence proceeding that it was not included as a second plaintiff, despite its ownership of nine units.[6] HWD was also advised that it would be levied its share of any repair costs as an owner but would be "unable to recover any of those levies through the litigation process".

[7] On 7 April 2021 the Body Corporate applied to the High Court for an order under s 74 of the Unit Titles Act 2010 (the UTA) to settle a scheme for the repair and remediation of the development. The scheme application was opposed by HWD.

[8] Unbeknown to HWD, on 15 September 2021, the Body Corporate and second plaintiffs entered into a conduct and distribution agreement (the distribution agreement) authorising a settlement committee to represent the plaintiffs in settlement negotiations and address the apportionment of any settlement proceeds. That agreement was not before the Associate Judge, although the effect of it was able to be surmised.[7] It was disclosed in February 2023 after a number of requests were made to the Body Corporate by HWD. The distribution agreement provided that the settlement funds must first be used to pay all outstanding fees incurred by the Body Corporate or the unit owners in relation to the proceeding, including legal and expert fees. The balance was to be apportioned to remedial costs required to be paid by the second plaintiffs and to claims for loss on sale, in the proportion that these categories of claim represented to the overall claim (excluding general damages and legal costs).

[9] On 3 November 2021 the negligence proceeding was settled in full by payment of $9.75 million from the Council to the Body Corporate. HWD declined to participate in the settlement in its capacity as defendant. The settlement agreement did not allocate the funds either as between the second plaintiffs or in respect of different heads of damages. The Council's cross-claims and third-party claims were preserved, including its cross-claim against HWD.

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6 The second plaintiffs were owners of individual units in the development.

7 Judgment under appeal, above n 1, at [53].

[10] From the settlement sum, the Body Corporate paid to the second plaintiffs a sum of approximately $2.2 million on account of "all legal fees and or charges associated with litigation".

[11] In February 2022 the Body Corporate held an extraordinary general meeting. It resolved to enter into a building contract for repairs in the sum of $9.5 million plus GST and to levy owners a sum of $12 million including GST, for payment on 27 May 2022. It was recorded that the second plaintiffs' share of the $12 million levy would be covered by the settlement from the Council, with top-up levies only being raised if final costs were greater than expected. In the event of delayed payment by corporate owners (of which there were only two, one being HWD) the Body Corporate resolved to allow immediate issue of statutory demands.

[12] Instead of allocating levies split by common property, building elements and unit property (as the defects claim had been drawn) the Body Corporate determined to levy based on the proportionate split between each block. No allocation was made for common property.

[13] Based on HWD's ownership interest and the resolutions at the extraordinary general meeting, on 16 February 2022 the Body Corporate levied HWD in the total sum of $2,166,184 — $1,314,264 for its block A units and $851,919 for its block C units — with payment due on 27 May 2022. HWD queried the quantum on the basis that no credit had been allocated to it from the settlement funds received by the Body Corporate. It requested, among other things, a copy of the distribution agreement. The Body Corporate did not provide the information sought.

[14] On 18 March 2022 the s 74 scheme application was approved.[8] HWD did not appeal. HWD says it expected at that point that the Body Corporate would ultimately retain funds to pay for the cost of common property.

[15] Having failed to obtain the information it sought, on 20 May 2022 HWD filed proceedings against the Body Corporate, seeking damages for misapplication of the settlement funds (HWD's substantive proceeding). HWD alleged it was improper for

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8 *Body Corporate 392418 v Chan*, above n 2.

the Body Corporate to divest its own interest in the settlement funds entirely for the benefit of the second plaintiffs, to the detriment of HWD. HWD's substantive proceeding relies on the Body Corporate, as the owner of the common property and the party responsible for repairs, owing statutory and equitable duties under ss 54 and 138 of the UTA to all owners including HWD.

[16] On 22 May 2022 the Body Corporate resolved to reverse the levies issued in February 2022 and to re-issue levies for the same amount and on the same basis, but with staggered payment dates to reflect construction completion dates and slightly varied block allocations. On 1 June 2022 HWD was levied $2,099,510 — $1,392,896 for block A and $706,614 for block C. The block C levy was due on 17 June 2022 and the block A levy on 13 August 2022.

[17] In June 2022 HWD settled the Council's cross-claim against it, which was then discontinued. HWD says it "thus contributed to the settlement sum paid to settle the [Body Corporate]'s defects claim". No mention is made as to the quantum of HWD's contribution.

[18] HWD did not pay the block C levy by 17 June 2022, relying on its previous correspondence and noting its substantive proceeding seeking allocation of a share of the settlement proceeds. Following that non-payment, on 27 June 2022 the Body Corporate served a statutory demand on HWD in the sum of $706,614.

