

**The Owners – Strata Plan No 72381 v The Owners – Strata Plan No 71067 - [2016]
NSWSC 1857**

Supreme Court

New South Wales

Medium Neutral Citation: [The Owners – Strata Plan No 72381 v The Owners – Strata Plan No 71067 \[2016\] NSWSC 1857](#)

Hearing dates: 21 November 2016

Decision date: 21 December 2016

Jurisdiction: Equity

Before: Emmett AJA

Decision: Summons filed 11 April 2016 dismissed with costs.

Catchwords: REAL PROPERTY – owners of one strata lot in tower complex install mirrored door on their common property in lobby – owners of another strata lot in same tower complex allege installation is in contravention of [Strata Schemes \(Freehold Development\) Act 1973 \(NSW\)](#) – construction of strata management statement – meaning of “Shared Facilities”

Legislation Cited: [Conveyancing Act 1919 \(NSW\)](#), s [88B](#), [Strata Schemes \(Freehold Development\) Act 1973 \(NSW\)](#), ss [7\(2\)](#), [28R](#), [28S](#), [28W](#), Div [2B](#), Sch [1C](#), [Strata Schemes Development Act 2015 \(NSW\)](#), s [203](#), cl [9](#) Sch [8](#), [Strata Schemes Management Act 1996 \(NSW\)](#), s [65A](#).

Category: Principal judgment

Parties: The Owners – Strata Plan No 72381 (Plaintiff)
The Owners – Strata Plan No 71067 (First Defendant)
Meriton Properties Pty Ltd (Second Defendant)

Representation: Counsel:
Mr JP Knackstredt (Plaintiff)
Mr DS Weinberger (First Defendant)
Ms N Malouf (Second Defendant)

Solicitors:
Doyle Edwards Anderson Lawyers (Plaintiff)
Grace Lawyers (First Defendant)
Office of the General Counsel - Meriton Group (Second Defendant)

File Number(s): 2016/110110

Judgment

EMMETT AJA :

Introduction

1. These proceedings are concerned with a dispute as to what constitutes “Shared Facilities” within a high-rise building known as World Tower, which forms part of the World Square complex. The World Square complex is made up of residential, commercial and retail properties bounded by Liverpool, Pitt, Goulburn and George Streets, in the Sydney Central Business District. By Deposited Plan 1057924, the World Tower building was originally divided into three vertical portions, consisting of lots 801, 802 and 803, respectively being the high-rise, mid-rise and low-rise portions of the building.
2. Lot 802, the mid-rise portion, is now the subject of Strata Plan 72381 and Lot 803, the low-rise portion, is now the subject of Strata Plan 71067. The common property of Strata Plan 72381 is owned by the plaintiff, Owners – Strata Plan No 72381 (**Mid Rise Owners**). The common property of Strata Plan 71067 is owned by the first defendant, Owners – Strata Plan No 71067 (**Low Rise Owners**). Lot 801, being the high-rise portion of the building, is owned by the second defendant, Meriton Properties Pty Ltd (**Meriton Properties**).
3. The main pedestrian entrance to the World Tower building is from Liverpool Street. Access from the entrance to the lifts for the mid-rise portion and the high-rise portion of the World Tower building is gained through a lobby area on level 10 of the World Tower building. Most of level 10 is part of Lot 803 and is therefore owned by Low Rise Owners.
4. Low Rise Owners has caused a glass/mirrored doorway (**the New Doorway**) to be constructed in an internal wall situated within Level 10. Mid Rise Owners claims, in effect, that the internal wall is part of the “**World Tower Shared Facilities**”, which I shall describe below, and that the construction of the New Doorway constituted an alteration of the “World Tower Shared Facilities” without its consent. It claims that the construction of the New Doorway was a contravention of the arrangements for the management and operation of World Square made under the [Strata Schemes \(Freehold Development\) Act 1973 \(NSW\)](#) (the [Freehold Development Act](#)). [1]

1. The Freehold Development Act has since been repealed by s 203 of the Strata Schemes Development Act 2015 (NSW) with effect from 30 November 2016. However, cl 9 of Sch 8 of the Strata Schemes Development Act provides that any proceedings commenced but not determined or finalised under a provision of a former Act, including the Freehold Development Act, are to be dealt with and determined as if the former Acts had not been repealed.

