



Civil and Administrative Tribunal

New South Wales

Case Name: Stojiljkovic v Whittle

Medium Neutral Citation: [2021] NSWCATCD 97

Hearing Date(s): 28 July 2021

Date of Orders: 21 September 2021

Decision Date: 21 September 2021

Jurisdiction: Consumer and Commercial Division

Before: K Ross, Senior Member

Decision: 1 On or before 30 November 2021, the respondents are, in a proper and workmanlike manner, to remove the two CCTV cameras which film the common property driveway, and the CCTV camera installed to film the courtyard (the courtyard CCTV camera), and are to provide evidence of compliance to the strata managing agent by that date.
2 If The Owners – Strata Plan No. 83029 is satisfied that the courtyard CCTV camera films only the respondents’ lot, and on or before 16 November 2021 passes a special resolution to allow it to remain, then the order in respect of that camera is discharged upon the making of that resolution.

Catchwords: LAND LAW — Strata title — Consent for installation of security cameras on common property— Interference in the reasonable use of a lot or common property

Legislation Cited: Strata Schemes Management Act 2015 (NSW)

Cases Cited: Nil

Texts Cited: Nil

Category: Principal judgment

Parties: Aleksandar Stojiljkovic (First Applicant)
Anka Stojiljkovic (Second Applicant)
Gordon Whittle (First Respondent)
Dorothy Whittle (Second Respondent)

Representation: Applicants (Self represented)
Respondents (Self represented)

File Number(s): SC 21/08985

Publication Restriction: Nil

REASONS FOR DECISION

Background

- 1 The applicants and respondents are lot owners in strata plan no. 83029, a six lot scheme in Coffs Harbour. There is a long history of conflict between them, including at least one AVO in the past. In 2019 the applicants commenced proceedings in the Tribunal seeking orders for the removal of security cameras installed by the respondents. The application was dismissed after Mr Gordon Whittle advised the Tribunal that two of the cameras had been disconnected.
- 2 Mr Stojiljkovic says that the security cameras have been reinstalled. He alleges:
 - (1) That the cameras have not been approved by the owners corporation,
 - (2) That the cameras were not installed by a licensed and suitably insured tradesperson.
 - (3) That the cameras film common property and his unit, and interfere with his privacy.
- 3 The application stated:

“What orders do you want?

Mr Gordon Whittle has been dishonourable regards to the information given to Mr Whittle from Mr Harris the Tribunal Administrator. Mr Whittle has an approval for 1 camera only. He has reinstalled 3 more no approval seeked (sic).

Reasons for asking for these orders

Mr Gordon Whittle is only doing this to harrasse (sic) intimidate spy and follow people. He has a doorbell camera this is more than appropriate to surveillance (sic) in front of his lot only which is No 5. Instead Gordon has installed 3 more cameras. This is a direct invasion of Privacy. Location of cameras all on common property”.

4 The respondents were represented at the hearing by their son Mr Mark Whittle. He gave evidence that:

- (1) security cameras were installed in 2017 by Mr and Mrs Whittle's grandson, an audio and lighting engineer, who at the time was an apprentice electrician,
- (2) the system was inspected and adjusted in April 2019,
- (3) the cameras do not film the applicants' unit.

5 Neither party provided the Tribunal with a copy of the by-laws for the scheme. At the end of the hearing the Tribunal directed both parties to provide a copy of the by-laws, together with a copy of the minutes of any meeting which had resolved to approve any additional by-laws. The Tribunal received:

- (1) A copy of a document headed "By-Laws – Strata Schemes Management Regulation 2005 (NSW) Schedule 1: Model By-Laws (Residential) SP 83029", comprising by-laws 1 – 20, with the contact details of SMS Coffs Harbour on the footer, and handwritten submissions which appear to be in Mr Stojiljkovic's handwriting on the back, and
- (2) A copy of minutes of the annual general meeting held on 6 February 2020 which included a special resolution granting permission under s 108 of the Act for lot owners to install security cameras within their respective lots, on certain conditions ("the February 2020 resolution"), and
- (3) A copy of the by-laws received from the respondents.

