[2021] WASAT 15

JURISDICTION	:	STATE ADMINISTRATIVE TRIBUNAL
ACT	:	STRATA TITLES ACT 1985 (WA)
CITATION	:	HAPGOOD-STRICKLAND and WATSON [2021] WASAT 15
MEMBER	:	DR B MCGIVERN, MEMBER
HEARD	:	8 JANUARY 2021
DELIVERED	:	8 FEBRUARY 2021
FILE NO/S	:	CC 1057 of 2020
BETWEEN	:	RONALD SHAUN HAPGOOD-STRICKLAND First Applicant KERRY-LEIGH HAPGOOD-STRICKLAND Second Applicant AND SUSAN WATSON Respondent

---

Catchwords:

Two-lot single tier strata scheme - Application by one owner for recovery from other owner of share of insurance premium - Whether share of premium was an 'amount due to the strata company' - Whether premium was 'for insurance under clause 53D' - Extent of strata company's insurance function - Whether buildings comprising lot residences form part of common property - Extent of common property - Determining lot boundaries

Legislation:

Strata Titles Act 1966 (WA), s 5(5)
Strata Titles Act 1985 (WA) (prior to 1 May 2020), s 3A, s 3AB, s 21H, s 21I, s21K, s 21L, s 21M, s 21N, s 21O, Pt 2, Div 2A
Strata Titles Act 1985 (WA) (since 1 May 2020), s 3, s 9, s 10, s 14, s 91(1), s 100(1)(a), s 140, s 140(3), Pt 8, Sch 2A cl 3, cl 3(1)(a), cl 3A, cl 3AB, cl 53B, cl 53B(2), cl 53C, cl 53D, cl 53E, Sch 3 cl 3, Sch 5 cl 16
Strata Titles Amendment Act 1996 (WA)
Strata Titles Amendment Act 2018 (WA)

Result:

Application dismissed

Category: B

Representation:

Counsel:

First Applicant	:	In Person
Second Applicant	:	In Person
Respondent	:	In Person

Solicitors:

First Applicant	:	N/A
Second Applicant	:	N/A
Respondent	:	N/A

Case(s) referred to in decision(s):

Nil
Commissioner of Police v Thayli Pty Ltd [2020] WASC 43
Maludra Pty Ltd and The Owners of Windsor Towers Strata Plan 80 [2017] WASAT 112

REASONS FOR DECISION OF THE TRIBUNAL:

Introduction

1 In broad terms, the parties to the dispute are neighbours in a two-lot strata scheme. The applicants have taken out a policy of insurance covering the buildings and common property in the scheme and the public liability of the strata company (**Policy**). By this proceeding, they claim a contribution towards the Policy premium from the respondent. The respondent disputes the need for joint insurance, particularly in relation to the parties' individual residences, and denies that the applicants acted reasonably in taking out the Policy and their entitlement to a contribution towards its cost.

2 The strata scheme in question, known as 119 Doveridge Drive, Duncraig (**Scheme**), was created upon the registration, on 9 October 1984, of strata plan 12286 (**Strata Plan**) and is described on the Strata Plan as follows:

> TWO SINGLE STOREY BRICK AND TILE RESIDENTIAL UNITS SITUATED ON LOT 157 OF SWAN LOCATION 1315 ON PLAN 13990.

3 The applicants are the proprietors of lot 2 (**Lot 2**), and the respondent is the proprietor of lot 1 (**Lot 1**), in the Scheme.

4 The residences comprising each of Lot 1 and Lot 2:

(a) do not share any common walls; and

(b) are separated by two adjoining carports (depicted on the Strata Plan with dotted lines, without lot numbers).

5 The application is brought pursuant to cl 53E(4)(b) of Sch 2A of the *Strata Titles Act 1985* (WA) (**ST Act**). In these reasons, unless otherwise specified, any reference to a statutory provision or to 'the Act' is a reference to the ST Act, and any reference to a clause is a reference to a clause in Sch 2A.

Regulatory framework

6 The Scheme was registered prior to the commencement of the ST Act, pursuant to the *Strata Titles Act 1966* (WA) (**1966 Act**). Such schemes are known as 'legacy schemes'.

7 However, as noted in ***Maludra Pty Ltd and The Owners of Windsor Towers Strata Plan 80*** [2017] WASAT 112 (***Maludra 2017***) at [196], despite the Scheme being registered pursuant to the 1966 Act, the provisions of the ST Act will, subject to any relevant transitional provisions, apply to it.