[19] Also on 17 June 2022, the Body Corporate, instead of filing a statement of defence in HWD's substantive proceeding, filed a notice of appearance protesting jurisdiction on the basis that HWD's claim was caught by cls 19–22 of the scheme, being arbitration and dispute resolution provisions. HWD applied to set aside the protest, saying these provisions did not apply.

[20] By letter dated 1 July 2022, HWD objected to the quantum of the 27 June 2022 statutory demand and on 18 July 2022 it paid $210,000, being HWD's calculation of the sum due after subtracting its assessment of an appropriate credit from the settlement funds. The Body Corporate declined to withdraw the statutory demand and HWD applied to set it aside.

[21] HWD also failed to pay the block A levy, leading the Body Corporate to issue a second statutory demand, for the sum of $1,392,896. HWD paid $390,000 on 16 September 2022, again its assessment of what was due, and applied to set aside the statutory demand.

Relevant law and scheme provisions

[22] Section 290(4) of the Act addresses an application to set aside a statutory demand as follows:

> (4) The Court may grant an application to set aside a statutory demand if it is satisfied that—
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> (a) there is a substantial dispute whether or not the debt is owing or is due; or
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> (b) The company appears to have a counterclaim, set-off, or cross-demand and the amount specified in the demand less the amount of the counterclaim, set-off, or cross-demand is less than the prescribed amount; or
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> (c) The demand ought to be set aside on other grounds.

[23] The appeal engages s 290(4)(b). In *Manchester Securities Ltd v Body Corporate 172108* this Court provided guidance on the application of that subsection:[9]

> Just as any defence must be shown to be reasonably arguable, so must any set-off, counterclaim or cross-demand. However, the obligation is not to prove the actual claim. It is not expected that the dispute itself is to be tried in the course of hearing the application. It has been said that "clear and persuasive" grounds must be shown for a set-off, rather than a mere assertion. There must be a real evidential basis for the claim, and the claim must be arguable as a matter of law.
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> In relation to contingent and unquantified counterclaims or set-offs, it has been held that the court must be able to determine from the material provided whether the amount of the set-off or counterclaim is more than the amount claimed in the statutory demand.

[24] Ordinarily it will only be a "rare case" where the court will exercise the discretion to refuse to set aside a statutory demand when an applicant has clearly made

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9 *Manchester Securities Ltd v Body Corporate 172108* [2018] NZCA 190, [2018] 3 NZLR 455 at [27]–[28], citing *Covington Railways Ltd v Uni-Accommodation Ltd* [2001] 1 NZLR 272 (CA) at 274–275; and *Provida Foods Ltd v Foodfirst Ltd* [2012] NZCA 326, (2012) 21 PRNZ 546 at [32] (footnotes omitted).

out grounds for setting aside under s 290(4).[10] However, the court is hesitant to set aside statutory demands where, as in the present case, the alleged counterclaim arises in the context of what is referred to as a "pay now argue later" provision. This is particularly true in the context of unit title schemes, the principle being that "pay now argue later" provisions facilitate the management of body corporate developments which otherwise would be unworkable, while preserving unit title holders' right to object to/challenge body corporate levies. This approach is considered fair because if a unit holder is ultimately successful in disputing a levy, the net result is they are only required to bear the cost of the (unjustified) levy for a relatively short period.

[25] The relevant clauses of the current scheme are as follows:

> **Dispute Resolution**
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> 19. The Body Corporate's decisions on any matter arising under the Scheme shall be final in all respects except where 2 or more Owners whose objection in monetary value cumulatively exceeds $30,000, or where one unit holder has an objection which in monetary terms exceeds $15,000.
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> 20. Any Owner wishing to object to a decision of the Body Corporate must give notice to the Body Corporate manager of their objection within 10 working days of receiving notice from the Body Corporate of the relevant decision (the notice shall be received by the Owner one day after it is sent to the Owner's last known physical or email address provided to the Body Corporate).
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> 21. Upon receipt of any objection notice the Body Corporate will refer the matter to an arbitrator (to be appointed by the President of the Arbitrator's and Mediator's Institute of New Zealand) and the arbitrator shall determine the matter in accordance with the provisions of the Arbitration Act. The costs of the arbitration shall be borne between the objecting Owner(s) and the Body Corporate as the arbitrator decides.
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> 22. No Owner shall be entitled to withhold payment of levies that fall due on the basis that an objection has been raised or an objection is pending arbitration.