The evidence

The applicants' evidence

6 The applicants' evidence comprised:

- (1) Attached to the application:
 - (a) a letter addressed to the Tribunal seeking that the Tribunal "rederect (sic) Mr Gordon Whittle to honour and follow a directive which NCAT already made previously". The letter states that:
 - (i) Mr Whittle installed a doorbell camera, and then installed 3 more cameras, 2 on common property and one in his back yard;
 - (ii) the applicants commenced proceedings in NCAT (SC 19/10327). Mr Whittle told the Tribunal that he had removed 3 of the cameras and the proceedings were dismissed on this basis;

- (iii) after the proceedings were dismissed Mr Whittle reinstalled the cameras.
 - (b) a copy of an email dated 20 February 2020 from the applicants to the strata manager complaining about the cameras and asking the strata manager to request Mr Whittle to remove 3 of the cameras.
 - (c) a series of photos, with comments by Mr Stojiljkovic. He states that they depict the 4 security cameras installed by Mr Whittle.
 - (d) a copy of an email dated 26 April 2019 from Mr Whittle to the Tribunal, stating that cameras 2 and 3 had been removed.
 - (e) an extract of a statement provided by Mr Whittle in proceedings SC19/10327.
 - (f) a copy of an AVO dated 2 December 2015, taken out by Mr Stojiljkovic against Mr Whittle.
- (2) Submitted on 12 April 2021:
- (a) a letter addressed to the Tribunal alleging (inter alia) that :
 “Administrator Mr Harris in Coffs Harbour agreed to allow Mr Whittle to have 1 camera only to service his lot only.

 Administrator please understand that we agree for Mr Whittle to have security to service their lot only. But they choose to invade my privacy and I do not want this type of life to have anyone monitor my movements especially on common property. As you can see Mr Whittle is in direct breach of by-laws. He did not apply for an approval. He contacted Jason Kelly from East Coast Strata and Jason approved one camera only without consulting any other owners in the complex. Mr Whittle took this opportunity to install 4 cameras instead of one only to service his lot only.
 - (b) two photos of the common property driveway, with comments endorsed by the applicant. The applicant states that the photos depict what can be seen from the installed cameras.
- (3) Submitted on 20 April 2021:
- (a) further copies of the documents submitted by the respondents in SC19/10327, with handwritten comments. Some of these comments are disparaging of the respondents.

The respondents’ evidence

7 The respondent relied upon:

- (1) An extract from the by-laws, and in particular By-law 5 (3) and (4),
- (2) A copy of a letter dated 1 April 2019 from “Robert and Ann Drinkwater, OC SP 83029” which states inter alia:
 “I have seen the cameras that have been installed by Mr and Mrs Whittle to their property. The cameras focus on Mr and Mrs Whittle’s own courtyard and

directly over the common driveway at the rear of the complex. The direction of focus of these cameras do not intrude on fellow resident's privacy from my observation. Subsequently, regardless of how many have been installed, I support their installation."

- 8 Mr Mark Whittle states that the cameras were installed in 2017 by Mr and Mrs Whittle's grandson, an audio and lighting engineer, who at the time was an apprentice electrician. They were reviewed and adjusted in April 2019 by a CCTV & electronic security specialist.

Issues

- 9 The issues are:
- (1) What was the effect of the orders made in 2019?
 - (2) Have the cameras been installed with the Owners Corporation's consent, and if so, have the conditions of any such consent have been complied with?
 - (3) Do the cameras interfere unreasonably with Mr and Mrs Stojiljkovic's use and enjoyment of the common property, or their lot?
 - (4) What orders should the Tribunal make?

What was the effect of the orders made in 2019?

- 10 The application made by the applicants in 2019 was dismissed. I have not been provided with a transcript of the hearing. The Tribunal made no orders in respect of the cameras, and there is no evidence that the Tribunal made any findings of fact. I accept that the application was dismissed after Mr and Mrs Whittle provided evidence that two of the cameras had been disconnected, but that does not mean that there was a finding made that only one camera was acceptable.
- 11 I am not satisfied that, in dismissing the proceedings, the Tribunal gave any directive in respect of the cameras, and any request for this Tribunal to "redirect Mr Gordon Whittle to honour and follow a directive which NCAT already made previously" is misconceived.

Did the Owners Corporation give consent for the installation of the cameras?

- 12 I am satisfied from the photos that there are 4 cameras affixed to common property. They are each visible from outside the lot.
- 13 Section 111 of the Act states that an owner must not carry out any work on common property unless the owner is authorised to do so:

“(a) under this Part, or

(b) under a by-law made under this Part or a common property rights by-law, or

(c) by an approval of the owners corporation given by special resolution or in any other manner authorised by the by-laws.”

- 14 The applicants provide evidence that the strata manager gave consent for the installation of one camera. I am not satisfied that he had power to give that consent, but the applicants do not object to the respondents having one door camera.

Is the installation authorised by by-law 5?

- 15 The respondents submit that the installation of the cameras was authorised by by-law 5, which states that the by-law does not prevent an owner from installing

“any locking or other safety device for protection of the owner’s lot against intruders or to improve safety within the owner’s lot”.

- 16 I am not satisfied that a camera can be regarded as a “locking or other safety device”. I am not satisfied that by-law 5 authorised the installation of the cameras.

Was the installation otherwise authorised under Part 6 of the Act?

