
JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

ACT : STRATA TITLES ACT 1985 (WA)

CITATION : THE OWNERS OF 875 WELLINGTON STREET,
STRATA PLAN 13599 and KAMIL ALSO KNOWN
AS AHMED KAMIL [2021] WASAT 126

MEMBER : MS V HAIGH, MEMBER

HEARD : 8 JULY 2021

DELIVERED : 15 SEPTEMBER 2021

FILE NO/S : CC 1751 of 2020
CC 1756 of 2020

BETWEEN : THE OWNERS OF 875 WELLINGTON STREET,
STRATA PLAN 13599
Applicant

AND

EDDIE AHMED KAMIL ALSO KNOWN AS
AHMED KAMIL
Respondent

Catchwords:

Use of common property by lot owner - Installation of CCTV cameras on common property - Charging for and receiving parking fees on common property

Legislation:

Strata Titles (General) Regulations 2019 (WA), reg 73
Strata Titles Act 1985 (WA), s 3, s 13(5)(c), s 44, Pt 7, s 83, s 86, Pt 8, s 91,

s 200(1), s 200(2)(m), Sch 1, Sch 2, cl 2, cl 4, cl 12
Strata Titles Amendment Act 2018 (WA)

Result:

The applications are dismissed

Category: B

Representation:

Counsel:

Applicant : P Monaco
Respondent : P Lafferty

Solicitors:

Applicant : GV Lawyers
Respondent : Butcher Paull & Calder

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

Dimitroff and Owners of 43 Kinsella Street, Joondanna, Strata Plan 14493
[2012] WASAT 12
Fisher and The Owners of Esplanade Court - Strata Plan 363 [2008] WASAT 301
Laffin and Renouf [2016] WASAT 48
Maber & Anor and The Owners of Strata Plan 11391 [2007] WASAT 99
The Owners of Rosneath Farm Survey-Strata Plan 35452 and Rowell and Anor
[2007] WASAT 95
Wong v Reid [2016] WASC 59

REASONS FOR DECISION OF THE TRIBUNAL:

Introduction

1 The applicant in matters CC 1751 of 2020 and 1756 of 2020 is The Owners of 875 Wellington Street, Strata Plan 13599 (**strata company**).

2 The premises at 875 Wellington Street, West Perth (**premises**), is a residential strata scheme consisting of 80 units of which 79 are for short stay accommodation.

3 The respondent in both of these proceedings is Mr Eddie Ahmed Kamil (**Mr Kamil**), one of the lot owners.

4 In these proceedings the strata company has made allegations against Mr Kamil regarding his use of common property, which I outline briefly as follows.

CC 1751 of 2020 (the collection of parking fees on common property)

5 The strata company alleges that Mr Kamil has been charging for and collecting parking fees for vehicles parked on common property at the premises without the approval of the strata company.

6 The strata company seeks orders under s 200(2)(m) of the *Strata Titles Act 1985 (WA) (ST Act)* requiring Mr Kamil to immediately refrain from charging for and receiving parking fees for vehicles parked on common property at the premises.

CC 1756 of 2020 (the installation of CCTV cameras on common property)

7 The strata company alleges that Mr Kamil has installed CCTV cameras on common property without the approval of the strata company.

8 The strata company is seeking orders from the Tribunal under s 200(2)(m) of the ST Act that Mr Kamil immediately remove CCTV cameras installed on common property at the premises and make good any damage to the common property.

The hearing

9 Both of these matters were listed to be heard together commencing on 8 July 2021 over a period of five days (together with three other

related matters (CC 1750 of 2020, CC 1752 of 2020 and CC 1754 of 2020) involving the same parties). The parties were represented.

10 Prior to the hearing both parties filed bundles of documents pursuant to the Tribunal's orders requiring them to file and provide to the other party indexed and paginated bundles of documents on which they proposed to rely at the hearing.

