



Civil and Administrative Tribunal  
New South Wales

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Case Name: Lockrey v Rosewall

Medium Neutral Citation: [2022] NSWCATCD 27

Hearing Date(s): 17 February 2022

Date of Orders: 23 February 2022

Decision Date: 23 February 2022

Jurisdiction: Consumer and Commercial Division

Before: D Moujalli, Senior Member

Decision: The Tribunal orders that the Application is dismissed.

Catchwords: STRATA TITLES LAW — Strata schemes — Conduct at extraordinary general meeting — Order sought for removal of strata committee member from office – Order sought to give effect to agreement arising out of mediation session

Legislation Cited: Strata Schemes Management Act 2015 (NSW)

Cases Cited: Gershberg & Troyanovski v Owners Corporation SP 5768 [2011] NSWCTTT 411  
Linney v The Owners - Strata Plan No. 11669 [2021] NSWCATCD 123  
Vlastegui v Chan [2021] NSWCATCD 98

Texts Cited: Nil

Category: Principal judgment

Parties: Christopher Lockrey (Applicant)  
Jason Rosewall (Respondent)

Representation: Applicant (Self-represented)  
Respondent (Self-represented)

File Number(s): SC 21/49021

Publication Restriction: Nil

## REASONS FOR DECISION

### Introduction

- 1 On 30 November 2021 the applicant, Christopher Lockrey, lodged an application with the Tribunal which nominated Jason Rosewall as the respondent (the Application).
- 2 Both parties are lot owners in the strata scheme in respect of Strata Plan 47748. The strata scheme comprises of 20 lots. The respondent is also a member of the strata committee and the secretary of the owners corporation of SP 47748.
- 3 The Application seeks orders under the *Strata Schemes Management Act 2015* (NSW) (the SSMA). The specific orders sought are:
  - (1) an order under s 238 of the SSMA removing the respondent as a member of the strata committee; and
  - (2) an order or orders under s 230 of the SSMA to give effect to an agreement arising out of a mediation session between the parties.
- 4 The Application was listed for hearing on 17 February 2022.
- 5 At the hearing on 17 February 2022, both parties appeared and were self-represented. The hearing proceeded by telephone. At the hearing each party was given an opportunity to present his evidence, ask questions of the other party and make submissions. Both Mr Lockrey and Mr Rosewall did this in a respectful manner notwithstanding the differences of opinion between them, which is discussed further below. The Tribunal is grateful for their co-operation in the conduct of the hearing.

### Evidence

- 6 In determining the Application, the Tribunal has had regard to the following:
  - (1) The material filed by the applicant on 14 February 2022. This included a two page statement prepared by the applicant and also an earlier statement prepared by the applicant under the heading "Reasons for Application". The Reasons for Application was attached to the

Application. This material was marked Exhibit A1 at the hearing on 17 February 2022.

- (2) The matters stated by the applicant in the Application.
  - (3) The material filed by the respondent on 16 December 2022. This was marked Exhibit R1 at the hearing on 17 February 2022.
  - (4) The further material filed by the respondent on 24 January 2022. This was marked Exhibit R2 at the hearing on 17 February 2022.
  - (5) The oral evidence and submissions of the parties at the hearing on 17 February 2022.
- 7 The material relied upon by the respondent included written statements made by the other lot owners in the strata scheme. In total, the respondent relied upon statements from 12 of the other lot owners. When the evidence from the applicant and the respondent is added to this total, the Tribunal had available to it evidence from 14 out of the 20 lot owners in the strata scheme.
- 8 The findings made by the Tribunal on the basis of the above evidence is set out below.
- 9 Any reference to the lot owners other than the applicant and the respondent in these reasons has been done in such a way so that the specific lot owner is not personally identified. This has been done in deference to the privacy of the other lot owners who are not parties to the proceeding. It is not necessary to understand Tribunal's reasons for the lot owners who are not a party to the proceeding to be individually identified. The evidence was, however, presented to the Tribunal and served on the respondent in a form which individually identified the lot owners who provided statements.