- 17 I am not satisfied that the installation can be regarded as either cosmetic work (s 110) or minor renovation (s 109), as both sections exclude any alteration which changes the external appearance of the lot.
- 18 Otherwise, s108 of the Act provides that a special resolution is required before the alteration is made:

108 CHANGES TO COMMON PROPERTY

(1) Procedure for authorising changes to common property

An owners corporation or an owner of a lot in a strata scheme may add to the common property, alter the common property or erect a new structure on common property for the purpose of improving or enhancing the common property.

(2) Any such action may be taken by the owners corporation or owner only if a special resolution has first been passed by the owners corporation that specifically authorises the taking of the particular action proposed.

Note : If the special resolution is a sustainability infrastructure resolution fewer votes may be needed to pass it. See section 5(1)(b).

(3) Ongoing maintenance A special resolution under this section that authorises action to be taken in relation to the common property by an owner of a lot may specify whether the ongoing maintenance of the common property once the action has been taken is the responsibility of the owners corporation or the owner.

(4) If a special resolution under this section does not specify who has the ongoing maintenance of the common property concerned, the owners corporation has the responsibility for the ongoing maintenance.

(5) A special resolution under this section that allows an owner of a lot to take action in relation to certain common property and provides that the ongoing maintenance of that common property after the action is taken is the responsibility of the owner has no effect unless--

(a) the owners corporation obtains the written consent of the owner to the making of a by-law to provide for the maintenance of the common property by the owner, and

(b) the owners corporation makes the by-law.

(6) The by-law--

(a) may require, for the maintenance of the common property, the payment of money by the owner at specified times or as determined by the owners corporation, and

(b) must not be amended or repealed unless the owners corporation has obtained the written consent of the owner concerned.

(7) Sections 143 (2), 144 (2) and (3) and 145 apply to a by-law made for the purposes of this section in the same way as they apply to a common property rights by-law.

Note : A new by-law or other changes to the by-laws for a strata scheme must be approved by a special resolution of the owners corporation (see section 141).

- 19 There is no evidence that the installation of the cameras was approved by way of a special resolution before the installation was carried out. Indeed, there is no evidence that Mr and Mrs Whittle ever sought the consent of the owners corporation to the installation of **four** cameras, or if they did, that such request was ever put to a meeting for consideration.

The effect of the February 2020 resolution

- 20 On 6 February 2020 the owners corporation passed the February 2020 resolution, a special resolution which grants permission for lot owners to install security cameras within their lots, on certain terms and conditions. Importantly, the cameras must cover only the area of the respective lot owner's lot. The installation is to be carried out by licensed and suitably insured tradespersons. Seven days' notice of the proposed installation must be given.

- 21 The approval for the installation of security cameras given by the February 2020 resolution does not purport to be retrospective, and did not authorise the installation of the cameras in 2017. However, the fact that the owners corporation has specially resolved to grant permission for lot owners to install security cameras, and the conditions on which that permission is given, are matters relevant to the exercise of the Tribunal's discretion in this matter.

Conclusion

- 22 I am not satisfied that the installation of the cameras was carried out with the owners corporation's consent.

Do the cameras interfere unreasonably with Mr and Mrs Stojiljkovic's use and enjoyment of the common property, or their lot?

- 23 Section 153 of the Act provides as follows:

153 OWNERS, OCCUPIERS AND OTHER PERSONS NOT TO CREATE NUISANCE

(1) An owner, mortgagee or covenant chargee in possession, tenant or occupier of a lot in a strata scheme must not--

(a) use or enjoy the lot, or permit the lot to be used or enjoyed, in a manner or for a purpose that causes a nuisance or hazard to the occupier of any other lot (whether that person is an owner or not), or

(b) use or enjoy the common property in a manner or for a purpose that interferes unreasonably with the use or enjoyment of the common property by the occupier of any other lot (whether that person is an owner or not) or by any other person entitled to the use and enjoyment of the common property, or

(c) use or enjoy the common property in a manner or for a purpose that interferes unreasonably with the use or enjoyment of any other lot by the occupier of the lot (whether that person is an owner or not) or by any other person entitled to the use and enjoyment of the lot.

Note : Depending on the circumstances in which it occurs, the penetration of smoke from smoking into a lot or common property may cause a nuisance or hazard and may interfere unreasonably with the use or enjoyment of the common property or another lot.

(2) This section does not operate to prevent the due exercise of rights conferred on a developer by the operation of section 82 of the *Strata Schemes Development Act 2015* .

Note : Division 1 of Part 6 contains provisions about the circumstances in which owners of lots may carry out work that affects common property.

What do the cameras film?

- 24 The evidence in respect of the cameras and what they film is limited. Mr Mark Whittle says that they do not film the applicants' lot. He does not provide any

evidence to support that statement. He does not address the issue of the cameras filming the common property driveway, which appears to be conceded.