The judgment of Associate Judge Brittain

[26] The Associate Judge addressed the two interlocutory issues in HWD's substantive proceeding against the Body Corporate.

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[10] *Manchester Securities Ltd v Body Corporate 172108*, above n 9, at [49].

[27] He found in favour of HWD on its application to set aside the Body Corporate protest to jurisdiction, on the basis that HWD's substantive proceeding was not a dispute involving a decision of the Body Corporate under the scheme.[11] HWD's substantive proceeding was therefore not required to be referred to arbitration under cl 21. The apportionment of the settlement sum by the Body Corporate and owners was inferred to have been made pursuant to the distribution agreement.[12] The Associate Judge found the Body Corporate was not in fact empowered to determine distribution of the settlement funds under the scheme itself.[13]

[28] The jurisdiction finding has not been appealed by the Body Corporate (which has now filed a statement of defence in HWD's substantive proceeding).

[29] With regard to HWD's application to set aside the Body Corporate's statutory demand, the Associate Judge found:

(a) HWD's objection to the payment of levies amounts to a set-off or counterclaim.[14]

(b) HWD had met the threshold of establishing clear and persuasive grounds for the set-off or counterclaim in terms of s 290(4) of the Act.[15]

(c) The policy argument in favour of "pay now argue later" clauses in schemes ordered under s 74 of the UTA applied such that a broad interpretation of cl 22 of the scheme was justified, similar to this Court's approach in *Manchester Securities*.[16] The Associate Judge said the policy argument is of general application with no distinction to be made on the basis of body corporate cash flow, which will be different under every scheme.[17]

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11 Judgment under appeal, above n 1, at [68].
12 At [53].
13 At [65]–[67].
14 At [58].
15 At [90].
16 At [91], citing *Manchester Securities Ltd v Body Corporate 172108*, above n 9.
17 At [91].

(d) The "pay now argue later" obligation in cl 22 applied such that the statutory demand ought not be set aside because an objection for the purposes of cl 22 included objections in the form of legal proceedings and therefore "an objection had been raised".[18]

[30] The Associate Judge briefly considered the merits of HWD's substantive claim which he described as complex both in terms of fact and law.[19] But he seemed to address that point only in terms of his conclusion that the threshold in s 290(4)(b) had been met. He did not consider the merits of HWD's substantive proceeding further when addressing his discretion.

Issues on appeal

[31] The parties agree that the sole issue on appeal is whether the Associate Judge erred in finding that cl 22 of the scheme, which it is accepted is a "pay now argue later" clause, justified exercising the discretion under s 290(4) of the Act to not set aside the statutory demand.

[32] The appeal is against exercise of a discretion. The decision will not be upset unless contrary to principle, it considered an irrelevant factor, disregarded a relevant factor, or was wholly wrong.[20]

Submissions

[33] HWD says that the Associate Judge erred in exercising his discretion under s 290(4) because HWD's substantive proceeding is not "an objection" under cl 22 and that clause, on which the Judge relied, is therefore not applicable.

[34] In any event, if cl 22 does apply, HWD submits the Associate Judge failed to consider the statement in *Manchester Securities* that it would only be a "rare case" where the discretion would be exercised and he failed to provide reasons as to why

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18 At [92]–[93].
19 At [86]–[90].
20 *May v May* (1982) 1 NZFLR 165 (CA) at 170.

this case fell into that category. HWD submits that the present case is not a "rare case" where the exercise of the discretion could be justified:

(a) The case can be distinguished from *Manchester Securities* where it was clear that the "pay now argue later" clause was engaged. Further, unlike in *Manchester Securities,* HWD's substantive claim has not already been considered by the courts, HWD has acted in good faith and its claim is particularised to the requisite degree.

(b) The cooperative principle behind the UTA should not have primacy because the "pay now argue later" scheme does not apply to HWD's substantive proceeding, HWD has suffered a cash drain due to the Body Corporate failing to act prudently and HWD has already contributed a significant amount in respect of the defects claim and levies for the building work.

(c) Other unit holders are unfairly attempting to make HWD meet the shortfall between the settlement sum and the cost of redevelopment works.

[35] As noted above, in supplementary submissions filed after the hearing, HWD referred to the recent decision of Tahana J in *Grimshaw & Co.*[21] HWD submits that this decision supports its substantive proceeding. It says if its appeal is dismissed liquidation would likely follow which would automatically stay any proceeding and enable the Body Corporate to avoid HWD's meritorious case. That would be highly unjust.

