



Civil and Administrative Tribunal
New South Wales

Case Name: Vojkovic v Bicioc

Medium Neutral Citation: [2020] NSWCATAP 128

Hearing Date(s): 23 June 2020

Date of Orders: 23 June 2020

Decision Date: 30 June 2020

Jurisdiction: Appeal Panel

Before: P Durack SC, Senior Member
G.Blake AM SC, Senior Member

Decision: (1) Grant leave for Mr Matthews to appear for the owners corporation at the hearing of the appeal on the basis he appears as *amicus curiae* and that no order for costs of the owners corporation will be sought against the appellant.
(2) The application for an extension of time in which to appeal is dismissed.
(3) The appeal is dismissed.

Catchwords: APPEALS – application by the owners corporation for leave to be legally represented where no relief claimed against it – leave granted for solicitor to appear as *amicus curiae* – application by the appellant for an extension of time in which to appeal where he is no longer an interested person – application dismissed

Legislation Cited: Civil and Administrative Tribunal Act 2013 (NSW), 41
Civil and Administrative Tribunal Rules 2014 (NSW), r 25
Strata Schemes Management Act 2015 (NSW), s 226, Sch 2, cl 18

Cases Cited: Jackson v NSW Land and Housing Corporation [2014]

NSWCATAP 22

Texts Cited: None cited

Category: Principal judgment

Parties: Darko Vojkovic (Appellant)
Roman Bicioc (First Respondent)
Maureen Morkos (Second Respondent)
The Owners - Strata Plan No SP73839 (Third Respondent)

Representation: The Appellant was self-represented

Solicitors:
Appellant (Self Represented)
P Matthews (Third Respondent)

File Number(s): AP 20/11980

Publication Restriction: Nil

Decision under appeal:

Court or Tribunal: NSW Civil and Administrative Tribunal

Jurisdiction: Consumer and Commercial Division

Citation: N/A

Date of Decision: 4 September 2019

Before: G K Burton SC, Senior Member

File Number(s): SC 18/51968

REASONS FOR DECISION

Summary

- 1 In these proceedings the appellant Darko Vojkovic appeals against the order made by the Tribunal on 4 September 2019 dismissing his application against the respondents Roman Bicioc, Maureen Morkos, and The Owners - Strata Plan No SP73839 who are the respondents to this appeal.
- 2 We made the following orders at the conclusion of the hearing:

- (1) grant leave for Mr Matthews to appear for the owners corporation at the hearing of the appeal on the basis he appears as amicus curiae and that no order for costs of the owners corporation will be sought against the appellant;
- (2) the application for an extension of time in which to appeal is dismissed;
- (3) the appeal is dismissed.

3 These are our reasons for the making of these orders.

Background

4 The scheme related to strata plan no 73839 consists of 22 lots, and is comprised by a multi-storey building at 21-25 Bryant Street, Rockdale NSW 2216.

5 In December 2018, the appellant was the occupier of lot 2, and the first two respondents were members of the strata committee of the third respondent, which is the owners corporation responsible for the management of the scheme.

The proceedings below

6 On 3 December 2018, the appellant as the applicant commenced proceedings SC 18/51968 against the respondents by filing a strata application in which he sought orders that the first two respondents be removed from the strata committee and that a civil penalty be imposed on the first respondent.

7 On 19 July 2019, the Tribunal refused leave to AR Connolly, solicitors, to represent the third respondent but granted leave to AR Connolly “to assist the Tribunal as amicus to the extent that they wished to do so (without present basis for remuneration for so doing if they chose)”.

8 On 4 September 2019, the Tribunal dismissed the application.

The appeal proceedings

9 On 10 March 2020, the appellant filed a notice of appeal in which he sought leave to appeal against the decision under appeal and an extension of time. The grounds for an extension of time were contained in documents marked “Private and Confidential” which relevantly contained three medical certificates dated 10 September 2019, 2 October 2019, and 17 December 2019 covering the period from 4 September 2019 to early February 2020.

- 10 On 10 April 2020, the third respondent in its reply to appeal relevantly opposed an extension of time to appeal.
- 11 On 5 May 2020, the appellant filed extensive written submissions which do not address the issue of whether an extension of time in which to appeal should be granted.
- 12 On 10 June 2020, the respondents filed written submissions which relevantly state the appellant “moved out of the building recently and is not associate (sic) anymore with SP73839”.
- 13 On 10 June 2020, the third respondent filed written submissions which relevantly opposed an extension of time to appeal.

The preliminary issues on the hearing of the appeal

- 14 At the hearing of the appeal we decided to deal with the following two preliminary issues:
 - (1) whether to grant leave for the third respondent to be legally represented;
 - (2) whether to grant the appellant an extension of time in which to appeal.

Whether to grant leave for the third respondent to be legally represented

- 15 The third respondent applied for leave to be legally represented by Mr P Matthews, a solicitor, on the basis of the complexity of the appeal involving the interpretation of cl 18 of Sch 2 of the *Strata Schemes Management Act 2015* (NSW) (SSM Act), and the third respondent had an interest in the democratic processes by which the strata committee was elected being upheld.
- 16 When questioned by us, Mr Matthews could not identify any relief being sought against the third respondent and indicated that the third respondent may seek costs if the appeal was dismissed depending on the basis of its dismissal.
- 17 The appellant opposed the application, but indicated he had “no issue” if Mr Matthews appeared as amicus curiae on the basis that no order for costs of the third respondent would be sought against him.
- 18 We could see no good reason to differ from the approach of the Tribunal and granted leave for Mr Matthews to appear for the third respondent at the hearing

of the appeal on the basis he appears as amicus curiae and that no order for costs of the third respondent will be sought against the appellant.