5. By summons filed 11 April 2016, Mid Rise Owners seeks an order requiring Low Rise Owners to remove the New Doorway and reinstate the wall as close as possible to the condition that it was in prior to the installation of the New Doorway. Low Rise Owners denies that the construction of the New Doorway was a contravention of the relevant arrangements. Meriton Properties supports the contentions of Low Rise Owners, but has played no significant part in the proceedings.

Legislative framework

6. Section 7(2) of the Freehold Development Act relevantly provides that land, including the whole of a building, may be subdivided into lots, or into lots and common property, by the registration of a plan as a strata plan. However, under s 28R(1), the Registrar-General must not register a plan as a strata plan creating a stratum parcel unless the Registrar-General also registers a strata management statement for the building and site concerned. Section 28S(1) provides that such a strata management statement must be in the approved form. Under s 28S(2), a strata management statement as in force from time to time must comply with Schedule 1C, which applies to any such a strata management statement.
7. Section 28W of the Freehold Development Act deals with the effect of a strata management statement. Under s 28W(1), a registered strata management statement, as in force for the time being, has effect as an agreement under seal, containing the covenants referred to in s 28W(2), entered into by each person who, for the time being, is:
 - a body corporate of a strata scheme for part of the building, or
 - a proprietor of any of the lots in such a strata scheme, and
 - any other person in whom the fee simple of any part of the building or its site is vested for the time being.

Under s 28W(2), the covenants referred to in s 28W include a covenant by which those persons jointly and severally agree to carry out their obligations under the registered strata management statement as from time to time in force.

8. Schedule 1C to the Freehold Development Act relevantly provides that a strata management statement must provide for the establishment and composition of a building management committee and its office bearers and the functions of that committee and those office bearers in managing the building and its site. Each body corporate for a strata scheme for part of a building

must be a member of the building management committee. A body corporate that is a member of a building management committee may be represented for the purposes of the committee by a person appointed by, or selected in accordance with, a special resolution or by-law made by the body corporate. A person who has been so appointed or selected and whose term of office as such a representative has not expired or been terminated by the body corporate is, while representing the body corporate for those purposes, taken to be the body corporate.

The World Tower

9. Deposited Plan 1057924 was registered in respect of the World Tower building on 10 September 2003. The original owner of the land in Deposited Plan 1057924, being Lots 801, 802 and 803, was Meriton Apartments Pty Ltd (**Meriton Apartments**), which was the developer of the World Tower building.
10. Lot 801, which constitutes the high-rise portion, includes parts of Levels 6, 7, 10 and 61 to 79 of the World Tower. The apartments on levels 61 to 79 are operated by Meriton Properties as serviced apartments.
11. On 17 September 2003, SP 71067 was registered in relation to Lot 803, the low-rise portion. As a consequence, Low Rise Owners came into existence. Development lots were subsequently subdivided creating further lots together with common property. The Low Rise portion presently consists of car parking on Levels 2 and 3, a loading dock on Level 8, the street entry lobby to the World Tower building on Level 10, commercial offices on Levels 8 to 17 and residential lots on Levels 18 to 36.
12. Strata Plan 72381 was registered on 20 April 2004 in relation to Lot 802, the mid-rise portion. As a consequence, Mid Rise Owners came into existence. By registration of SP 72381, 145 lots were created, together with common property. The lots were initially on levels 4, 5, 6 and 39 to 50, with common property on levels 10, 38 and 60. One of those lots was a development lot, which was further subdivided to create additional common property and further lots on Levels 51 to 59. The Mid Rise portion presently consists of car parks and storage lots on 4, 5 and 6, residential apartments on Levels 58 and 59, and plant and equipment on Levels 60 and 61.

The New Doorway

13. Level 10 of the World Tower building is shown in a plan forming part of SP 71357, which is set out in Appendix I to these reasons (**the Level 10 Plan**). While no part of level 10 is shown as “lobby”, the Level 10 Plan has a notation as follows:

CP

FOYER

(RESIDENTIAL)

There is a notation on the Level 10 Plan signifying that “CP” denotes “Common Property”. The Level 10 Plan also shows other parts of level 10 as being part of Lot 802, being part of the mid-rise portion, and part of Lot 801, being part of the high-rise portion. Neither of those parts is part of SP 71357.

