



Civil and Administrative Tribunal  
New South Wales

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Case Name: Owners Corporation SP 22607 v Yang

Medium Neutral Citation: [2018] NSWCATCD 3

Hearing Date(s): 24 August 2017

Date of Orders: 24 January 2018

Decision Date: 24 January 2018

Jurisdiction: Consumer and Commercial Division

Before: T Simon, Senior Member

Decision: (1) On or before 30 March 2018, the respondent, at her own cost, is to present to the Owners Corporation a common property rights by-law in relation to each of the unauthorised works, including (but not limited to) independent expert evidence that all unauthorised works have been done with due skill and care and in accordance with the relevant Australian standards, evidence that the works do not affect the structural stability of the building (including the removed wall). The applicant is not to unreasonably deny the making of the by-law.

(2) In the event that the above is not complied with then the respondent, must at her own cost remove the unauthorised works and restore the common property to its previous state and repair any damage to the common property by 30 April 2018.

(3) The respondent is to pay the applicants costs as agreed or assessed.

Catchwords: STRATA – minor works – works affecting common property, unauthorised works.

Legislation Cited: Civil and Administrative Tribunal Act 2013  
Strata Schemes Management Act 2015

Cases Cited: Nil

Category: Principal judgment

Parties: Owners Corporation SP 22607 (Applicant)  
Julie Yang (Respondent)

Representation: Solicitors:  
Mr C Cunio (Applicant)  
Ms Yang in person

File Number(s): SC 17/08505

Publication Restriction: Nil

## **REASONS FOR THE DECISION**

### **The Application**

- 1 By application made on 16 February 2017, the applicant Owners Corporation was initially seeking orders for the ceasing and removal of unauthorised renovation works.
- 2 Mr Martin, the strata managing agent, appeared as a witness on behalf of the applicant. An interpreter also appeared for Ms Yang and she was also assisted by a friend Mr Anstead.
- 3 The matter had initially been listed for final hearing on 1 June 2017. On that occasion the respondent had not provided documents in accordance with the Tribunal directions. She stated at that hearing that she was unsure about what she needed to provide. The matter was adjourned on 1 June 2017 to facilitate negotiation between the parties, allow an inspection of the works and allow the respondent to obtain legal advice on what documents she should provide. The Tribunal also made further directions allowing for access for the applicant to inspect the works and for the exchange of documents
- 4 Documents were received by the Tribunal from the applicant on 7 April 2017 and 21 June 2017. Access had been given by the respondent to the applicant to inspect the works.

- 5 However, the respondent had again not provided any documents in accordance with the directions. The respondent confirmed that she had been waiting for her solicitor to talk with the other side and had left matters in the hands of her solicitor who had gone overseas and by the time the matter came for hearing had ceased acting for her. The respondent again stated that she was unsure what evidence she was to provide. In any case the respondent agreed that the Tribunal should decide the matter and the matter should proceed. She was offered an opportunity to make an application for adjournment and she declined, although she continued to repeat that she was unsure what she was to provide. The Tribunal was not satisfied to grant an adjournment of its own motion because it had previously adjourned the matter to allow the respondent to obtain advice and provide documents and no documents had been provided. The Tribunal had also set out in the directions what the documents may include, including statements, which she had not provided.
- 6 The respondent stated she was willing to proceed, but wanted to rely on a photograph she had not previously provided which related to a wall and correspondence from a tradesperson. The applicant did not object to the consideration of those documents. The applicant had objected to Ms Yang's friend, Mr Anstead giving oral evidence. However, the Tribunal did allow Mr Anstead to give oral evidence.
- 7 All the documents received by the Tribunal including the oral evidence from Ms Yang and Mr Anstead have been considered in making this decision. Mr Martin was cross examined by Ms Yang. Ms Yang and Mr Anstead were also cross examined.

### **Consideration**

- 8 When they had initially made the application to the Tribunal, the applicants has been seeking for the respondent to cease works. However, it soon transpired that works were completed and in the documents provided by the applicant on 7 April 2017, the applicant amended its claim seeking removal of the unauthorised works.

9 The respondent conceded that she had done the renovation works and felt that she should only be required to present a common property rights by law and perhaps a small fine. She stated that she had only proceeded with the works because the Owners Corporation was being difficult and had sought to charge her for having the meeting to consider authorisation of the works. She did not dispute that she had done the wrong thing in proceeding with the works without authorisation, but that the work had not adversely affected the common property and that the applicant had not demonstrated that the work is defective.