11 Further the Tribunal had previously ordered that the five proceedings remain as separate proceedings but be heard and determined together and that the evidence in one proceeding be evidence in the other proceedings.¹

12 At the commencement of the hearing it was submitted by Mr Kamil's counsel that Mr Kamil conceded that:

- a) he had been taking monies for parking on common property (CC 1751 of 2020); and
- b) he had installed four CCTV cameras on the common property (CC 1756 of 2020).

13 Counsel for both parties were in agreement that these two concessions provided the factual matrix.²

14 Counsel for both parties proposed and were in agreement, that these matters proceed by way of written submissions and orders were made for filing of the same.³ By consent of the parties, final orders were made in respect of the other three related matters.⁴

15 No other facts were agreed by the parties and no evidence was heard or submitted to the Tribunal in any of the five related matters. Neither of the parties sought to adduce into evidence their bundles of documents.

16 Indeed, prior to these concessions being made, the strata company's counsel foreshadowed at the hearing that:

... if the respondent admits that he has been taking parking fees, then it will come down to a legal argument as to whether or not the doing of that behaviour - taking money for parking from common property breaches the Act and breaches the by-laws ... if the respondent admits to this

¹ Order, 13 April 2021.

² ts 14, 8 July 2021 and ts 18, 9 July 2021.

³ ts 14-15, 8 July 2021 and ts 18, 19 July 2021.

⁴ ts 18, 19, 9 July 2021.

Tribunal he has been taking parking fees, we can then deal with the legal arguments without the need for any evidence[.]⁵

17 Mr Kamil's counsel, before a brief adjournment to take instructions from his client regarding whether he conceded that he had been taking monies for parking on common property, echoed this view when he stated that, 'this is purely a matter of law, then that's something we can deal with without calling evidence'.⁶

18 Insofar as the parties have now sought to introduce other facts in their submissions, I have placed no weight on them in arriving at my decision as they are not based on any evidence that is before me. However, it is necessary for me to briefly set out some of those facts, to give meaning to the submissions made by the parties.

CC 1751 of 2020 (the collection of parking fees)

19 As I have already set out, the strata company is seeking orders pursuant to s 200(2)(m) of the ST Act.

20 The issue to be determined by the Tribunal is therefore whether I should exercise my discretion pursuant to s 200(2)(m) of the ST Act and order Mr Kamil to refrain from charging for and receiving parking fees for vehicles parked on common property.

21 Section 200(2)(m) of the ST Act provides that without limitation, the orders that may be made by the Tribunal include:

an order requiring a person to take specified action or to refrain from taking specified action to remedy a contravention or prevent further contraventions of this Act, scheme by-laws or a strata management contract.

22 If I am to be persuaded to exercise my discretion pursuant to s 200(2)(m) of the ST Act, the strata company must establish that in taking monies for parking on common property, Mr Kamil is in breach of the ST Act, scheme by-laws or a strata management contract.

23 The making of orders by the Tribunal pursuant to s 200(2)(m) of the ST Act are premised on such a breach, and thus frame this dispute.

⁵ ts 11, 8 July 2021.

⁶ ts 12, 8 July 2021.

24 Mr Kamil submits that the strata company has not established that
he is in breach of the ST Act, scheme by-laws or a strata management
contract.

**Is there a contravention of the ST Act, scheme by-laws or strata
management contract?**

25 The submissions made by the strata company are based on the
following factual matrix.

26 Firstly, that it was resolved at the annual general meeting (**AGM**)
on 26 September 2019 to obtain quotes to install a ticket machine for
parking on common property with parking funds to go to the strata
company.

27 Secondly, on the basis of that resolution, the Council of Owners on
31 October 2019 engaged Secure Parking Pty Ltd (**contractors**) to install
a ticket machine and manage parking on the common property.

28 Thirdly, the charging for parking on common property and the
parking funds to be paid to the strata company was in accordance with
the parking resolution and by-law 15 of Sch 2 of the ST Act.