14. Within the area shown as “foyer” on the Level 10 Plan, a wall has been erected, shown as “new wall” on the plan set out in Appendix 2 to these reasons (**the Foyer Plan**). The new wall created a separate room at the southern end of the foyer, which is marked “store” on the Foyer Plan. That room is now used as a manager’s office. A reception area is located to the north of the manager’s office, being to the left of the office on the Foyer Plan. The New Doorway has been constructed in the northern wall of that manager’s office, to give direct entry to the manager’s office from the reception area; it is unmarked on the Foyer Plan. It is common ground that that reception area and the manager’s office have for some time been used exclusively by Low Rise Owners. The question in the proceedings is whether the wall in which the New Doorway has been constructed is part of “World Tower Shared Facilities” for the purposes of the World Square Statement, which is described in more detail below.

The World Square Statement

15. On 17 September 2003, a strata management statement was registered in accordance with Div 2B of the Freehold Development Act in respect of World Square (**the World Square Statement**). The World Square Statement consists of introductory and preliminary material, followed by Section 1 and Section 2. Section 1 applies to each owner of a stratum lot in World Square, and is not directly relevant. Section 2 applies only to the World Tower building and World Tower members. Each owner of a stratum lot in the World Tower building is a **World Tower member**.

The World Tower Committee

16. Clause 2.1 of Section 2 of the World Square Statement provides for the constitution of the World Tower Committee. The functions of the World Tower Committee include to operate, maintain, renew and replace “World Tower Shared Facilities”, to control use of the “World Tower Shared Facilities” and to change or add to “World Tower Shared Facilities”.
17. Under cl 2.1(b) and (d), each World Tower member is entitled to have a “World Tower Representative” on the World Tower Committee and each World Tower member must appoint a World Tower Representative to represent the World Tower member at meeting of the World Tower Committee. Under cl 2.1(e), unless otherwise expressly provided, the World Tower Committee may only decide any matter under or in relation to Section 2 of the World Square Statement by way of a special resolution of World Tower members entitled to vote.
18. Clause 3.1(c) of Section 2 of the World Square Statement provides that, subject to the requirements set out in Section 2, the World Tower Committee must operate, manage, control, maintain, repair and replace “World Tower Shared Facilities”. The World Tower Committee may appoint and

contract with parties to perform its functions in relation to “World Tower Shared Facilities”. Under cl 3.5(a)(ii), only contractors approved by the World Tower Committee may do building works to maintain or replace “World Tower Shared Facilities”, provided the selection and use of an approved contractor does not adversely affect any manufacturer’s or supplier’s warranty or similar warranty.

19. Clause 3.7(c) provides that no World Tower member, including the owner of any “World Tower Shared Facility”, is entitled to carry out any works to the “World Tower Shared Facilities” except at its own cost and with the consent in writing of the World Tower Committee. The World Tower Committee may impose conditions in relation to the conduct of any such works and the World Tower member carrying out the works must comply with those conditions at all times.

20. Clause 4.1 of Section 2 of the World Square Statement deals with meetings of the World Tower Committee. Under cl 4.1(n), the World Tower Committee may decide, by special resolution, to add to, replace or extend the “World Tower Shared Facilities”. Under cl 4.1(p), the value of each World Tower member’s vote in relation to all “World Tower Shared Facilities” is determined in accordance with the following percentage contribution:
 - High Rise – 26 per cent
 - Mid Rise – 33 per cent
 - Low Rise – 41 per cent

World Tower Shared Facilities

21. The meaning of the term “World Tower Shared Facilities” in the World Square Statement is by no means clear. Section 2 of the World Square Statement deals with the meaning of “World Tower Shared Facilities” in two different places. Clause 1.1 of Section 2 consists of a dictionary, which contains a definition of “World Tower Shared Facilities”. Clause 3.1 of Section 2 also deals with the identification of “World Tower Shared Facilities”.