8 The ST Act has itself undergone amendment, relevantly in this case upon the commencement of provisions under the following:

(a) *Strata Titles Amendment Act 1996* (WA) (**1996 STAA**), on 20 January 1997; and

(b) *Strata Titles Amendment Act 2018* (WA) (**2018 STAA**), on 1 May 2020. (The ST Act as it stood prior to the commencement of the 2018 STAA will be referred to as the **Prior ST Act.**)

9 Since it is clear from the Strata Plan that no part of either lot in the Scheme is above or below the other lot, the Scheme is a single tier strata scheme within the meaning of cl 3 of Sch 2A. Accordingly, the special provisions for such strata schemes contained in Sch 2A apply to it.

Strata company and insurance

10 Section 14 provides that upon registration of a strata scheme, a strata company comprising the owners for the time being of the lots in the scheme is established.

11 The functions of a strata company, set out in Pt 8, include:

(a) under s 91(1), to control and manage the common property for the benefit of all owners; and

(b) under s 100(1)(a), to establish a fund for administrative expenses that is sufficient to discharge the obligations of the strata company including, amongst other things, 'the payment of any premiums of insurance'. However, pursuant to s 140 a strata company for a two-lot scheme cannot establish an administrative fund unless required to do so by scheme by-laws (or unless ordered to do so under to s 140(3)).

12 Of particular relevance to this proceeding, Sch 2A contains provisions specifically directed to insurance of lots and common property in single tier strata schemes, relevantly to the following effect:

(a) Pursuant to cl 53C(1), a strata company must effect and maintain insurance in respect of:

(i) 'insurable assets' within the scheme; and

(ii) damage to property, death, bodily injury or illness for which the owners of lots in the scheme could become liable in damages (**public liability**) as holders of the common property,

(collectively, **Strata Insurance**).

(b) However, the strata company does not have an obligation to effect and maintain Strata Insurance if it has, by resolution without dissent, determined that the obligation is not to apply to the scheme (cl 53C(2)).

(c) Pursuant to cl 53B, lot owners have the discretion to decide whether, and on what terms, to take out insurance in respect of 'insurable assets' in their lot, or the potential public liability arising from their lot ownership. However, that discretion:

(i) is subject to a determination by the strata company (passed by ordinary resolution) that it is the function of the strata company to take out such insurance (cl 53B(2)); and

(ii) does not apply in relation to any insurable asset that is wholly within common property.

(d) Pursuant to cl 53D, if a strata company is responsible, under cl 53C or a resolution under cl 53B(2), for effecting insurance cover in respect of the scheme then it must effect and maintain cover (**Insurance Obligation**) as follows:

(i) for insurable assets, against specified risks (fire, storm and tempest, lightning, explosion and earthquake) to replacement value (or such

maximum amount specified in the insurance contract that is a reasonable limitation on replacement value); and

(ii) in respect of public liability, for not less than $10,000,000 (or such other amount as may be prescribed).

13 Relevant to each of the above provisions, under s 3(1)(a), an 'insurable asset' means:

(i) the common property of the scheme (including the fixtures and improvements on the common property); or

(ii) the parts of scheme buildings that comprise lots in the scheme (including the paint and wallpaper); or

(iii) anything included in this definition by the regulations[.]

14 Under cl 53D(4), it is a defence against a breach of the Insurance Obligation for a strata company to prove that, despite having taken all reasonably practicable steps available to it to comply, no insurer is willing to enter into a contract of insurance, on reasonable terms, that meets the requirements of the Insurance Obligation.

15 As noted above, the application is brought under cl 53E. Because of the centrality of that provision to the disposition of the application, it is set out here in full:

(1) If -

(a) in accordance with section 140, an administrative fund is not maintained by a strata company under section 100(1)(a); and

(b) the strata company or the owner of a lot receives notice of the amount of any premium or other charge for insurance under clause 53D,

the strata company, or the owner, may give notice in writing of that amount to the owner of each lot in the scheme, or each other owner, and require the owner to pay a share of the premium or other charge before a specified time.

(2) The share payable by the owner of a lot is -

(a) a sum equal to the same proportion of the amount as the unit entitlement of the lot bears to the sum of the unit entitlements of all the lots in the scheme; or

(b) if applicable, a sum fixed under the scheme by-laws.

(3) If -

(a) notice has been given to the owner of a lot under subclause (1); and

(b) the amount of the owner's share has not been paid to the strata company or the insurer before the specified time,

that amount becomes a debt due by the owner to the strata company and may be recovered by it in a court of competent jurisdiction.