### **Jurisdiction**

- 10 The applicant is a lot owner in the relevant strata scheme and therefore has standing as an "interested person" as defined by s 226 of the SSMA to make an application to the Tribunal under the SSMA. The respondent holds office as a member of the strata committee of the owners corporation.
- 11 Accordingly, the Tribunal has jurisdiction to consider the application under s 238 of the SSMA on the basis that the respondent was a strata committee member as of the date of the Tribunal hearing.

## The Applicable Law

### 12 Section 230 of the SSMA provides:

230 Agreements and arrangements arising from mediation sessions

(1) The Tribunal may make orders to give effect to any agreement or arrangement arising out of a mediation session.

(2) An order may be made whether or not the mediation was carried out in accordance with this Part or by a mediator within the meaning of this Part.

(3) Without limiting subsection (1), the Tribunal may make an order that gives effect to the terms of a written agreement signed during a mediation session by persons who were parties to the mediation.

### 13 Section 238 of the SSMA provides:

238 Orders relating to strata committee and officers

(1) The Tribunal may, on its own motion or on application by an interested person, make any of the following orders—

(a) an order removing a person from a strata committee,

(b) an order prohibiting a strata committee from determining a specified matter and requiring the matter to be determined by resolution of the owners corporation,

(c) an order removing one or more of the officers of an owners corporation from office and from the strata committee.

(2) Without limiting the grounds on which the Tribunal may order the removal from office of a person, the Tribunal may remove a person if it is satisfied that the person has—

(a) failed to comply with this Act or the regulations or the by-laws of the strata scheme, or

(b) failed to exercise due care and diligence, or engaged in serious misconduct, while holding the office.

### 14 In respect of an application for an order appointing a strata managing agent under s 237 of the SSMA, the Tribunal has previously observed that such an appointment is a serious measure that should not be taken lightly as it removes the democratic process established by the SSMA for an owners corporation to manage its strata scheme: *Velastegui v Chan* [2021] NSWCATCD 98 at [76]; see also *Gershberg & Troyanovski v Owners Corporation SP 5768* [2011] NSWCTTT 411 at [80].

### 15 It necessarily follows that the approach identified in *Velastegui v Chan* to an application for an order under s 237 should also be taken in respect of an application for an order removing a person from a strata committee under s

238 of the SSMA. Section 9 of the SSMA provides that the owners corporation for a strata scheme has the principal responsibility for the management of the scheme. The regime for self-management of strata schemes established by the SSMA involves the ability of an owners corporation to elect the members of its strata committee: see ss 29(1) and 30(4) of the SSMA. Compelling circumstances would need to be demonstrated to justify the intervention of the Tribunal to override the democratic wishes of the owners corporation by making an order under s 238 of the SSMA. The decisions of the Tribunal establish that such an order should only be made in the clearest of cases.

- 16 Consistently with the above approach, the Tribunal observed in *Linney v The Owners - Strata Plan No. 11669* [2021] NSWCATCD 123 at [94] that even if any of the matters set out in s 238(2) are established, “the applicant must **additionally** satisfy the Tribunal that the matters are of sufficient magnitude to justify exercising its discretion in favour of removing the strata committee member from office” [emphasis added].

### **Assessment of the Evidence and Findings of Fact**

- 17 The applicant contended (in his statement forming part of Ex A1) that the central issue for the Tribunal’s consideration is whether the respondent’s “position as a member of the strata committee continues to be viable following his threatening and aggressive actions at the EGM on 6 May [2021]”.
- 18 As a critical issue arising in the consideration of the Application, it is convenient to commence with an assessment of the evidence relating to events which occurred at the EGM on 6 May 2021.
- 19 As at 6 May 2021, the respondent was a member of the strata committee and the secretary of the owners corporation of SP 47748. He had served on the strata committee for about 8 years.
- 20 The meeting on 6 May 2021 was held between about 6 pm and 7pm. It was held in the respondent’s unit within the strata premises. There were approximately 12 lot owners present in addition to the strata manager. Both the applicant and respondent were present at the meeting.