10 Section 108 of the of the *Strata Schemes Management Act 2015* (SSMA) relates to changes to common property and relevantly states:

(1) Procedure for authorising changes to common property An Owners Corporation or an owner of a lot in a strata scheme may add to the common property, alter the common property or erect a new structure on common property for the purpose of improving or enhancing the common property.

(2) Any such action may be taken by the Owners Corporation or owner only if a special resolution has first been passed by the Owners Corporation that specifically authorises the taking of the particular action proposed.

(3) Ongoing maintenance A special resolution under this section that authorises action to be taken in relation to the common property by an owner of a lot may specify whether the ongoing maintenance of the common property once the action has been taken is the responsibility of the Owners Corporation or the owner.

(4) If a special resolution under this section does not specify who has the ongoing maintenance of the common property concerned, the Owners Corporation has the responsibility for the ongoing maintenance.

(5) A special resolution under this section that allows an owner of a lot to take action in relation to certain common property and provides that the ongoing maintenance of that common property after the action is taken is the responsibility of the owner has no effect unless:

(a) the Owners Corporation obtains the written consent of the owner to the making of a by-law to provide for the maintenance of the common property by the owner, and

(b) the Owners Corporation makes the by-law.

(6) The by-law:

(a) may require, for the maintenance of the common property, the payment of money by the owner at specified times or as determined by the Owners Corporation, and

(b) must not be amended or repealed unless the Owners Corporation has obtained the written consent of the owner concerned.

(7) Sections 143 (2), 144 (2) and (3) and 145 apply to a by-law made for the purposes of this section in the same way as they apply to a common property rights by-law.

Note : A new by-law or other changes to the by-laws for a strata scheme must be approved by a special resolution of the Owners Corporation (see section 141).

11 Section 110 of the *Strata Schemes Management Act* relates to minor renovations by owners. It relevantly states:

(1) The owner of a lot in a strata scheme may carry out work for the purposes of minor renovations to common property in connection with the owner's lot with the approval of the Owners Corporation given by resolution at a general meeting. A special resolution authorising the work is not required.

(2) The approval may be subject to reasonable conditions imposed by the Owners Corporation and cannot be unreasonably withheld by the Owners Corporation.

(3) "Minor renovations" include but are not limited to work for the purposes of the following:

- (a) renovating a kitchen,
- (b) changing recessed light fittings,
- (c) installing or replacing wood or other hard floors,
- (d) installing or replacing wiring or cabling or power or access points,
- (e) work involving reconfiguring walls,
- (f) any other work prescribed by the regulations for the purposes of this subsection.

(4) Before obtaining the approval of the Owners Corporation, an owner of a lot must give written notice of proposed minor renovations to the Owners Corporation, including the following:

- (a) details of the work, including copies of any plans,
- (b) duration and times of the work,
- (c) details of the persons carrying out the work, including qualifications to carry out the work,
- (d) arrangements to manage any resulting rubbish or debris.

(5) An owner of a lot must ensure that:

- (a) any damage caused to any part of the common property by the carrying out of minor renovations by or on behalf of the owner is repaired, and
- (b) the minor renovations and any repairs are carried out in a competent and proper manner.

(6) The by-laws of a strata scheme may provide for the following:

- (a) additional work that is to be a minor renovation for the purposes of this section,

(b) permitting the Owners Corporation to delegate its functions under this section to the strata committee.

(7) This section does not apply to the following work:

(a) work that consists of cosmetic work for the purposes of section 109,

(b) work involving structural changes,

(c) work that changes the external appearance of a lot, including the installation of an external access ramp,

(d) work involving waterproofing,

(e) work for which consent or another approval is required under any other Act,

(f) work that is authorised by a by-law made under this Part or a common property rights by-law,

(g) any other work prescribed by the regulations for the purposes of this subsection.

(8) Section 108 does not apply to minor renovations carried out in accordance with this section.

12 Section 111 of the *Strata Schemes Management Act* states:

An owner of a lot in a strata scheme must not carry out work on the common property unless the owner is authorised to do so:

(a) under this Part, or

(b) under a by-law made under this Part or a common property rights by-law, or

(c) by an approval of the Owners Corporation given by special resolution or in any other manner authorised by the by-laws.

13 It is undisputed and the Tribunal finds that the respondent has undertaken a renovation works. Mr Anstead stated he did a health and building work course at TAFE. He confirmed that he saw the renovation works are various states and a new kitchen had been installed and that new light fittings had been installed and electrical work had been done to the property . He stated that the property was already tiled previously and new tiles had simply been installed over the old one. He stated that the works would certainly have affected common property, but his inspection of the works demonstrated that the works have had no adverse effect on the property. Mr David Wilcox, the engineer for the applicant has stated that he observed a new "island" kitchen bench had been installed between the kitchen and living room. He also stated that he observed new ceramic tiles with a hard floor look finish had been installed. The bathroom had been extensively renovated which involved the removal and replacement of tiles and fixtures. The tiles were lifted and had been re-tiled. Mr

Anstead gave evidence that he observed that the waterproofing had not been interfered with. Further a new built in was installed.