(4) If the amount of an owner's share has become due to the strata company but has not been paid, the owner of another lot may -

(a) pay the amount; and

(b) recover the amount as a debt on application to the Tribunal.

Lot boundaries

16 Because many of the powers and responsibilities of a strata company, including in respect of its Insurance Obligation, arise in connection with common property, it is important to identify with precision the extent of the common property.

17 Pursuant to s 3(1) and s 10, the common property of a strata scheme is that part of the land which does not comprise the lots on the strata plan, including 'those parts of a scheme building that do not form part of a lot'. The identification of lot boundaries is, therefore, essential to determining the extent of the common property.

18 Because, at the time of registration, the Scheme did not make any specific provision regarding boundaries of lots, those boundaries were initially determined under s 5(5) of the 1966 Act, pursuant to which lot boundaries along floors, walls or ceilings were at the centre of those structures.

19 Once the ST Act was introduced, that position changed pursuant to a transitional provision, cl 3 of Sch 3, which relevantly provides in respect of such a lot that:

> … instead of any boundary that was the centre of a floor, wall or ceiling, the upper surface of that floor, [the boundary is] the inner surface of that wall or the under surface of that ceiling, as the case may be[.]

20 Under amendments effected by the 1996 STAA, the position changed again, by the introduction of s 3A, s 3AB and Div 2A of Pt 2 (headed 'Merger of common property into lots in certain strata schemes') of the Prior ST Act.

21 Relevantly, under the Prior ST Act, s 3AB created 'alternative boundaries' for lots in such single tier strata schemes as fell within the scope of s 3A. Pursuant to s 3A(1)(b) such schemes included any scheme in respect of which s 21M had effect.

22 In turn, under Div 2A of Pt 2 of the Prior ST Act:

(a) s 21M relevantly provided that:

> If on the change-over day [being 6 months from the commencement of the 1996 STAA] … in respect of an existing small strata scheme [being a strata scheme registered before 1 January 1998 and comprising no more than 5 lots], section 21I applies to the scheme … -
>
> (c) as if a notice of resolution had been registered under section 21H; and
>
> (d) without the need for any documentation[;]

(b) s 21H provided that the Registrar of Titles was to register a notice of resolution if the relevant requirements of the Division had been satisfied; and

(c) pursuant to s 21I, the effect of the registration of a notice under s21H was that, without the need for any other documentation:

> … the boundaries of lots or parts of lots on the strata plan are fixed by reference to section 3AB regardless of where they were located before that registration[.]

23 The commencement, on 1 May 2020, of the 2018 STAA introduced further amendments, giving rise to the ST Act as it now stands. Many, but not all, of the provisions of the Prior ST Act (**former sections**) relevant to single tier schemes are now reflected in similar (but not necessarily identical) clauses contained in Sch 2A

(**corresponding clauses**). Of particular relevance, following the 2018 STAA amendments:

(a) cl 3A, being the corresponding clause of the former s 3A, now provides at sub-clause (1):

> Clause 3AB fixes the boundaries of lots and parts of lots, other than boundaries that are external to a building, for single tier strata schemes in the following cases -
>
> (a) unless the strata plan for a scheme provides that clause 3AB does not apply to it, for a scheme the strata plan for which is registered -
>
> (i) on or after the commencement of section 6 of the *Strata Titles Amendment Act 1996*; and
>
> (ii) before 1 January 1998;
>
> (b) for a scheme in respect of which a notice of resolution has been registered under clause 21H, including any lot or part of a lot in such a scheme the boundaries of which are amended by registration of a notice of resolution under clause 21X;
>
> (c) for a scheme the strata plan for which is registered on or after 1 January 1998, except if the boundaries are -
>
> (i) stated on the plan to be those provided for by section 3(2)(a); or
>
> (ii) are fixed by a description shown on the plan under section 3(2)(b);

and

(b) cl 3AB, being in similar terms to the former s 3AB, provides:

> (1) If this clause applies, the boundaries of a cubic space referred to in paragraph (a) of the definition of *floor plan* in section 3(1) are, regardless of the exact location of the lines referred to in that paragraph -

> (a) the external surfaces of the building occupying the area represented on that floor plan -
>
> (i) including anything that -
>
> (I) is attached to and projects from the building; and
>
> (II) is prescribed by the regulations to be included as part of a lot;
>
> but
>
> (ii) excluding any thing that is prescribed by the regulations not to be included as part of a lot;
>
> or
>
> (b) despite paragraph (a), if 2 lots -
>
> (i) have a common or party wall, the centre plane of that wall; or
>
> (ii) have buildings on them that are joined, the plane or planes at which they are joined.
>
> …
>
> (3) Nothing in this clause applies to a boundary of a lot or a part of a lot that is external to a building.
>
> (4) If this clause applies it -
>
> (a) displaces the operation of section 3(2)(a); but
>
> (b) does not affect the operation of section 3(2)(b).