- 21 The purpose of the meeting was to decide on a colour scheme for certain parts of the common property of the strata premises, including the guttering and downpipes which had recently been replaced.
- 22 It appears from the evidence that differing views were expressed before a final decision was reached. One lot owner who was present gave a statement which was in evidence before the Tribunal as part of the material presented by the respondent which said: "The meeting went on for quite a while, as trying to get consensus with that many people was always going to be tricky". Another lot owner describes the discussion as "going around in circles". Another lot owner who was present during the meeting states that there was a "lively discussion about which colours people preferred". The evidence suggests that some frustration or impatience may have been experienced by some of the persons present at the meeting with the protracted nature of the discussions at the meeting. However, when the evidence as a whole is assessed, it does not appear that the meeting had been acrimonious or unpleasant prior to an incident towards the end of the meeting involving the applicant and respondent (which is addressed further below).
- 23 The applicant states that at the meeting the respondent was "pacing and using foul language". The Tribunal does not accept this to have been the case. There is no support for it in any of the evidence from the other persons who attended the meeting.
- 24 Before the meeting ended one of the lot owners decided to leave the meeting. So as not to identify her personally, and with no disrespect intended, she will be referred to as an elderly woman in these reasons. She has provided a statement to the Tribunal. As her departure led to an incident between the applicant and the respondent, it is appropriate to set out most her statement. She states:

I live next door to [the respondent]. He has been my neighbour for approximately 7-8 years. I am in my late seventies and found [the respondent] to be a very kind & helpful neighbour whenever I have needed help.

In regards to the incident on 6 May 2021, I normally do not go to meetings as I do not handle confrontations which can happen in meetings, however this time I decided to go as we were going to

choose colours for the painting of our houses. [The applicant] tried to dominate the meeting from the start.

I was sitting next to [one of the lot owners] and I was starting to get very agitated, I whispered to [her] that I could not handle it any longer, so I got up and as I was going to the door, the [respondent] touched me on the arm and asked if I was okay. I just said no and left. After the meeting [the respondent] came over to see that I was alright.

- 25 The above version of events is corroborated by the other lot owners (except the applicant) who were present at the meeting and have provided a statement. For example, another lot owner states:

Half way through the meeting during discussions regarding the external colour schemes [the elderly woman] left the meeting when she felt stressed by the discussion going around in circles and when the group were having difficulties in coming to a compromise re colours. Immediately after [her] departure [the applicant accused the respondent] of bullying [the elderly woman]. [The respondent] took offence to this and told [the applicant] that he though it wasn't right to make such accusations to someone in their own home.

- 26 Another lot owner who was present at the meeting describes what happened in the following way:

After approximately 1 hour, the elderly owner [of one of the units], left the meeting as the conflict was getting too much for her. After another 5 or so minutes [the applicant] ... announced in a loud voice that [the elderly woman] had probably left because [the respondent] has bullied her. In the heat of the moment [the respondent approached the applicant] where he was sitting/standing and told him that he'd had enough and that his behaviour not only at the meeting but in [the respondent's] house was not acceptable and he wasn't going to tolerate it any further. Both men were held back by the owners and the meeting resumed. After about a further 10 mins the meeting was declared closed. [The applicant] left immediately without another word and the other owners left after a few minutes of packing up.

- 27 There is no dispute that after the elderly woman left the meeting on 6 May 2021, the applicant accused the respondent at the meeting that he had bullied the elderly woman into leaving the meeting.
- 28 It is not possible for the Tribunal to assess, on the basis of the evidence available to it, whether the applicant genuinely believed that the respondent had bullied the elderly woman when he made the accusation at the meeting. The Tribunal does, however, find that even if the applicant genuinely believed that the respondent had bullied the elderly woman, the applicant was mistaken in this respect. The elderly woman's statement makes clear that she did not leave the meeting because of any conduct on the part of the respondent. The

Tribunal also finds that the applicant did not have any reasonable basis for accusing the respondent of bullying the elderly woman. The applicant did not make any enquiries, either of the elderly woman or other persons present at the meeting, as to why the elderly woman had left before he made his accusation.

- 29 After having made his accusation of the respondent at the meeting, the applicant states in the Reasons for Application:

At this point [the respondent] became very aggressive and threatening. He raised his fists and started walking aggressively towards me saying:

“Right I have had enough, I am going to fight you right here.”