- 14 The Tribunal rejects the respondent's assertion that simply because the applicant has not produced evidence to show that the works have had an adverse effect on common property that the works should remain. It is clear that the respondent has proceeded to do the works without obtaining the proper authorisation. Further she gave evidence that she was told she needed the authorisation but decided not to get it when she was advised that she would need to pay the cost for a meeting to be held to pass the resolution. The SSMA has clearly implemented a regime so that such works require approval as they do affect common property and the applicant is entitled to know what the works are. The SSMA offers the applicant protection in relation to the works that affect common property. While there is no immediate evidence before the Tribunal that the works are defective or have had any negative impact on common property, the onus is not on the applicant to produce such evidence. Just because no evidence of that nature has been produced, does not mean that the Owners Corporation can be assured that the common property has not been adversely affected by the unauthorised works. The regime and regulation imposed by the statute of authorisation and by-laws clearly protects an applicant from any prospective defects or damage that that might arise on common property. In this case the non-compliance with the regulatory scheme by the respondent has denied the applicant the opportunity to ensure the works are done in a way that will not adversely affect common property or that if it does, the respondent bears the responsibility. Further the SSMA clearly provide a mechanism for lot owners to bring an action in situations where an Owners Corporation unreasonably refuses to approve the works.
- 15 The Tribunal finds from the evidence that the following unauthorised works have been undertaken:
- (1) The kitchen has been renovated with new cupboards, tiling and lighting. A kitchen island bench has been replaced. This is a minor renovation and is in breach of ss 110(3) (a) and (c) of the SSMA.
  - (2) The recessed light fittings have been changed. This is also classed as a minor renovation and is in breach of s110(3) (b) of the SSMA.

- (3) New tiles have been installed in the unit. This is also classed as a minor renovation and is in breach of s110(3) (b) of the SSMA.
- (4) The brick masonry wall located on the southern side of the kitchen has been removed. The respondent states that the wall has not been there since she moved into the property in 2001. At that time the property had previously been commercial. The Tribunal is satisfied from the evidence of the applicant's expert, Mr Wilcox, that based on the hydraulic services drawing for the apartment the wall has been removed. While it is unclear when the wall was removed, the Tribunal is satisfied that it has been removed from the original without any record of authorisation from the applicant. That is in breach of s108 of the SSMA.
- (5) The bathroom has been renovated, including removal of toilet, vanity, bath and tiles. That is in breach of s108 of the SSMA.

16 Given the extent of the works the Tribunal and to ensure that the common property is protected the Tribunal finds that the following order should be made.

- (1) On or before 30 March 2018, the respondent, at her own cost, is to present to the Owners Corporation a common property rights by-law in relation to each of the unauthorised works, including (but not limited to) independent expert evidence that all unauthorised works have been done with due skill and care and in accordance with the relevant Australian standards, evidence that the works do not affect the structural stability of the building (including the removed wall). The applicant is not to unreasonably deny the making of the by-law.
- (2) In the event that the above is not complied with then the respondent, must at her own cost remove the unauthorised works and restore the common property to its previous state and repair any damage to the common property by 30 April 2018.

### **Costs**

- 17 The applicant has made an application for costs. The respondent opposed the application for costs.
- 18 Section 60 of the *Civil and Administrative Tribunal Act (NSW) 2013* requires parties to pay their own costs unless the Tribunal is satisfied that special circumstances warrant an award of costs.
- 19 The Tribunal is satisfied that there are special circumstances which warrant the making of a costs order in this matter. The Tribunal is satisfied from the evidence of Mr Martin that he had told Ms Martin to cease works on 2 February as the works were not authorised. At time this application was made, the works were underway and on 24 February 2017 the Tribunal made interim orders



requiring the respondent to cease all works affecting common property. The Tribunal is satisfied on the evidence of Mr Martin that the works did not cease. The Tribunal is satisfied that it has been necessary for the applicant to bring this application and that the respondent was on notice that she needed authorisation for the works, yet she continued. The Tribunal finds that those are special circumstances which warrant the making of a costs order in the applicants favour. Those costs are to be paid as agreed or assessed.

**T Simon**

**Senior Member**

**Civil and Administrative Tribunal of New South Wales**

**24 January 2018**

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.  
Registrar

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