24 The ST Act makes clear, in s 9, that boundaries of lots in a strata titles scheme are defined on the scheme plan. If the 'alternative boundaries' under cl 3AB do not apply to a scheme, lot boundaries are determined in accordance with the 'ordinary position' under s 3(1) and s 3(2), as follows:

> (a) 'lot in a strata plan' is defined in s 3(1) by reference to a cubic space designated on the floor plan of a strata plan; and

(b) 'floor plan' is construed in accordance with s 3(2), of which:

(i) sub-section (a) provides, in effect, as a 'default position' (which is displaced by cl 3AB and s 3(2)(b)) that lot boundaries comprising a wall, floor or ceiling are the *inner surfaces* of those structures; and

(ii) sub-section (b), which is not displaced by cl 3AB, provides that :

> The boundaries of a cubic space referred to in … the definition of *floor plan* in subsection (1) … are such boundaries as are described on a sheet of the floor plan relating to that cubic space (those boundaries being described in the manner required by the regulations by reference to a wall, floor or ceiling in a building to which that plan relates or to structural cubic space within that building)[.]

Issues to be determined

25 The primary issue for the Tribunal is whether the amount claimed from the respondent was an amount paid by the applicants in accordance with cl 53E(4). In order to determine that issue, the Tribunal must determine whether the requirements of cl 53E are satisfied including, relevantly:

(a) whether the Policy premium paid by the applicants was 'for insurance under cl 53D' within the meaning of cl 53E(1)(b), taking into account:

(i) whether the strata company for the Scheme had an Insurance Obligation in respect of the Scheme;

(ii) if so, then the extent of the Insurance Obligation, including by reference to the extent of the common property in the Scheme;

(iii) whether the Policy corresponds with the Insurance Obligation of the strata company;

(b) whether, at the time the applicants paid the Policy premium, a share of that premium 'had become due to

the strata company' by the respondent, and was not paid, within the meaning of cl 53E(4); and

(c) if so, the share of the Policy premium properly attributed to the respondent under cl 53E(2).

Hearing and evidence

26 A final hearing of the application was conducted (audio-visually) on 8 January 2021 (**Hearing**).

27 At the Hearing, the parties appeared in person and were self-represented. Each gave oral evidence on affirmation and had an opportunity to cross-examine the other party's evidence. No other witnesses were called.

28 Prior to the Hearing, the parties filed submissions and documents with the Tribunal. These were bundled into a hearing book which was taken into evidence (**Exhibit 1**).

29 All of the above evidence has been considered by the Tribunal in making its findings of material fact and in arriving at its decision.

The parties' contentions

30 The applicants' contentions may be summarised as follows:

(a) by reason of s 21M, the 'alternative boundaries' under the former s 3AB applied to the Scheme between 20 July 1997 and 30 April 2020;

(b) the repeal by the 2018 STAA of former s 3AB, and of s 21K to s 21O, had the effect that, from 1 May 2020, the 'alternative boundaries', now under cl 3AB, no longer apply (or *may* no longer apply: ts 20, 8 January 2021) to the Scheme;

(c) since 1 May 2020, the 'ordinary position' in relation to lot boundaries under s 3(2) applies to the Scheme and, accordingly, the common property for the Scheme includes the buildings (other than the inner surfaces thereof) comprising each residence in the Scheme;

(d) it follows that the insurable assets falling within the scope of the strata company's Insurance Obligation include the buildings comprising the residences;

(e) at the time that the applicants effected cover under the Policy, the strata company for the Scheme was in breach of its Insurance Obligation (not being exempt from that obligation under cl 53C);

(f) the Policy properly responds to the scope of the strata company's Insurance Obligation;

(g) alternatively, if the Policy exceeds the scope of the strata company's insurance obligations, then in any event, the applicants acted reasonably in effecting cover under the Policy because:

(i) there was no cover reasonably available that corresponded with the strata company's Insurance Obligation;

(ii) the only way to meet the strata company's Insurance Obligation was by effecting cover under the Policy (or an equivalent level of cover); and

(iii) in the circumstances, it was within the power of the strata company (and the applicants on its behalf) to effect cover of the kind under the Policy and to incur the cost of the associated premium;

(h) pursuant to s 140, there is no administrative fund for the Scheme and, accordingly, the share of the premium payable by each lot owner is to be determined under cl 53E;

(i) the respondent, despite being given notice of a premium of $1,090.54 (**Premium**) being payable in respect of the Policy, has not paid her share, the expense of which has been borne by the applicants;

(j) in the circumstances, the applicants are entitled to recover from the respondent the share of the premium that was payable by her, being half of the Premium (**Contended Share**).