The Dictionary

22. The dictionary in Clause 1.1 of Section 2 of the World Square Statement provides that “World Tower Shared Facilities” are “the services, facilities, machinery, equipment and other things that two or more of the World Tower members use or have the benefit of”. Specifically, the definition provides that “World Tower Shared Facilities” include, without limitation, the following:
 - the “World Tower Easements”,
 - those things in Part 2 of Schedule 1,

- other facilities and services nominated under Section 2 of the World Square Statement, and
 - a facility used or owned by one World Tower member but located in another World Tower member’s stratum lot.
23. Two of those matters require further elaboration. The phrase “World Tower Easements” is defined and it is necessary to say something about the easements. It is also necessary to say something about Part 2 of Schedule 1.
24. The phrase “**World Tower Easements**” is defined as meaning the easements that benefit or burden a World Tower stratum lot, or any subdivided part of a World Tower stratum lot. Some 23 easements were created in relation to World Tower by registration of an instrument under s [88B](#) of the [Conveyancing Act 1919 \(NSW\)](#) (the s [88B](#) Instrument). Each easement is shown as a separate item in the s [88B](#) Instrument. The following easements appear to have some relevance:

Item number	Identity of easement	Burdened lots	Benefited lots
2.	Easement for access	802 803	801, 803 801, 802
17.	Easement for access to Mail Room (Level 10) (PP)	803	802
21.	Easement for access to Lobby Area (Level 10) TT)	803	801, 802
22.	Easement for encroachment (Mid Rise Lobby Facility, Level 10) (UU)	803	802
23.	Easement for encroachment (Caretaker’s Office, Level 10) (VV)	803	801, 802

25. Easement 2 provides access through the “Common Areas” of the lot burdened. Thus, the “Common Areas” of Lot 803 on level 10 are subject to that easement for access. Under cl 2.2, the terms of Easement 2 are as follows:

“Full, free and unimpeded right for the Proprietor of the Lot Benefitted and Authorised Users to pass and repass across the Common Areas of the Lot Burdened.”

Clause 2.5, which deals with “Interruption to access”, provides as follows:

Where the Proprietor of the Lot Burdened conducts any repairs and/or alterations to the Lot Burdened which may affect the rights of the Proprietor of the Lot Benefitted and its Authorised Users to enjoy the rights under clause 2.2, the Proprietor of the Lot Burdened must (except in the case of and for the duration of any Emergency Situation):

(a) ensure that access for the Proprietor of the Lot Benefitted and its Authorised Users to the Lot Burdened is maintained at all times; and

(b) consult in good faith with the Proprietor of the Lot Benefitted in relation to the nature and timing of any such repairs and/or alterations with a view to reaching agreement which enables the Proprietor of the Lot Burdened to carry out such repairs and alterations in a reasonably cost effective, efficient and safe manner.”

26. Easement 17 provides for the use of and access to a shared mail room. The mail room is part of the area marked on the Level 10 Plan as foyer.

27. Easement 21 provides access across and through “the Lobby Area” of the lot burdened. The lot burdened is Lot 803, being the Low Rise portion. By Easement 21, the proprietor of the lot benefitted and its authorised uses are granted full free and unimpeded right to pass and re-pass across “the Lobby Area” of the lot burdened, as defined in cl 24.6 of the [§ 88B](#) Instrument. “Lobby Area” is defined as meaning such parts of Level 10 as are necessary to permit persons entering World Tower to access:

- the lifts stopping on Level 10 of World Tower,
- any concierge desks or associated facilities,
- any mail room facilities, and
- any other communal facilities available for the use of occupiers of World Tower.

28. However, “the Lobby Area” excludes any areas on Level 10 of World Tower dedicated from time to time for exclusive use by owners or occupiers within World Tower, including concierge desks, security facilities and mail rooms. On the other hand, “the Lobby Area” may be expanded to include such additional areas on Level 10 of World Tower as are, from time to time, determined by the Building Management Committee for inclusion as part of the Lobby Area. No part of the Level 10 Plan is described as “Lobby Area”. However, it seems fairly clear that the “Lobby Area” was intended to be part of the area designated as “foyer” on the Level 10 Plan.

29. Easement 22 provides the right for “the Mid Rise Lobby Facility” to be attached, erected, supported and maintained on Lot 803, being the low-rise portion, and for the “Mid Rise Lobby

Facility” to function and operate in relation to its intended purpose. The Mid Rise Lobby is the area next to the mid-rise lifts and is part of the area of Lot 803 on Level 10 that is marked as “foyer”.