29 Fourthly, the strata company entered into a contract with Secure
Parking Pty Ltd on 16 December 2019.

30 Fifthly, Mr Kamil, without the approval of the strata company,
charged invitees to common property for parking and obstructed the
ticket machine.

31 Sixthly, Mr Kamil, collected parking fees from the invitees on the
common property notwithstanding being issued with notices to desist.

32 The strata company submits that Mr Kamil's conduct *in obstructing
the contractors* (my emphasis) is in breach of the ST Act and its by-laws
as follows:

Section 83

83 Use and enjoyment

The owner or occupier of a lot must not use, or permit the use of,
the lot or common property of the strata titles scheme in a way
that interferes unreasonably with the use or enjoyment of another
lot or the common property by a person who is lawfully on the lot
or common property.

...

Schedule 2 - Conduct by-laws

2 Use of common property

An owner or occupier of a lot must-

- (a) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment of the common property by other owners or occupiers of lots or of their visitors; and
- (b) not use the lot or permit it to be used in such manner or for such purpose as causes a nuisance to an occupier of another lot (whether an owner or not) or the family of such an occupier; [.]

...

4 Behaviour of owners and occupiers

An owner or occupier of a lot must be adequately clothed when on common property and must not use language or behave in a manner likely to cause offence or embarrassment to an owner or occupier of another lot or to any person lawfully using common property.

...

12. Additional duties of owners and occupiers

An owner or occupier of a lot must not-

- (a) use the lot for a purpose that may be illegal or injurious to the reputation of the building[.]

33 Whilst Mr Kamil has conceded that he has collected parking fees from invitees on the common property, the other facts upon which the strata company relies (set out at [26]-[31] above), are not in evidence before me, and I am unable to make any findings in respect of that factual matrix.

34 Mr Kamil has made one other concession, in his response dated 23 February 2021 at para 11 of the grounds of the application which state that:

[T]he applicant by resolution of the council of owners on 12 December 2019 authorised the applicant to contract with Secure Parking Pty Ltd for the management of parking on the common property

at the strata scheme which includes the charging for and collection of parking fees.

35 In his response Mr Kamil denies each of the matters in the application save for admitting 'that on or about 12 December 2019 a resolution was passed by the owner's corporation to accept the proposal from Secure Parking ... over a period of five years'. He denies that the motion entitled the Council of Owners to enter into a contract with Secure Parking Pty Ltd or any other party.

36 However, Mr Kamil contends that the resolution was not valid for three reasons because:

- 1) it was not registered with Landgate within three months of the passing of the resolution;
- 2) the strata company does not have power to grant to a third party the right to operate a parking business on the common property; and
- 3) the resolution did not authorise the strata company to enter into a contract and the contract is therefore void.

37 Thus, on the basis of the application and the response, it appears to be an agreed fact that there was a resolution made on 12 December 2019 with respect to parking involving Secure Parking Pty Ltd. However, given that there is no evidence before the Tribunal, I am unable to make any findings in relation to the resolution.

38 Mr Kamil does not assert, in his response, that he was granted exclusive use or some other privilege concerning his use of common property for the purpose of taking monies for parking. Nor does he assert that he has received the approval of the strata company to do so. However, given that there is no evidence before the Tribunal, I am unable to make any findings to this effect.

39 The strata company has referred me to:

- i) s 91 of the ST Act which sets out the general duties of a strata company which require that it control and manage the common property for the benefit of all the owners of lots; and
- ii) s 13(5)(c) of the ST Act which provides that in respect of common property the lot owners are tenants in

common in shares proportional to the unit entitlements of their respective lots.

40 The strata company submits that the common property is for the benefit of all lot owners unless there has been approval granted to a lot owner to transfer any rights or benefits either by way of a licence, lease, exclusive use by-law or easement.

41 The strata company has referred me to two decisions of this Tribunal which considered the use of common property by an individual lot owner.

