

Magistrates Court appoints Administrator to Lot Owner

Section 287 of the *Body Corporate and Community Management Act 1997* (**Act**) has been successfully used to appoint an Administrator to perform the obligations of a Lot Owner under an Adjudicator's Order.

Case

A Body Corporate obtained an Adjudicator's Order against an individual Lot Owner requiring the Lot Owner to demolish an unapproved structure from an exclusive use area or otherwise alter the structure in accordance with any approval obtained, within three months. The exclusive use area was located within a locked, fenced area accessible by the Lot Owner.

Three months passed and the Lot Owner had not demolished the unapproved structure or obtained any approval.

The Body Corporate filed an application in the Magistrates Court seeking an Administrator be appointed to perform the Lot Owner's obligations under the Adjudicator's Order including several express authorisations to give practical effect to the appointment.

Law

Section 287 of the Act gives a Magistrates Court power to appoint an Administrator to perform the obligations under an Adjudicator's Order of a Body Corporate, Committee, member of the Committee, or Owner or Occupier of a lot.

The power in section 287 of the Act is discretionary. It has been established that this discretion is to be exercised with reference to the inferences available on the evidence and the facts of the case, and the specific purpose of the appointment being sought.

The reported cases however only deal with the appointment of an Administrator to a Body Corporate. How section 287 of the Act would apply to an individual Lot Owner, and the incidental matters surrounding the authorised work of the appointed Administrator, were unclear.

For example, what happens if the Lot Owner refuses the Administrator access to the exclusive use area, who is an appropriate Administrator to perform an individual Lot Owner's obligations, and who pays the costs of the Administrator.

The Act provides no express guidance, however section 287 would lose value if orders could not also be made providing express authorisations to the Administrator to overcome those issues.

Outcome

The Magistrates Court ordered the appointment of an Administrator to perform the Lot Owner's obligations under the Adjudicator's Order. A number of express authorisations were included in the order and considered reasonably necessary to allow the Administrator to perform the Lot Owner's obligations. The Lot Owner was also ordered to pay the Body Corporate's costs.

This decision shows that an Administrator will be appointed to perform an individual Lot Owner's obligations where the facts of the case are appropriate. These facts may include undue delay by the Lot Owner and an unwillingness to comply with the Adjudicator's Order. The Administrator can be given wide authorisations and the ability to recover the costs incurred directly from the Lot Owner.

The appointment of an Administrator should be properly considered by a Body Corporate as a useful tool to enforce an Adjudicator's Order, in addition to pursuing the imposition of monetary fines and the mechanisms in the applicable regulation modules, where appropriate.

By Brendan Pitman, Associate – MBA Lawyers