31 The respondent did not file submissions with the Tribunal. At the Hearing she made contentions to the following effect:

(a) she does not understand there to be a strata company in relation to the Scheme;

(b) the respondent holds, and has always held, a policy of insurance in respect of her own residence;

(c) she opposes any joint insurance being taken out in respect of her residence, or the Scheme more broadly;

(d) the respondent denies that insurance cover other than individual home and contents polices for each lot is necessary;

(e) the residence for Lot 1 is larger than that in Lot 2, and any property insurance cover based on an inspection of the applicants' residence alone would likely be inadequate cover for her home;

(f) the Policy is not likely to be valid;

(g) the applicants did not effect notice on her in relation to the Policy premium because, to the applicants' knowledge, she did not accept mail from them; and

(h) in the circumstances, the applicants were not entitled to claim any share of the premium payable in relation to the Policy from her.

Material Facts

Background

32 The applicants became the registered proprietors of Lot 2 on 14 July 2016.

33 The applicants' Statement of Issues, Facts and Contentions (Exhibit 1, pages 15-26) includes a statement that the respondent has been the owner of Lot 1 since April 1988. The respondent did not object to, or provide evidence contrary to, this statement. Little turns on the matter and the Tribunal accepts that the respondent has owned Lot 1 for a number of years, since or about 1988.

34 Unfortunately, the relationship between the parties as neighbours has been a difficult one, marked with conflict. In May 2019, the Joondalup Magistrates Court issued Misconduct Restraining Orders (**MROs**) against both parties (Exhibit 1, pages 76-83), prohibiting contact between them:

> … except for the purpose of dealing with civil disputes, property law, strata matters or matters involving their respective properties, and such contact to be by way of written correspondence, sent via Registered Australia Post only.

Insurance

35 The respondent gave evidence, which the Tribunal accepts, to the effect that:

(a) the previous owner of Lot 2 (**Ms McKenzie**) and the respondent had held, for a short period of time (around two years), insurance cover with the same insurer, but as individual policies. She did not recall the precise details of those policies;

(b) in any event, by the time the applicants purchased Lot 2, she and Ms McKenzie had ceased to hold any coordinated insurance, and each proprietor arranged and held individual policies of insurance in respect of their respective lots; and

(c) the respondent is not aware of any insurance having been held in respect of the Scheme common property (but she noted that she had successfully claimed under her insurance policy in respect of goods stored in her shed).

36 The applicants gave evidence, which the Tribunal accepts, that:

(a) following acceptance, in June 2016, of their offer to purchase Lot 2, they took out and maintained building insurance in respect of the Lot 2 residence until June 2018, when their insurer advised that, owing to the nature of the Scheme, the residence fell outside acceptable underwriting criteria;

(b) the applicants contacted a number of alternate insurers, but had difficulty securing individual building

insurance for their residence, with most insurers only offering cover for insurance covering all buildings in a strata scheme;

(c) in June 2018, the applicants managed to secure building insurance (with WFI) in respect of their residence;

(d) in July 2020, the applicants were advised by a legal practitioner that the strata company should hold insurance cover in respect of the common property in the Scheme;

(e) the applicants believed the strata company did not hold such insurance and sought quotes to secure Strata Insurance. Having approached four insurers, the applicants received quotes from three (with one having declined to quote on strata schemes constructed before 1990);

(f) to support the value of any building insurance, the applicants obtained a replacement cost estimate in respect of the Scheme buildings from Valuations WA who, in a written reported dated 13 July 2020 (**Insurance Valuation**), recommended an insured value of $480,000 (Exhibit 1, pages 31-35); and

(g) the applicants, having considered the quotes, took out the Policy in the name of the strata company.

37 The Tribunal finds that, at the time the applicants effected insurance cover under the Policy, the strata company for the Scheme did not hold a policy of Strata Insurance.