42 The first decision is that of *Dimitroff and Owners of 43 Kinsella Street, Joondanna, Strata Plan 14493* [2012] WASAT 12 (*Dimitroff*) at [48]-[49]:

48 The use of common property by lot owners as considered by the Tribunal in *The Owners of St John's Court - Rivervale Strata Plan 6052 and Clark* [2010] WASAT 126, which cited an earlier Tribunal decision of *The Owners of Rosneath Farm Survey Strata Plan 35452 and Rowell & Anor* [2007] WASAT 95, and relevantly stated at [23] - [26]:

Thus, while an individual lot owner, as a tenant in common, is entitled to the use and enjoyment of any part of the common property, it is subject to the control and management of the common property by the strata company. **That right of use does not enable the lot owner to exclude any other tenant in common from making use of the common property, unless by way of a resolution without dissent (or unanimous resolution in the case of a two-lot scheme)[,] a by-law is passed granting exclusive use and enjoyment, or special privileges in respect of the common property or any part of it (s 42(8)).**

The legislative intent is therefore, that common property cannot be used to the exclusion of other lot owners, nor can it be dealt with in any of the above senses, unless the requisite resolution has been passed. The standard by-laws imposed by virtue of s 42, and which cannot be varied unless consistent with the legislation, restrict the use and enjoyment of common property in that it may only be used in a manner which does not unreasonably interfere with the use and enjoyment thereof by other proprietors, occupiers, residents or their visitors (Sch 1, [B]y-law

1(2)(a)). Nor may a proprietor obstruct lawful use of common property by any person (Sch 2, [B]y-law 2).

It is, therefore, clear that control and management of common property vests in the strata company and that any part of common property cannot be used to the exclusion of other co-owners without their consent. That consent may be obtained in the above circumstances by way of the requisite resolution. The strata company may also deal with common property by way of a simple majority vote of members in general meeting where the proposal is sufficiently detailed and the expenditure is approved as part of the budget or where the nature of the proposal comes under the control and management of the common property: see *Sisto and The Owners of Glenway Gardens Apartments* [2005] WASAT 282.

If any more were needed to conclude that on a proper construction of the ST Act, **a lot owner must seek the approval of the strata company before using any part of the common property to the exclusion of other lot owners**, it is self-evident from the very provisions on which the respondents rely, namely[,] s 85 and s 94 which are predicated upon refusal of a consent, or licence, as the case may be. (Emphasis added by the strata company in this application)

- 49 Relevantly, in the matter of *Fisher and The Owners of Esplanade Court - Strata Plan 363* [2008] WASAT 301 at [36] - [38] which involved the placing of pot plants on common property, the Tribunal discussed the options available for the use of common property and stated:

There are essentially four main ways to deal with the use of common property by proprietors - resolution without dissent pursuant to s 42(8) of the ST Act[,] special resolution pursuant to s 3B of the ST Act, a lease pursuant to s 19 of the ST Act and a licence pursuant to the inherent powers of a strata company to manage and control common property (s 35 of the ST Act).

The contention by Mr Kronberger that common property can only be dealt with by way of a s 42(8) ST Act by-law or by a lease is not consistent with the ST Act. The Tribunal is of the view that the ST Act does not mandate that any use of common property should automatically be the subject of a Sch 1 by-law. It depends on the nature and scope of rights and privileges afforded to a proprietor.

Although the Tribunal appreciates the plea of Mr Kyle that a 'common sense' approach should be used to deal with something as relatively trivial as the placing of pot plants, the question is, what are the rights and privileges that are bestowed on the beneficiaries? The principle of dealing with exclusive use and special privileges of common property must guide the Tribunal regardless of the subject matter.