[36] In response, the Body Corporate takes the position that the Associate Judge correctly applied the law. It emphasises that HWD was notified from the commencement of the negligence proceeding (November 2016) that it would not be receiving any of the proceeds. It could have taken action much earlier. The Body Corporate disputes that *Grimshaw & Co* has any relevance to whether the Associate Judge erred in exercising his discretion.

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[21] *Body Corporate 207624 v Grimshaw & Co,* above n 4.

Leave to adduce new evidence and memoranda

[37] HWD seeks leave to adduce further evidence in the form of various statements, financial reports and documentation pertaining to the apportionment and distribution of settlement funds by the Body Corporate. The application falls to be considered under r 45 of the Court of Appeal (Civil) Rules 2005. That rule requires further evidence to be fresh, credible and cogent.[22]

[38] HWD submits the further evidence "informs the Court further as to the sums in dispute and what is to be determined at the substantive hearing of HWD's claim". The Body Corporate opposes the application on the basis that HWD has not acted with alacrity and the evidence is not cogent to an issue on appeal.

[39] We agree with the Body Corporate that leave to adduce further evidence should be declined. Evidence as to the quantum of HWD's substantive claim is primarily relevant to whether the counterclaim meets the s 290(4)(b) threshold. That is not in dispute. At issue is whether the Associate Judge was right to exercise his discretion under s 290(4). The quantum of the counterclaim is not sufficiently cogent to that assessment. The evidence does not meet the threshold for granting leave under r 45.

[40] We accept HWD's submission that *Grimshaw & Co* has some relevance to the issues on appeal as briefly discussed below. We grant leave for filing of the further memoranda on that point.

Does cl 22 of the scheme apply to HWD's outstanding unpaid levies?

[41] HWD says the Associate Judge's finding that its substantive proceeding does not amount to "an objection" for purposes of cl 22 means the clause does not apply to its application under s 290(4)(b) of the Act.

[42] However, the question for the purposes of HWD's application under s 290 is not whether its substantive proceeding is "an objection", but whether the Body Corporate's decision to levy HWD is "a matter arising under the scheme" in

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[22] *Rae v International Insurance Brokers (Nelson Marlborough) Ltd* [1998] 3 NZLR 190 (CA) at 192.

terms of cl 19 and whether HWD's non-payment is an objection. The answer to both questions is plainly yes. Under cl 19 the decision to levy is final in all respects except where owners object (and the objection meets the relevant monetary threshold). HWD has clearly objected to the decision to levy. It objects to and is withholding payment (at least in substantial part).

[43] It follows that cl 22 applies and HWD is not entitled to withhold payment of levies on the basis that it has raised an objection.

[44] The fact that HWD did not give notice of its objection in time in terms of cl 20 or seek to have it referred to arbitration in terms of cl 21 does not detract from HWD's non-payment being an objection in terms of cl 19. An objection is not limited for the purpose of cl 22 to an objection given within a specific period or an objection referred to arbitration. While the clauses are not clearly drawn, it would be illogical if a unit owner who did not pay a levy and did not comply with the provisions of cls 20 and 21 was in a better position to stave off a statutory demand than one who did comply with the objection process.

Was the Associate Judge wrong to exercise his discretion under s 290(4) by not setting aside the statutory demand?

[45] HWD satisfied the Associate Judge in terms of s 290(4)(b) that it "has met the threshold of establishing clear and persuasive grounds showing a set-off or counterclaim".[23] It is implicit in this finding that the Judge accepted that the quantum of the set-off or counterclaim was at least equal to the amount of the statutory demand. In those circumstances, the Court may set aside the statutory demand.

[46] For HWD to successfully appeal the Associate Judge's decision it needs to show, as set out above, that he failed to take account of a relevant factor, took account of an irrelevant factor or his decision was plainly wrong.

[47] We consider that the Associate Judge was right to use his discretion not to set aside the statutory demands but for slightly different reasons to those he advances.

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[23] Judgment under appeal, above n 1, at [90].

[48] The Associate Judge held that the statutory demand must stand because of the "pay now argue later" clause, and this Court's decision in *Manchester Securities.* As is clear from our finding above, we agree that the "pay now argue later" clause is engaged. We also agree that the application of that clause is an important factor in the exercise of the s 290(4) discretion. However, we consider the issue is more nuanced than is expressed in the judgment under appeal.

[49] This Court's decision in *Manchester Securities* is not authority for the proposition that where a "pay now argue later" scheme applies it will *always* be appropriate for a court to use its discretion not to set aside a statutory demand. The Court specifically said it was not necessary to formulate a test for exercise of the discretion.[24]

[50] In *Manchester Securities*, the Court exercised the discretion not to set aside the statutory demand, even though the applicant had satisfied the threshold requirement. However, the applicant's ability to "argue later" was only one factor the Court considered.[25] The Court was also influenced by the fact that the applicant was attempting to "relitigate matters already decided",[26] including a court order that the applicant make payment immediately, that the applicant had acted in a "dilatory" and "prevaricating" manner and that its claim was poorly particularised.[27] As HWD submits, these factors are not present here, although as subsequently noted, we consider there has been delay on HWD's part.