38 The Policy (Exhibit 1, pages 37-46):

(a) is policy number HU0006048664 issued by CHU Underwriting Agencies Pty Ltd, described as a CHU Residential Strata Insurance Plan, in respect of the Scheme for the period 2 July 2020 to 2 July 2021;

(b) a Policy Schedule dated 3 July 2020 shows that the Policy is subject to the payment of a premium of

$1,176.16 and (not unusually) comprises cover under an amalgamation of policies, as follows:

(i) Policy 1 - Insured Property (including building insurance to a limit of $500,000);

(ii) Policy 2 - Liability to Others (the insured sum being $20,000,000);

(ii) Policy 3 - Voluntary Workers (with limits of $100,000 for death and $1,000 for total disablement);

(iv) Policy 5 - Fidelity Guarantee (the insured sum being $100,000);

(v) Policy 9 - Government Audit Costs and Legal Expenses (with varying specified limits); and

(vi) Policy 10 - Lot Owners' Fixtures and Improvements (the insured sum being $250,000, per lot).

39 A revised Policy Schedule (Exhibit 1, pages 44-46) dated 16 July 2020 shows:

(a) revisions for Policy 1 - Insured Property, with building cover reduced to $480,000, and Policy 2 - Liability to Others with a reduced limit of $10,000,000; and

(b) a reduction in the base premium, with an amount of $85.62 described as 'Total Payable to You'.

40 By letter dated 20 July 2020 (Exhibit 1, pages 27-30), the applicants wrote to the respondent advising her:

(a) of the applicants' understanding:

(i) of the requirement under the ST Act for the strata company to obtain Strata Insurance; and

(ii) that the strata company had been in breach of its Insurance Obligation at the date that the applicants took out the Policy;

(b) that the applicants had effected cover in respect of the Scheme (enclosing copies of the Insurance Valuation, insurance quotes and the Policy); and

(c) seeking payment by the respondent of $545.27 (being the Contended Share) into the applicants' bank account within 28 days.

41 The applicants filed records (Exhibit 1, pages 57-59) of:

(a) a registered letter sent on 21 July 2020 to the respondent; and

(b) that letter being returned to sender on 23 July 2020.

42 The Tribunal is satisfied that the applicants sent the letter referred to in [40] above to the respondent by the registered mail referred to in [41] above, which letter was returned because the respondent refused delivery thereof (Exhibit 1, pages 58-59).

43 Similarly, follow up letters dated 4 August 2020 and 20 August 2020 were written by the applicants to the respondent and sent to the respondent by registered mail, but returned upon refusal of the respondent to accept delivery (Exhibit 1, pages 60-66).

Consideration

44 As outlined at [25] above, the determination of whether the applicants are entitled to recover a portion of the Premium under cl 53E begins with consideration of the requirements of the clause itself.

45 Since the resolution of the issues in dispute requires careful consideration of the meaning and operation of the key legislative provisions, it is important to do so in line with established principles of statutory construction.

46 The meaning given to written laws is to be approached in accordance with the general principles of construction, relevantly summarised in ***Commissioner of Police v Thayli Pty Ltd*** [2020] WASC 43 at [29] and [31] as follows:

> 29 The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute. The importance of construction of legislation is to begin in the text itself by regard to its context and purpose. Statutory context within immediate

> provisions and the whole of an Act is to be considered from the beginning of the task.
>
> …
>
> 31 [Further], thus context includes the existing state of the law, the history of the legislative scheme and the mischief to which the statute is directed.

Amount 'due to the strata company'

47 It is worth noting at the outset that the existence of a strata company is a matter of law. Specifically, pursuant to s 14 (and despite the respondent's contentions at [31](a) above), the applicants and respondent have at all relevant times constituted the strata company for the Scheme.

48 The ability under cl 53E(4) of a lot owner to pay another owner's share of an insurance premium, and to claim that amount as a debt, is premised on the amount having 'become due to the strata company but [not having been] paid'. Whether the amount claimed is an amount 'due to the strata company' is to be determined in line with the preceding sub-clauses. Notably,

(a) cl 53E(1) relevantly requires that, if an owner receives notice of a premium payable for insurance under cl 53D, then that owner may give notice in writing to another owner requiring payment within a specified time of the latter's share of the premium; and

(b) if, after receiving such notice, the other owner fails to pay their share of the premium before the time specified, then pursuant to cl 53E(3) that amount becomes a debt due to the strata company.