43 The second decision is *The Owners of Rosneath Farm Survey Strata Plan 35452 and Rowell & Anor (Rosneath)* [2007] WASAT 95 in which the Tribunal elaborated on the meaning of 'for the benefit of all proprietors' at [9]-[11]:

9 In my view, the expression 'for the benefit of all proprietors' in s 35 means that the strata company's control and management of the common property must be for the benefit of the whole corporate body of proprietors, and must not be for the benefit of individual proprietors where that benefit undermines the corporate benefit. Any assessment of what is for the benefit of all proprietors will depend upon the facts of each case. With reference to the facts of this case, if it be the fact that one owner uses part of the common property to the exclusion of other proprietors, when it possesses no special rights or privilege in respect of that part, then the strata company, in the exercise of its duty to control and manage the common property for the benefit of all of the proprietors, is entitled to take steps to rectify that situation. There may be a question as to the existence of such rights or privilege, which would be for determination in the proceedings instituted by the strata company. But arguments going to that issue cannot undermine the authority of the strata company to embark upon a course to which it is committed by a regular resolution.

10 Further, in my view, it is not open to analyse common property as a composite of cells, some of which can be used by individual proprietors to the permanent or indefinite exclusion of others. Section 17 ST Act describes common property in the following terms:

(1) Common property shall be held by the proprietors as tenants in common in shares proportional to the unit entitlements of their respective lots.'

11 The essential feature of a tenancy in common is unity of possession, each of the tenants having the right to occupy the whole of the property in common with the others: *Nullagine Investments Pty Ltd v Western Australian Club Inc* (1993) 177 CLR 635 at [643]. Therefore, to the extent that the strata

company considers that any part of the common property is the subject of unwarranted privileged use by any proprietor, it may take action under s 35.

44 In summary the strata company contends that:

- 1) it controls and manages the common property for the benefit of all owners (s 91 of the ST Act);
- 2) Mr Kamil is using common property for his own benefit by collecting parking fees; and
- 3) notwithstanding the contract entered into by the strata company with an independent parking contractor and notices to desist, Mr Kamil continues to collect parking fees. (I note here that this third contention is not based on any evidence before the Tribunal).

45 I have considered the submissions of the strata company and do not consider that it has established that in taking monies from invitees for parking on common property, Mr Kamil has contravened the ST Act, scheme by-laws or a strata management contract.

46 Its submissions are largely tangential to this point.

47 The only direct submission as to a breach of the ST Act or the by-laws is the strata company's submission that the conduct of Mr Kamil in obstructing the contractors engaged by them is in breach of the ST Act or the by-laws (and they refer to s 83, Sch 2, cl 2, cl 4 and cl 12 of the ST Act).

48 The problem with this submission is that there is no evidence before me that Mr Kamil has obstructed any contractors engaged by them. As I outlined above the factual matrix relied upon by the strata company is not in evidence before the Tribunal.

49 For this reason, I am unable to find that there has been a breach of s 83, or Sch 2, cl 2, cl 4 and cl 12 of the ST Act as claimed.

50 I would also add that the order sought by the strata company pursuant to s 200(2)(m) of the ST Act does not relate to this conduct (in obstructing the contractors engaged by the strata company).

51 I observe here that s 83 of the ST Act is to be found in Pt 7 of the ST Act, which relates to lot owners and occupiers. Pt 7 of the ST Act

includes offences by lot owners/occupiers that contravene restricted use conditions set out in scheme plans, and provisions relating to the structural alteration of lots by a lot owner.

52 Further the conduct by-laws in Sch 2 of the ST Act restrict the use and enjoyment of common property and where a strata company wishes to impose further restrictions on the owners and occupiers it may do so through the introduction of by-laws as contemplated by s 44 of the ST Act.

53 Aside from identifying s 83 of the ST Act and the Sch 2 by-laws referred to above, the strata company has not otherwise identified any sections or by-laws which have been breached by Mr Kamil in taking monies for parking from invitees on common property.

54 The balance of its submissions are somewhat tangential to the identification of any breach by Mr Kamil.

55 Insofar as the strata company has made reference to s 91 of the ST Act, this is referable to the duties of a strata company, including that it must control and manage the common property for the benefit of all the lot owners. Section 91 is in Pt 8 of the ST Act, which is relevant to the functions of a strata company.