[51] We also accept HWD's submission that a number of factors additional to those referred to in *Manchester Securities* can be relevant to the exercise of discretion under s 290(4) even where a "pay now argue later" scheme applies. Unlike the Associate Judge, we consider the financial position of the parties to be a relevant factor, particularly where the Body Corporate is not in pressing need of funds and the applicant faces potential loss of a counterclaim through liquidation or otherwise. The strength of a counterclaim would also be relevant in this context.

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24 *Manchester Securities Ltd v Body Corporate 172108,* above n 9.
25 At [56]–[58].
26 At [54].
27 At [61], citing *Body Corporate 172108 v Manchester Securities Ltd* [2017] NZHC 329 at [14]; and *Manchester Securities Ltd v Body Corporate 172108* [2017] NZCA 527 at [44].

[52] However, in this case, the financial position of the Body Corporate supports the decision not to set aside the statutory demand. While the Body Corporate received a substantial settlement from the Council, it will clearly suffer a shortfall on the building contract, if it has not already, if HWD does not pay the levies. It may even be unable to complete the repair works required.

[53] Also, although HWD argues that it stands to lose its ability to counterclaim because of the risk of liquidation, there is no evidence that it is unable to meet the statutory demands and therefore unable to pursue its substantive proceeding.

[54] There is also no suggestion that the Body Corporate would not be able to pay an award in the event HWD successfully disputed the levies. As touched on above, the benefit of the "pay now argue later" scheme is that it preserves HWD's ability to dispute the levies while enabling the Body Corporate to fund the remedial works required. If HWD is ultimately successful in its objection, it will recover what it is owed. Any issue with HWD having unfairly paid more towards levies or remedial work than it should have can be resolved through its substantive proceeding.

[55] We do not need to address HWD's associated point regarding its alleged significant contribution to the defects claim, as the quantum of that contribution is not evidenced. It would be difficult also to measure the significance and relevance of any such contribution in the present context.

[56] We accept HWD's submission that Tahana J's decision in *Grimshaw & Co* is relevant to the merits of its substantive proceeding. That case suggests that body corporate recipients of negligence proceeding settlements are required to allocate a portion of settlement funds to cover the common property proportion of any defects claim.[28] Body Corporates are also required to distribute settlement funds having regard to body corporate repair obligations under s 138 of the UTA, including the duty to repair and maintain the common property.[29] However, notwithstanding *Grimshaw & Co*, we do not consider the merits of HWD's substantive proceeding so

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28 *Body Corporate 207624 v Grimshaw & Co*, above n 4, at [287(a)].
29 At [287(c)]; and Unit Titles Act 2010, s 138(1)(a).

obviously strong as to prevail over cl 22. As the Associate Judge said, HWD's substantive proceeding is complex.

[57] Even if the merits of HWD's substantive proceeding were obviously strong, we would still be of the view that the Associate Judge appropriately exercised his discretion. In addition to the factors considered above, HWD had been on notice since November 2016 as to the Body Corporate's position (whether correct or otherwise) regarding HWD's inability to recover levies through the negligence proceeding, yet its substantive proceeding was only served in May 2022. We acknowledge the position may not have been clear to HWD particularly with regard to common areas, but nonetheless, it had the opportunity to bring its claim much earlier. This is a material factor in the exercise of the discretion.[30]

[58] In the round, we are satisfied that the combination of the "pay now argue later" scheme, financial position of the parties and delay in HWD's substantive proceeding render this an appropriate case for the exercise of the s 290(4) discretion. The statutory demands stand.

Result

[59] Leave to adduce further evidence is declined.

[60] The appeal is dismissed.

[61] The appellant must pay the respondent costs for a standard appeal on a band A basis together with usual disbursements.

Solicitors:
Davidson Legal, Christchurch
Grove Darlow & Partners, Auckland

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[30] See *Sunglass Hut New Zealand Ltd v Amtrust Pacific Properties Ltd* HC Auckland, M1710/02, 24 June 2003 at [46]–[47]; and *Luxe One Ltd v Body Corporate 68792* [2017] NZHC 2672 at [172] where failure to challenge amounts claimed over a significant period was a factor justifying the exercise of discretion not to set aside a statutory demand.