“I am not a bully, you can’t call me a bully.”

- 30 The Tribunal accepts that the respondent said words to the effect of “*I am not a bully, you can’t call me a bully.*” The respondent said at the hearing that he was not prepared to “cop” an accusation of that nature. The Tribunal does not, however, accept the balance of the applicant’s evidence as to the respondent’s reaction to be being accused of having bullied an elderly woman.
- 31 None of the other lot owners who have provided statements indicate that the respondent displayed physical aggression or the threat of physical aggression at the meeting. If there was any display of aggression at the meeting, it would be expected that someone at the meeting other than the applicant would have noticed this. There was certainly no physical altercation. The respondent denies that he raised his fist and the Tribunal accepts his evidence.
- 32 The evidence indicates that the respondent was forceful in his verbal denial that he had bullied an elderly woman. The respondent accepts that he became “verbally aggressive”. At the hearing the respondent was asked to explain what he meant by this. He clarified that he meant that he had spoken his words with some force. However, viewed objectively and in the circumstances of having been wrongly accused of bullying an elderly woman, the respondent’s conduct cannot be described as aggressive and threatening. It does not even appear that the applicant actually felt threatened as he was content to remain at the meeting until it was concluded.

- 33 On 21 June 2021, the applicant and the respondent participated in a telephone assisted mediation conducted by the Community Justice Centres. At the mediation, they agreed to, amongst other things, any communications between them being respectful. At the hearing, both parties agreed that the agreement reached at the mediation had been adhered to.
- 34 At the AGM on 23 November 2021, the respondent was re-elected to the strata committee. Of the candidates who stood for election, he received the highest number of votes.
- 35 It is also appropriate to record some of the comments made by the lot owners who have provided statements about the respondent's character. As mentioned above, 12 other lot owners have provided statements. It is clear from these statements that the respondent is a highly valued and respected member of the strata committee, the local strata community and the broader community.
- 36 One of the lot owners states:
- [The respondent] makes himself available to meet tradespeople to liaise for quotes and works to be carried out. He communicates effectively to owners and residents of any relevant matters and is often the "go to person" for any maintenance or other issues within our strata complex.
- [The respondent] has a genuine concern and empathy for the elderly and vulnerable. I have witnessed this on several occasions. This includes but is not limited to, his concerns for them raising funds on a pensioner income, for special levies and the social restrictions placed on them, being unable to attend strata meetings in person due to Covid rules. He helps everyone in every possible way that he can and has a genuine concern for their wellbeing. This is demonstrated through his willingness to undertake extra tasks, such as taking out rubbish bins for those who are unable to do so for themselves or just providing a listening ear and a cheerful word of encouragement.
- 37 Another lot owner states:
- [The respondent] is always there to lend a hand to his fellow neighbours. [The respondent] has taken our children to school if we have been unable to, rescued our dog when he escaped our backyard during storms and has ensured building works scheduled during our daughter's online HSC trials, due to Covid 19, were managed for our villa, so they would have minimal effect of her exams.
- 38 All of the lot owners (other than the applicant) who provided a statement to the Tribunal made comments in a similar vein to those set out above.

## Consideration and Decision

*Whether there should be an order to disqualify the respondent from holding office under s 238 of the SSMA*