56 For this reason, I am not persuaded that Mr Kamil is in breach of s 91 of the ST Act.

57 I have considered the two decisions to which the strata company has referred. These cases largely concern the duties of strata companies in relation to the use of common property.

58 Insofar as the principles espoused in *Dimitroff* relate to the use of common property by a lot owner to the exclusion of other proprietors, they are not applicable to this case.

59 In this case, Mr Kamil submits that he is not using common property to the exclusion of others. Given that there is no evidence before me that Mr Kamil has used or is using the common property to the exclusion of others, I am unable to make a finding in that regard. Mr Kamil admits only to collecting parking fees from invitees on the common property.

60 Further, in *Dimitroff* the Tribunal refers to *Fisher and The Owners of Esplanade Court - Strata Plan 363* [2008] WASAT 301 (*Fisher*), in which the Tribunal discussed four ways to deal with the use of common

property by proprietors - resolution without dissent, special resolution, a lease and a licence. The Tribunal expressed the view that the ST Act does not mandate that any use of common property should automatically be the subject of a Sch 1 by-law of the ST Act, and that it depends on the nature and scope of the rights and privileges afforded to a proprietor. In my view *Fisher* was concerned with the way a strata company must control and manage common property.

61 *Rosneath* is relevant to the general duties of a strata company in s 91 of the ST Act, to control and manage the common property 'for the benefit of all the owners of lots'.

62 In my view neither *Fisher*, nor *Rosneath*, assist me to discern what section or by-laws of the ST Act have been breached by Mr Kamil.

63 For these reasons the strata company has not established that in taking monies for parking on common property, Mr Kamil is in breach of the ST Act, scheme by-laws or a strata management contract.

64 I am not therefore persuaded to exercise my discretion and make the orders sought by the strata company.

65 For these reasons I make the orders set out below.

Further comments

66 I would add here that the Tribunal has broad powers, pursuant to s 200(1) of the ST Act, to make any order that it considers appropriate to resolve a dispute. However, the strata company has not sought that orders be made pursuant to that section, nor has it framed its case against Mr Kamil in this way. The case being met by Mr Kamil is framed in terms of the orders sought.

67 I note here that Mr Kamil's counsel made it plain at the outset of the hearing, that it was Mr Kamil's case that the strata company had not identified any breach by the strata company.⁷

CC1756 of 2020 - installation of CCTV cameras on common property

68 As I have already set out the strata company is seeking orders pursuant to s 200(2)(m) of the ST Act.

69 The issue to be determined by me is therefore whether I should exercise my discretion pursuant to s 200(2)(m) of the ST Act and order

⁷ ts 10-11, 8 July 2021.

that Mr Kamil remove four CCTV cameras installed on common property at the premises and make good any damage to the common property.

70 If I am to be persuaded to exercise my discretion pursuant to s 200(2)(m) of the ST Act, the strata company must establish that in installing CCTV cameras on common property, Mr Kamil is in breach of the ST Act, scheme by-laws or a strata management contract.

71 As I have already stated, the making of orders by the Tribunal pursuant to this section are premised on such a breach and thus frame this dispute.

Is there a contravention of the ST Act, scheme by-laws or strata management contract?

72 There is no provision in the ST Act which deals specifically with the erection, alteration or extension of a structure on common property.

73 In considering this issue, I have regard to the decision of *Laffin and Renouf* [2016] WASAT 48, (*Laffin*) a decision of Senior Member Aitken of this Tribunal, in which he found that:

... except where renewal or replacement is necessary to keep common property in good repair, no works for the demolition or alteration of any structure on the common property *or for the erection of any structure on the common property can be carried out by a strata company or any proprietor unless a resolution without dissent is passed*[.]

(Emphasis added)

74 In making this finding Senior Member Aitken referred to the decisions of *Maber & Anor and The Owners of Strata Plan 11391* [2007] WASAT 99 (*Maber*) and *Wong v Reid* [2016] WASC 59 (*Wong*).