49 In this case, the Tribunal finds that:

(a) by sending their letter of 20 July 2020 to the respondent by registered post, the applicants effected notice of the contents of that letter to the respondent;

(b) contrary to the respondent's contention in [31](g) above, such notice was effected notwithstanding that the respondent refused to accept delivery of registered post from the applicants because:

(i) the express terms of the MROs make it clear that the parties are to communicate concerning strata matters by registered post (see [34] above);

(ii) the respondent may not therefore rely on the MROs as a basis for refusing delivery; and

(iii) it would, in the circumstances, frustrate the operation of the ST Act if the respondent's refusal to accept delivery of registered post from the applicants (contrary to the terms of the MROs) operated to shield the her from any notice being given;

(c) however, the notice effected was not of the kind contemplated by cl 53E(1) because:

(i) by the time the applicant's letter was sent, the applicants had already paid the Premium (so much appears from the terms of the revised Policy Schedule which notes a *refundable* amount to be paid upon reduction of the initial base premium: see [39](b) above); and

(ii) as such, it did not afford the respondent an opportunity to make any payment to the strata company or the insurer (but rather sought to require payment directly into the applicants' bank account).

50 Accordingly, even if the Premium was 'for insurance under cl 53D' (as to which, see below), the payment by the applicants of the Contended Share was not made in accordance with cl 53E(4)(a) because:

(a) at the time the applicants paid it, the respondent had not failed to pay any amount the subject of a notice under cl 53E(1) (because no such notice had yet issued); and

(b) the Contended Share was not, therefore, an amount that had 'become due to the strata company'.

Insurance under cl 53D

51 The Tribunal's conclusion in [50] above is sufficient to dispose of the application. However, for completeness and to address a key element of the applicants' contentions, the Tribunal will also consider whether the Premium was 'for insurance under cl 53D' within the meaning of cl 53E(1) (involving consideration of the issues identified in [25](a) and (c) above).

52 Relevantly (see [12] above), in this case:

(a) there is no evidence before the Tribunal that there are any resolutions in force under cl 53B, cl 53C(2)(b) or cl 53D(2); and

(b) accordingly, the scope of the strata company for the Scheme had an Insurance Obligation under cl 53D extending only to the insurable assets *within the common property*, and the potential public liability of the parties *as holders of the common property*.

53 One of the key contentions of the applicants was that they understood (on the basis of legal advice) that the amendments introduced by the 2018 STAA had the effect of altering lot boundaries for single tier schemes such that, from 1 May 2020, the buildings comprising the Lot 1 and Lot 2 residences, beyond their inner surfaces, became common property (**3AB Contention**). If that were the case, then those buildings would fall within the scope of the strata company's Insurance Obligation. For the reasons that follow, however, that contention is not correct.

54 It appears that the basis for the 3AB Contention is that the Scheme, being registered in 1984, does not fall within the scope of cl 3A(1)(a) (see [23](a) above) and, following the introduction of the 2018 STAA amendments:

(a) former sections 21K to 21O have been repealed, with no corresponding clauses appearing in Sch 2A;

(b) there is currently no provision in the ST Act that corresponds with former s 21M; and

(c) cl 3A(1) no longer refers to s 21M (or any equivalent provision) as a basis for the application cl 3AB to legacy schemes.

55 However, cl 3A(1)(b) does include within its scope 'a scheme in respect of which a notice of resolution has been registered under clause 21H'. That provision is to be read in conjunction with:

(a) cl 21H which is in relevantly identical terms to the former s 21H; and

(b) Sch 5, containing transitional provisions for the 2018 STAA, relevantly including in cl 16:

> The clauses in Schedule 2A (except those in Part 1) are numbered as they were as sections in the body of the Act immediately before commencement day and anything done under any of those sections that may have effect after that day is taken to have been done under the corresponding clause.

56 Accordingly, anything done under the former s 21H is taken to have been done under cl 21H, and anything done under s 21I is taken to have been done under cl 21I.

57 As appears from [22] above, the effect of s 21M, read with s 21I, was that, six months after the commencement of the 1996 STAA, s 21I was taken to apply to the Scheme as if a notice of resolution had been registered under s 21H.

58 Turning to the construction of cl 16 of Sch 5:

(a) it is in terms that something *done* under a former section is taken to have been done under the corresponding clause;

(b) it is not in terms that something *taken to have been done* under a former section to be taken to have been done under the corresponding clause;

(c) reading that provision with the former s 21M poses a further challenge in that s 21M:

(i) provided that s 21I applied *as if a notice of resolution had been registered* under s 21H; and

(ii) was not in terms that a notice of resolution under s 21H was *deemed to have been registered* (which would aid an argument in favour of saying that such registration was, by reason of s 21M, 'done').

59 Without more, that construction may give rise to some uncertainty about the operation of cl 3A, and therefore the application of cl 3AB, in relation to the Scheme.