Whether to grant the appellant an extension of time in which to appeal

19 Rule 25(4)(b) of the *Civil and Administrative Tribunal Rules 2014* (NSW)

(NCAT Rules) provides:

(4) Unless the Tribunal grants an extension under section 41 of the Act, an external or internal appeal must be lodged—

(a) ..., or

(b) in the case of an internal appeal against a decision made in residential proceedings—within 14 days from the day on which the appellant was notified of the decision or given reasons for the decision (whichever is the later), or

20 Section 41 of the *Civil and Administrative Tribunal Act 2013* (NSW) provides:

41 Extensions of time

(1) The Tribunal may, of its own motion or on application by any person, extend the period of time for the doing of anything under any legislation in respect of which the Tribunal has jurisdiction despite anything to the contrary under that legislation.

(2) Such an application may be made even though the relevant period of time has expired.

21 In *Jackson v NSW Land and Housing Corporation* [2014] NSWCATAP 22

(*Jackson*) at [21]-[22] the Appeal Panel relevantly said:

“21 Time limits, including the specification of the time within which an appeal from an internally appealable decision to the Appeal Panel of the Tribunal must be lodged, are established by legislation for the purpose of promoting the orderly and efficient conduct of proceedings in the Tribunal, providing certainty for the parties to proceedings, especially the party in whose favour orders have been made, and achieving finality in litigation. For these reasons, these time limits should generally be strictly enforced. That is not to say, however, that exceptions should not be made where the interests of justice so require. The express power in s 41 of the Act to grant extensions of time allows the Tribunal to prevent the rigid enforcement of time limits becoming an instrument of injustice.

22 The considerations that will generally be relevant to the Appeal Panel's consideration of whether to grant an extension of time in which to lodge a Notice of Appeal include:

(1) The discretion can only be exercised in favour of an applicant upon proof that strict compliance with the rules will work an injustice upon the appellant -;

(2) The discretion is to be exercised in the light of the fact that the respondent (to the appeal) has already obtained a decision in its favour and, once the period for appeal has expired, can be thought of as

having a "vested right" to retain the benefit of that decision - ... and, in particular, where the right of appeal has gone (because of the expiration of the appeal period) the time for appealing should not be extended unless the proposed appeal has some prospects of success - ...;

(3) Generally, in an application for an extension of time to appeal the Appeal Panel will be required to consider:

- (a) The length of the delay;
- (b) The reason for the delay;
- (c) The appellant's prospects of success, that is usually whether the applicant has a fairly arguable case; and
- (d) The extent of any prejudice suffered by the respondent (to the appeal),

...; and

(4) It may be appropriate to go further into the merits of an appeal if the explanation for the delay is less than satisfactory or if the opponent has a substantial case of prejudice and, in such a case, it may be relevant whether the appellant seeking an extension of time can show that his or her case has more substantial merit than merely being fairly arguable - ..." (citations omitted)

22 The appellant said that he ceased being the occupier of lot 2 from 12 March 2020.

23 We drew to the attention of the appellant s 226(1)(d) of the SSM Act which relevantly provides:

226 Interested persons

(1) The following persons are interested persons for the purpose of making an application to the Tribunal under this Act—

...

(d) ... an occupier of a lot,"

24 When questioned by us as to what interest he has in the membership of the strata committee and the management of the scheme, the appellant said that he believed the scheme was being mismanaged, he had an interest when the appeal proceedings were commenced on 10 March 2020, and that he had a financial interest by reason of a dispute over \$2,000 with the third respondent.

25 The third respondent said that settlement of the sale of lot 2 occurred on 11 March 2020 and that the appellant ceased being the occupier of lot 2 prior to 10 March 2020, but adduced no evidence to support these assertions.

- 26 There is a question as to whether s 226(1)(d) of the SSM Act on its proper construction requires the relevant interest to exist at the time the Tribunal determines the application, but in the absence of argument we decided that it would be inappropriate to consider this question. Rather, it was appropriate to consider whether to grant the appellant an extension of time in which to appeal on the basis that he was an interested person up to 12 March 2020.
- 27 We have determined that strict compliance with r 25(4)(b) of the NCAT Rules will not work an injustice upon the appellant as required by *Jackson* at [22(1)] for the following reasons:
- (1) since 12 March 2020 that he no longer has had any interest in the membership of the strata committee and the management of the scheme by reason that he has not been the occupier of lot 2;
 - (2) neither his belief in the mismanagement of the scheme nor his alleged financial interest are sufficient for him to have an ongoing interest as an interested person.
- 28 As the required working of an injustice upon the appellant through strict compliance with r 25(4)(b) of the NCAT Rules does not exist, it is unnecessary to consider the factors specified in *Jackson* at [22(3)].
- 29 It follows that both the application for an extension of time in which to appeal and the appeal should be dismissed.

Orders

- (1) Grant leave for Mr Matthews to appear for the owners corporation at the hearing of the appeal on the basis he appears as amicus curiae and that no order for costs of the owners corporation will be sought against the appellant.
- (2) The application for an extension of time in which to appeal is dismissed.
- (3) The appeal is dismissed.

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

any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.