- 25 In the statement to the Tribunal made by Mr and Mrs Whittle in the 2019 proceedings, and provided by the applicants in these proceedings, Mr Gordon Whittle stated that he needed the cameras to:

“protect our privacy and security. I needed CCTV coverage of the front of my property (garbage area for units 5 and 6), garage and front door access covering the driveway and my gardens. I wanted both driveway entrances covered”.

- 26 He goes on to allege that:

“the applicant vandalises my front gardens during the night and has thrown eggs on my bedroom windows overlooking the courtyard and street and throws garbage into my courtyard.....

When questioned he denies his actions which is his word against ours and without visual proof we don't have any evidence, hence the CCTV cameras.”

- 27 The respondents also rely on evidence from Mr and Mrs Drinkwater, from Lot 2. They purport to provide the evidence on behalf of “OC SP 83029”, but it is not clear what roles if any they played at that time. They state that the cameras focus on Mr and Mrs Whittle's own courtyard and directly over the common driveway at the rear of the complex. They do not say how they know that to be the case. They do not say whether they have any particular expertise or qualifications which would enable them to give any sort of expert opinion in respect of the matter. I can place little weight on this statement.

- 28 The applicants allege that the cameras allow the respondents to follow their every move. However, they do not say how they know that to be the case.

- 29 Taking all of the evidence into account it seems not to be disputed that two of the cameras film the common property driveway. However I am unable to make any finding as to whether any of the cameras film any other of the common property or any other lot (including the applicants' lot).

Do the cameras unreasonably interfere with the applicants' use of or enjoyment of the common property or their lot?

- 30 There is no doubt that the Mr Stojiljkovic perceives the presence of the cameras to interfere in his use of the common property and his lot. He

expressed his distress during the hearing, and in the submissions filed. He stated that the respondents are privy to all of the movements in his household. He stated that he feels like he is being spied on.

31 Whilst Mr Gordon Whittle pointed out in his submission that CCTV cameras are common in public areas, I do not accept that this is the same as one lot owner filming a common property driveway. It might be different if the owners corporation resolved to install cameras, and if all members of the owners corporation had access to the data obtained. That is not the case.

32 I am satisfied that the filming of the common property driveway by one lot owner (the respondents) interferes with the reasonable use of the common property by other lot owners (including the applicants). As I am unable to make any finding that the cameras film the applicants' lot, I am unable to find that they interfere unreasonably in the use by the applicants of their lot. However, if the cameras do indeed film the applicants' lot, that would amount to interference in the reasonable enjoyment by the applicants of their lot.

What orders should the Tribunal make?

33 I am satisfied that it is apparent from the material filed by the applicants that they were in effect seeking the removal of all but the door camera, even though the order was not expressed in that way, but rather was expressed as a request to direct the respondents to follow the earlier decision of the Tribunal.

34 I take into account that the installation of the cameras did not have the lawful consent of the owners corporation at the time of their installation. The door camera is not objected to, had the consent of the strata manager, and does not unreasonably interfere with the applicants' use of the common property or their lot. Two of the cameras would not be authorised by the February 2020 resolution, because they film common property, and their use unreasonably interferes with the applicants' use of the common property. Whilst I can make no finding as to what the fourth camera films, it was not installed with the owners corporation's consent.

35 I will therefore order the removal of the two cameras which film the common property, and the camera in the courtyard. If the respondents are able to obtain the consent of the owners corporation for that courtyard camera to remain, on

the terms of the February 2020 resolution (which would require that they provide evidence acceptable to the owners corporation that the camera films only their own lot), then the order in respect of that camera will be discharged.

Orders

- (1) On or before 30 November 2021, the respondents are, in a proper and workmanlike manner, to remove the two CCTV cameras which film the common property driveway, and the CCTV camera installed to film the courtyard (the courtyard CCTV camera), and are to provide evidence of compliance to the strata managing agent by that date.
- (2) If The Owners – Strata Plan No. 83029 is satisfied that the courtyard CCTV camera films only the respondents' lot, and on or before 16 November 2021 passes a special resolution to allow it to remain, then the order in respect of that camera is discharged upon the making of that resolution.

The image shows a handwritten signature in black ink, consisting of a large, stylized 'R' and 'J' intertwined. To the right of the signature is the official seal of the NSW Civil & Administrative Tribunal. The seal is circular with a double border. The outer border contains the text 'NSW CIVIL & ADMINISTRATIVE' at the top and 'TRIBUNAL' at the bottom, separated by two small stars. The inner circle features the coat of arms of New South Wales, which includes a shield with a kangaroo and a sheep, topped by a sunburst and a crown.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar

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