- 39 It appears from the way that the applicant presented his case that he seeks an order for the respondent to be removed from the strata committee on the basis that the respondent has engaged in serious misconduct while holding office, being one of the grounds identified in s 238(2)(b). The alleged misconduct is said to be that which occurred at the meeting on 6 May 2021 which the applicant characterises as “threatening and aggressive”. At the hearing, the applicant also described the respondent’s conduct as “violent”.
- 40 The Tribunal does not accept that the respondent’s conduct at the meeting can be described fairly as “threatening and aggressive”, yet alone violent. The Tribunal has the benefit of evidence in the form of statements from a number of persons who were present at the meeting. Apart from the applicant’s evidence, none of the evidence from the other persons at the meeting supports the contention that the respondent behaved in a threatening or aggressive manner at the meeting.
- 41 The evidence establishes that at the meeting, the applicant made a serious accusation against the respondent, namely, that he had bullied an elderly woman. The accusation was wrongly made as recorded in the Tribunal’s factual findings above. The respondent took offence at having been wrongly accused of such a serious matter. The Tribunal has no doubt that when the respondent spoke his words denying the accusation of bullying, he did so in a tone which clearly conveyed his indignation at having been falsely accused of bullying an elderly woman. Both the applicant and respondent were then encouraged by the other persons present to calm down and to resume with the conduct of the meeting which is what happened. The meeting then proceeded to its conclusion without any further incident.
- 42 Viewed objectively, the Tribunal does not consider the respondent’s reaction to being falsely accused of bullying an elderly woman to have been unreasonable or disproportionate in the circumstances. True it is that the respondent uttered a few words in anger. However, the circumstances do not justify a finding that the respondent’s conduct was misconduct, yet alone serious misconduct. Any

display of upset or indignation on his part in response to a false accusation appears to have been fleeting. After he denied the accusation of bullying, he resumed his duties in relation to the conduct of the meeting.

- 43 The applicant states (in his statement forming part of Ex A1) that every member of an owners corporation has a right to contribute to a discussion at a meeting and should be able to express a differing view without someone becoming aggressive and causing them harm. While the Tribunal agrees with this statement as a matter of principle, it cannot, however, see the relevance of it to the present circumstances. The respondent did not cause harm and was not at risk of causing any harm to the applicant at the meeting on 6 May 2021. In any event, the words spoken in anger by the respondent at the meeting were in response to being wrongly accused of bullying an elderly woman and not to any contribution to the discussion by the applicant.
- 44 In the Application, the applicant states “it is not possible to be sure that other members will now avoid raising issues/concerns for their safety”. The Tribunal does not consider that any concerns of this nature are justified. The evidence from the other lot owners indicates the high regard in which the respondent is held by the other members of the owners corporation. It also indicates his commitment to the proper and efficient functioning of the strata scheme and the wellbeing of the members of the owners corporation. There is no basis in the evidence for thinking that any members will be reluctant to raise with the respondent any issues or objections which they wish to bring to the attention of the strata committee.
- 45 It does not appear to the Tribunal that any other ground for the removal of the respondent from the strata committee other than the allegation of serious misconduct arises for consideration. The evidence of all the members of the owners corporation who have provided statements other than the applicant indicates that the respondent performs his duties and functions as a member of the strata committee and the secretary of the owners corporation in a highly committed and conscientious manner.

46 For the above reasons, the Tribunal will dismiss the application that the respondent should be removed from office as a member of the strata committee under s 238 of the SSMA.

*Whether there should be an order giving effect to an agreement arising out of a mediation session under s 230 of the SSMA*

47 Whatever the scope of the power conferred on the Tribunal by s 230, it is a discretionary power.

48 The applicant confirmed at the hearing that the respondent had complied with all the terms of their agreement arising from the mediation held in June 2021. The respondent confirmed that he intended to continue complying the agreement. The Tribunal is therefore not persuaded that there is any utility in exercising its discretion pursuant to s 230.

49 An additional reason for the Tribunal not exercising its discretion under s 230 is that there would be considerable difficulty in formulating the matters agreed upon by the parties at the mediation with the level of certainty and precision that would be necessary for orders of the Tribunal. For example, it is not readily apparent how an agreed term to be respectful in communications with each other can be formulated with sufficient precision and certainty as an order so as to remove any ambiguity as to whether such an order had been breached.

50 It appeared to the Tribunal from the hearing on 17 February 2022 that both parties are genuinely committed to adhering to the terms and spirit of their agreement. They have already demonstrated such commitment by the adherence to the agreement since June 2021. The Tribunal considers it preferable to rely on the continuing good will of the parties in this respect rather than to seek to formulate orders to give effect to the agreement. The latter course may well pose the risk of sowing the seeds for further disputation between the parties in relation to the formulation and interpretation of any orders by the Tribunal.

## **Conclusion**

51 For the above reasons, the Tribunal orders that the Application is dismissed.

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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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