30. Easement 23 provides the right for “the Caretaker’s Office” to be attached, erected, supported and maintained on Lot 803, and for the “Caretaker’s Office” to function and operate in relation to its intended purpose. As defined in cl 24.6 of the s 88B Instrument, the “Caretaker’s Office” means the office area on Level 10 allocated for use by “the caretaker or facilities manager” responsible for World Tower. On 4 February 2004, Meriton Apartments, as Caretaker, on the one hand, and Meriton Apartments, in its capacity as owner of Lots 802 and 80I, and Low Rise Owners, as owner of Lot 803, entered into a Caretaker Agreement. By the Caretaker Agreement, the caretaker was engaged to assist the owners of Lots 80I, 802 and 803 to manage the “C ommon P roperty”, to control the use of the “Common Property” by visitors and to maintain and repair the “Common Property”. Common Property was defined in the Caretaker Agreement as meaning all areas of the stratum lot in common use as well as the “World Tower Shared Facilities”. By cl 20.1 of the Caretaker Agreement, the owners agreed that the Caretaker had a right of exclusive use of the “C aretaker’s A rea” to carry out the duties and agency services in accordance with the Caretaker Agreement. The term “Caretaker’s Area” was defined as the area hatched in the plan contained in Schedule 5 to the Caretaker Agreement. Unhelpfully, Schedule 5 is blank.
31. It appears likely that Easement 23 was intended to relate to the Caretaker’s Area referred to in the Caretaker Agreement and that the area intended to be referred to as the Caretaker’s Area was intended to be “the Caretaker’s Office” being the “office area on Level 10 allocated for use by the caretaker or facilities manager”. That was probably intended to be the area now used as the manager’s office shown in the Foyer Plan in Appendix 2 as “store”.
32. **Part 2 of Schedule 1** of the Strata Management Statement consists of 22 items set out in a table with 4 columns. Item 15 is of critical significance for present purposes and is as follows:

Item No	World Tower Shared Facilities	Description	Location in World Tower
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All owners and occupiers and their invitees of World Tower may access the areas of the lobby which are designated “public access areas” at all times, subject to security requirements.

Lobby (except those

The World Tower Building Committee will prepare a plan which refers to the areas of the lobby which will not comprise a World Tower Shared Facility. These include the area for use by the commercial offices only and the reception area owned by lot 80I. There will be no shared costs in relation to these items.

15 areas excluded in the lobby plan) The sections of the lobby to be designated as a World Tower Shared Facility include the area for access by residential owners (as shown on the above plan), the office area owned by lot 801 and the mail room owned by lot 803. Level 10

The office area owned by lot 801 should be designated for use by the caretaker to be appointed by the World Tower Building Committee on behalf of the owners of lots 801, 802 and 803.

The owners of lot 802 have the right to access and use the mail room owned by lot 803.

33. It is common ground that no lobby plan has been prepared as contemplated by Item 15. It is also common ground that there has been no express designation of any areas of the Lobby as “public access areas”. As I have said, no part of the strata plans is designated as “Lobby”. Rather, the Level 10 Plan designates part of the common property of Lot 803 as “foyer”.

Clause 3.1 of Section 2

34. Clause 3.1 is headed “World Tower Shared Facilities” and cl 3.1(a) has a subheading: “What are they?”. Clause 3.1(a) answers that question by stating:

- There are several facilities, shared areas and services in the World Tower building that are used by two or more World Tower members or are located on the World Tower strata lot of one World Tower member but used by another World Tower member.
- Those facilities, shared areas and services are “World Tower Shared Facilities”, provided that they are not “Shared Facilities” as defined in Section 1 of the World Square Statement.

35. Clause 3.1(b) provides that, subject to the description of each “World Tower Shared Facility” in Part 2 of Schedule 1, “World Tower Shared Facilities” and costs for “World Tower Shared Facilities” include:

- “(i) plant and equipment which constitute a World Tower Shared Facility;
- (ii) conduits which are connected to or form part of a World Tower Shared Facility, but excluding any of those things which exclusively service a World Tower Member’s part of the World Tower Building;
- (iii) any rooms or areas in which World Tower Shared Facilities are located;
- (iv) the maintenance, repair, operation, cleaning and replacement of World Tower Shared Facilities;

- (v) parts or consumables used in the maintenance, repair, operation, cleaning and replacement of World Tower Shared Facilities;
- (vi) labour used in the maintenance, repair, operation, cleaning and replacement of World Tower Shared Facilities;
- (vii) the inspection of World Tower Shared Facilities (if applicable) by a government agency; and
- (viii) the certification of World Tower Shared Facilities for the purposes of the law.”