60 However:

(a) the former s 21H provided, and cl 21H provides, that the Registrar of Titles 'is to register a notice of resolution if the relevant requirements of this Division are satisfied'; and further

(b) in this case, the following text (**Notation**) appears on the Strata Plan (Exhibit 1, page 10):

> As at 20 July 1997 unless a notice of resolution under section 21H or an objection under 21O has been recorded on strata plan – The boundaries of the lots or parts of the lots which are buildings shown on the strata plan are the external surfaces of those buildings, as provided by section 3AB of the Strata Titles Act 1985[.]

61 The Tribunal finds that the Notation may be characterised as a registration effected (and therefore 'done') by the Registrar of Titles pursuant to s 21H (read with s 21M), and is therefore taken to have been effected under cl 21H, satisfying cl 3A(1)(b).

62 That interpretation and characterisation is consistent with the legislative intent reflected in the Second Reading Speech relevant to the 1996 STAA, in which the Minister, Mr Kierath, relevantly stated:

> Where new section 21M operates so that external surfaces of the buildings automatically become the boundaries, *the Registrar of Titles is required to amend the strata plan to show that the boundaries have been changed* by the automatic operation of new section 21M.
>
> (Western Australia, Parliamentary Debates, Legislative Assembly, 29 October 1996, 7377. Emphasis added.)

63 In any event, even if that were not the case and the Scheme was not taken to fall within the scope of cl 3A(1)(b), recourse can be had to the 'ordinary provisions' of the ST Act dealing with lot boundaries (see [24] above).

64 In that case, for the purposes of s 3(2)(b) (the operation of which is not affected by cl 3 AB in any event: see [24] above), read in conjunction with s 9, the Notation is a description on a sheet of the floor plan. Further, the Notation satisfies the boundary description requirements in s 3(2)(b) by its incorporation, by reference, of the boundaries described in the former s 3AB (having the same effect as cl 3AB).

65 It follows that:

(a) the lot boundaries applicable to the Scheme are as provided under cl 3AB (relevantly being the exterior surfaces of boundary buildings); and

(b) the common property for the Scheme does not include the buildings comprising the Lot 1 and Lot 2 residences and, as such, those buildings fall outside the scope of the strata company's Insurance Obligation.

66 Since the Policy covers all Scheme buildings, it exceeds the scope of the strata company's Insurance Obligation and:

(a) the Premium is not (wholly) 'for insurance under cl 53D'; and

(b) there is no evidence that would enable the Tribunal to apportion the Premium such as to determine, for the purpose of cl 53E(2), an amount representing each party's share of any premium 'for insurance under cl 53D'; and

(c) in the premises, the applicants are not eligible to recover the Contended Share from the respondent under cl 53E(4)(b).

67 The Tribunal is conscious that the conclusion reached in relation to this issue leaves owners in the circumstances of the applicants in a difficult position. That is, in the absence of a strata company resolution (requiring agreement between owners) to extend the strata company's

insurance function, owners concerned to effect Strata Insurance in respect of the common property of a similar scheme must:

(a) find an insurer willing to provide cover that does not exceed the Insurance Obligation, or who will identify with precision such portion of the premium that is attributable to only to cover within the scope of the strata company's Insurance Obligation (and, according to the applicants' evidence, this may pose a challenge);

(b) rely on the defence available to the strata company under s 53D(4), but risk exposure to liability if an insurable risk manifests; or

(c) bear the costs of comprehensive Strata Insurance, without being able to recover a contribution from other lot owners (and giving rise to the potential complexities of double insurance if an insurable risk manifests).

68 The above observation does not, however, detract from the construction of the relevant clauses. Rather, the legislative scheme requires and contemplates a level of cooperation between strata owners. The restrictions on the ability of owners to effect and recover insurance is a reflection of what appears to be a deliberate balance between preserving the discretion of owners to manage their own affairs, the need for collective protection against shared risk, and procedural safeguards to avoid potential abuses of process. This underscores the practical need for members of a strata scheme to endeavour to maintain a level of cooperation to manage their shared risks and interests.

Conclusion

69 For the reasons outlined above, the applicants are not eligible to recover the Contended Share from the respondent under cl 53E(4)(b) because:

(a) the Premium paid by the applicants was not 'for insurance under cl 53D' within the meaning of cl 53E(1)(b); and

(b) in any event, the Contended Share was not an amount 'due to the strata company' within the meaning of cl 53E(4).

70 It follows that the application does not succeed.

Orders

The Tribunal orders:

1. The application is dismissed.

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

FM
Secretary

8 FEBRUARY 2021