75 *Maber* concerned an application to the Tribunal by Mr William Maber and Mrs Margaret Maber, who were the proprietors of a lot in a 16 lot strata scheme, seeking an order to permit them to install a window on the common property balcony adjacent to their lot, to partially enclose the balcony.

76 *Wong* concerned an application to the Supreme Court for leave to appeal against the decision of the Tribunal which required the proprietor of a lot, Mr Oliver Wong, to remove a wall he constructed on common property.

77 *Laffin, Maber* and *Wong*, insofar as they are relevant to these proceedings, are authority for the proposition that a structure may not be erected on common property by any proprietor unless a resolution without dissent is passed.

78 Mr Kamil submits that *Laffin, Maber* and *Wong* are referable to provisions in the legislation which had been amended, replaced and removed by the *Strata Titles Amendment Act 2018* (WA) and further, those cases were not situations where an order was sought pursuant to s 200(2)(m) of the ST Act. Whilst that is correct, they remain authority for the proposition I have just outlined, which is applicable notwithstanding amendments to the ST Act.

79 Further Mr Kamil submits that the principle in *Laffin* only goes so far as requiring a resolution without dissent to be passed before there can be 'works for the demolition or alteration of any structure on the common property'. He submits that the installation of CCTV cameras is not the demolition or alteration of any structure on the common property and would not be captured by the principle in *Laffin*.

80 I reject that submission. It is clear, that the principle in *Laffin* extends to 'the erection of any structure'.

81 In the absence of a definition of 'structure' in s 3 of the ST Act, I turn to other divisions of the ST Act and *Strata Titles (General) Regulations 2019* WA (**Regulations**) to assist me.

82 Section 86 of the ST Act defines 'structure' as 'including anything classified as a structure by the regulations'.

83 Regulation 73 of the Regulations provides that:

For the purposes of the definition of *structure* in s 86, the things classified as a structure are any dwelling, shop, factory, commercial premises, garage, carport, shed or other building or improvement (whether free standing or annexed to or incorporated with any existing building on the lot) -

- (a) the construction or erection of which is required to be approved by the local government or any other authority; or
- (b) the area of which is to be taken into account for the purposes of determining the plot ratio restrictions or open space requirements for the lot.'

84 Whilst s 86 of the ST Act relates to the structural alterations to lots (rather than common property), I consider that by analogy the erection of CCTV cameras on common property may be regarded as an improvement that is annexed to the common property and may therefore be considered to be a structure.

85 In the circumstances of this case, there is no evidence that such a resolution has been passed for the erection of the CCTV cameras on common property, nor does Mr Kamil assert that any such resolution has been passed.

86 By his response, Mr Kamil does not assert that he has received the approval of the strata company for the installation of the CCTV cameras, including by way of a resolution without dissent.

87 Mr Kamil in his response justifies the installation of the CCTV cameras on common property on the basis that he has received the 'permission of the property managers and owners' corporation to monitor unruly behaviour in the building itself and also in the car park'.

88 However, given the absence of evidence before the Tribunal, I am unable to make any findings as to whether or not Mr Kamil had the approval of the strata company, or anyone else, for the installation of the CCTV cameras.

89 For these reasons the strata company has not established that in installing the CCTV cameras on common property, Mr Kamil is in breach of the ST Act or scheme by-laws or a strata management contract.

90 I am therefore not persuaded to exercise my discretion and make the orders sought by the strata company.

91 For these reasons I make the orders set out below.

Further comments

92 I reiterate the comments I have already made, regarding the Tribunal's broad powers, pursuant to s 200(1) of the ST Act, to make any order that it considers appropriate to resolve a dispute. Again, the strata company has not sought that orders be made pursuant to that section. Nor has it framed it's case in this way. The case being met by Mr Kamil is framed in terms of the orders sought.

Orders

The Tribunal orders:

CC 1751 of 2020

1. The application is dismissed.

CC 1756 of 2020

1. The application is dismissed.

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

MS V Haigh, MEMBER

15 SEPTEMBER 2021