Thus, cross reference is again made back to the material in the Dictionary.

The Dispute

36. On 21 October 2015, the solicitors for Mid Rise Owners wrote to Low Rise Owners, drawing attention to the notice convening the Annual General Meeting of the owners of lots in Strata Plan 71067, being Low Rise Owners. The solicitors said that Mid Rise Owners was concerned about two motions on the agenda for the Annual General Meeting relating to the change of use of, and alterations to, the Lobby on Level 10 of World Tower. Those motions had been proposed by Low Rise Owners. The motions were for special resolutions, pursuant to s [65A](#) of the [Strata Schemes Management Act 1996](#) (the [Management Act](#)), as follows:
- to change the use of the existing Level 10 reception area to add a new reception desk and window/door to the “building manager’s room”; and
 - to use a part of the reception desk for advertisement purposes and charge a fee and that the “Building Manager” will manage the applications for proposed advertisement.
37. After drawing attention to the terms of the World Square Statement, the solicitors’ letter went on to say that the Level 10 lobby was the main pedestrian entrance to the World Tower building, including the Mid Rise portion. The solicitors asserted that, by the operation of Clause 3.7(c) of the World Square Statement, Low Rise Owners was not entitled to carry out any works to the Lobby on Level 10 unless it obtained consent in writing of the World Tower Committee. They said that Mid Rise Owners had not been provided with any details of the proposed works, other than the very limited information contained within the agenda, and requested that Mid Rise Owners be provided with details of the works proposed to be done prior to any meeting of the World Tower Committee to consider the works. The solicitors’ letter warned that, if Low Rise Owners commenced to undertake any of the work referred to in the notice of the Annual General Meeting, or any other work in respect of the Lobby, without consent in writing of the World Tower Committee, Mid Rise Owners would approach the Supreme Court for an injunction prohibiting any such works.
38. By notice of 17 November 2015, the ninth meeting of the World Tower Committee was convened for 27 November 2015. One of the items on the agenda, requested by Ms Melonie Amin on behalf of Low Rise Owners, was as follows:

“determine whether our reception desk (low Rise) which will be built is something that mid rise and high rise would be prepared to contribute funds towards as it impacts the look and feel of the lobby which impacts all rises. In the instance the rises are prepared to contribute funds we will be happy to share drawings etc and go through a collaborative design.”

The minutes of the meeting of the World Tower Committee held on 27 November 2015 record the following in relation to that item:

“(1) Reception desk – The Members for Lot 802 and Lot 801 were unable to make comment in relation to the requested item submitted by Melonie Amin [Low Rise’s World Tower Representative] of Lot 803 as there was insufficient documentation in relating [sic] to the request.”

39. On 7 April 2016, the solicitors for Mid Rise Owners again wrote to Low Rise Owners, referring to their letter of 21 October 2015. The letter also referred to the notice of the World Tower Committee meeting for 27 November 2015 and the minutes of that meeting. The letter then referred to a further meeting of the World Tower Committee held on 29 January 2016, the agenda for which did not refer to works to the Lobby on Level 10 and the matter was not discussed.

40. The solicitors’ letter of 7 April 2016 then went on to assert that work had been carried out to the Lobby on Level 10 and that a door/window appeared to have been cut out of a wall towards the rear of the Lobby. They said that, in breach of the World Square Statement, that work had been undertaken without consent or authority. The letter went on to say as follows:

“The proposed works impact on the look and feel of the Lobby which is the main pedestrian entrance to the building and therefore our client is very concerned about the works that [Low Rise] is presently doing.

We request that you immediately cease carrying out works in the Lobby on Level 10 and we request that you provide us with a written undertaking ... that you will not carry out any further works to the Lobby on level 10 unless you have the consent in writing of the World Tower Committee.

We also request (again) that you provide to our client details of the works proposed to be undertaken including plans and drawings so that they can properly consider that nature and extent of the works.

We are instructed that unless you immediately cease the work and provide us with the written undertaking referred to above that our client intends to file proceedings in the Supreme Court of NSW seeking an urgent interlocutory injunction restraining the works and orders for reinstatement of the property without further notice to you.”

41. By notice dated 22 April 2016, the eleventh meeting of the World Tower Committee was convened for 29 April 2016. One of the items requested by Ms Amin, on behalf of Low Rise Owners, was that the members approve “low-rise desk on Level 10”. The minutes of that meeting record the following in relation to that item:

“The member for Lowrise tabled a photo of the newly created reception desk and door, including a copy of the quotation for the works.

The member for Midrise Lot 802 approved the desk but not the door.

The member for Lot 803 “Low Rise” and Lot 801 “Meriton Apartments” approved the entire works.

The Manger [sic; manager] advised all members that the Level 10 Lobby is deemed a “shared facility” in accordance with s 2, Sch 1, Pt 2 Shared Facility item 15 [of the World Square Statement].”

The quotation referred to in the minutes included a sum of \$3,500 plus GST for “New Glass Door on the Wall”. The work was described as follows:

“Open a New Hole (has beed [sic] inspected) for the glass door. Make New Frame and the finishing of Gyprock work. New Painting for the Frame and Wall.”

The door was described as “Single Sight Glass Door with Lock”.

42. On 11 April 2016, these proceedings were commenced by Mid Rise Owners against Low Rise Owners and Meriton Apartments. On 13 May 2016, the solicitors for Mid Rise Owners wrote to the solicitors for Low Rise Owners making an offer to resolve the proceedings. After setting out the background, including the correspondence and meetings referred to above, the solicitors said that Mid Rise Owners, having had the benefit of seeing the works in their completed state, had “reluctantly given retrospective approval” for the installation of the reception desk.
43. However, the letter said, Mid Rise Owners and the World Tower Committee had not approved the installation of the New Doorway and the position of Mid Rise Owners was that it would not consent to the installation of the New Doorway, for reasons set out in the letter. Mid Rise Owners proposed to resolve the proceedings on the basis that Low Rise Owners reinstate “the World Tower Shared Facilities” in the Level 10 Lobby by removing the New Doorway and reinstating the wall as close as possible to the condition that it was in immediately prior to the “unauthorised works” being undertaken. The proposal by Mid Rise Owners was not accepted by Low Rise Owners.
44. By notice of 15 July 2016, the 12th meeting of the World Tower Committee was convened for 22 July 2016. One of the items, requested by Low Rise Owners, was that the Committee adopt the plan attached, as submitted by Mr Ben Mees, on behalf of Low Rise Owners. That plan set out “the shared area” to be incorporated into the World Square Statement. That appears to have been a proposal for the preparation of a plan referring to the areas of the Lobby that were not to comprise a World Tower Shared Facility, as contemplated by Item 15 of Part 2 of Schedule 1 to the World Square Statement. The minutes of the meeting held on 22 July 2016 record that the Committee resolved not to adopt the plan as submitted.

45. On 21 September 2016, the solicitors for Mid Rise Owners wrote again to the solicitors for Low Rise Owners, saying that Mid Rise Owners was prepared to reopen its earlier offer to resolve the proceedings. The letter confirmed that, if a second door was required, in addition to the door that already existed prior to the installation of the New Doorway, a door could be constructed in the adjacent wall. That proposal was not accepted by Low Rise Owners.

Contentions of Mid Rise Owners

46. Mid Rise Owners contends, in effect, that the new wall erected in the area marked foyer on the plan of Level 10, in which the new Doorway has been constructed, is part of “World Tower Shared Facilities”. It says that the definition of “World Tower Shared Facilities” in the dictionary in the World Square Statement makes it clear that the “use” of facilities is not their only defining characteristic. It asserts that the designation of something as “World Tower Shared Facilities” is relevant not only to their use but also to those whom they benefit, whether directly or indirectly, including aesthetically. Accordingly, it says, the mere existence of easements in relation to “the Lobby” area does not establish that the Lobby, or certain parts of it, is not part of World Tower Shared Facilities.
47. Mid Rise Owners contends that, since the major defining characteristic of an easement is the “use” of one parcel of land by the owner of another parcel, the concepts of “World Tower Shared Facilities”, on the one hand, and “World Tower Easements”, on the other, are not co-extensive. Accordingly, it says, the term “Lobby” in the World Square Statement should not be construed exclusively by reference to the World Tower Easements. It says that it is highly unlikely that the expression “public access areas”, when used in the World Tower Statement, was intended to be understood as a reference to the “Lobby Area” as defined in the World Tower Easements. Thus, it points out, the registration of the World Square Statement occurred after the registration of the s. 88B Instrument, which created the World Tower Easements. It would have been easy, it says, for the author of the World Tower Statement to use the defined term “Lobby area” in the World Tower Statement, or to refer expressly to the World Tower Easements, but that was not done.
48. Further, it says, the definition of the term “Lobby” in the World Square Statement is different from the definition of “the Lobby area” in the World Tower Easements. The “Lobby” is specifically designated by the World Tower Statement as a “Shared Facility”, both in the definition and in the schedule. It contends that the schedule to the World Square Statement indicates that the “public access areas” in the Lobby are limited only to the extent that a plan is prepared by the World Tower Committee, specifically identifying parts of the Lobby that are not to be treated as Shared Facilities. The World Square Statement does not say that those areas are to be limited by reference to the World Tower Easements. As I have said, no plan appears to have been prepared.
49. Mid Rise Owners suggests that there would be no need for the Lobby to be identified as a Shared Facility if it was co-extensive with the area in the World Tower Easements, which would be sufficient to allow for ingress and egress. Therefore, it says, there must be more to the concept of “Shared Facility” than simply providing for access and it is more likely that one of the reasons for

designating the Lobby as a shared facility was to prevent Low Rise Owners from acting unilaterally to alter its visual appearance.

50. Further, Mid Rise Owners says, the definition of “Lobby Area”, in the World Tower Easements, only excludes areas of the Lobby from having the benefit of the easements to the extent that they are “dedicated from time to time for exclusive use”. It contends that it is unclear how such dedication was to be effected and there is no evidence that the reception area and the new wall, in which the New Doorway was constructed, were ever designated as exclusions. It contends that the parts of the definition of “Lobby area” in the World Tower Easements appear to contemplate that items, such as reception desks and storage rooms, would be accessible by World Tower Members, unless expressly excluded.

No Contravention of the World Square Statement

51. I do not consider that the new wall, which is shown on the Foyer Plan in Appendix 2 to these reasons, is part of the World Tower Shared Facilities. The intention of the World Square Statement, and its somewhat convoluted definitions and cross-references, was to provide for access to the mid-rise portion and the high-rise portion of World Tower. That access was to be provided in the area of common property of Low Rise Owners as shown on the Level 10 in Appendix 1 to these reasons. A sensible reading of the World Square Statement does not lead to the conclusion that every part of the area marked as “foyer”, which appears to be intended to be referred to as “the Lobby”, was intended to be World Tower Shared Facilities.
52. The whole of the area shown as “common property” on the Level 10 Plan is owned by Low Rise Owners. I do not consider that the World Square Statement should be read as conferring on Mid Rise Owners any rights in relation to any part of that common property, beyond the rights that are reasonably necessary to enable Mid Rise Owners, and its licensees, to gain access to the Mid Rise Lobby and the mail room. The new wall, in which the New Doorway has been constructed, is not to be regarded as part of “World Tower Shared Facilities” simply because it has been erected on that part of the common property of Low Rise Owners on Level 10 that is marked as foyer and which might be regarded as having been intended to be referred to as “the Lobby”.
53. The circumstances of the erection of the new wall were not the subject of evidence. However, there is no reason to conclude that the erection of the new wall, so as to create the manager’s office or “store”, was an infringement of the World Square Statement. There is no suggestion that its erection interfered in any way with access to the Mid Rise Lobby and the mail room.
54. I do not consider that there is any basis for concluding, as a matter of construction of the various instruments and documents, that their scheme was to prevent alteration of the visual appearance of those parts of Level 10 owned by Low Rise Owners. The owners of Lots 802 and 801 were not intended to have a right in relation to the visual appearance of those parts of Level 10 that were not necessary for access. The intent is to afford protection to Mid Rise Owners and Meriton Properties from interference with the facilities that are actually used, such as that part designated as “foyer”, to gain access to the lifts, concierge desks, mail room facilities and other communal

facilities. The New Doorway and the new wall in which it was constructed, are not part of “World Tower Shared Facilities”.

Conclusion

55. It follows that Mid Rise Owners is not entitled to the relief claimed in the summons. The summons should be dismissed with costs.

APPENDIX 1

APPENDIX 2

Endnote

Decision last updated: 21 December 2016