



Civil and Administrative Tribunal  
New South Wales

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Case Name: Stocker v The Owners – Strata Plan No. 6622

Medium Neutral Citation: [2022] NSWCATCD 31

Hearing Date(s): 24 February 2022

Date of Orders: 25 March 2022

Decision Date: 25 March 2022

Jurisdiction: Consumer and Commercial Division

Before: K Ross, Senior Member

Decision: The application is dismissed.

Catchwords: LAND LAW — Strata title — Alteration of common property — Minor renovations — Removal of committee member

Legislation Cited: Strata Schemes Management Act 2015 (NSW)  
Civil and Administrative Tribunal Act 2013 (NSW)  
Civil and Administrative Tribunal Rules 2014 (NSW)

Cases Cited: Endre v The Owners- Strata Plan No 17771  
NSWCATAP 93

Texts Cited: Nil

Category: Principal judgment

Parties: Wayne William Stocker (Applicant)  
The Owners- Strata Plan No. 6622 (First Respondent)  
Peter Hartley (Second Respondent)

Representation: Counsel:  
A D Justice

Solicitors:  
Jackson Solicitors (First Respondent)

Trisley Lawyers (Second Respondent)

File Number(s): SC 21/25032

Publication Restriction: Nil

## **REASONS FOR DECISION**

### **Application**

- 1 The applicant is the owner of 3 lots in the strata scheme SP 6622 known as Belmont Towers. The respondents to the application are the Owners – Strata Plan No. 6622 (the Owners Corporation) and Peter Hartley, who is the owner of lot 7 in the strata scheme and an elected member of the strata committee.
- 2 Mr Stocker seeks the following orders:
  - (1) An order under s 132 of the Strata Schemes Management Act 2015 (the SSMA) to have Mr Hartley return the common property to the condition it was in before Mr Hartley removed a section of the common property wall to install a bookcase
  - (2) An order under s 24 of the SSMA that the retrospective approval of the bookcase given by the Owners Corporation on 25 February 2021 is invalid, on the basis that the motion was carried as an ordinary resolution in circumstances where a special resolution was required, and
  - (3) An order under s 238 of the SSMA removing Mr Hartley from the strata committee.
- 3 The respondents each oppose the orders sought.

### **The evidence and submissions**

- 4 At the hearing Mr Stocker relied upon:
  - The application and documents attached to it
  - A submission and attached documents received on 17 June 2021
  - A submission and attached documents received on 8 September 2021
  - A submission dated 31 January 2022 and attached documents.
- 5 The Owners Corporation relied upon a submission and a folder of documents received by the Tribunal on 21 February 2022. These documents were not supplied in accordance with the Tribunal's directions. Mr Stocker said that he could respond to them and did not seek that they be excluded, nor that the matter be adjourned. The Tribunal admitted the documents on that basis.

### *Submissions received after the hearing*

- 6 After the hearing Mr Stocker wrote two letters to the Tribunal. Whilst I have read both letters, I have not taken them into account in making my decision. The matters raised in the first letter were canvassed at the hearing. The second letter deals with a meeting on 3 March 2022.
- 7 It would not be procedurally fair for me to take these letters into account without giving the respondents an opportunity to respond to them. I am not satisfied that it is in the interest of the Tribunal's guiding principle for the matter to be delayed. I accordingly have not taken either letter into consideration.

### **The facts in relation to the bookcase**

- 8 There is no dispute that in about 2011, Mr Hartley removed bricks from the common property wall in lot 7 and installed a bookcase in the common property void between his lot and the adjoining lot owned by Mr and Mrs Villa. He did not seek consent from the Owners Corporation before doing so. Similar work was also carried out by Mr Wiltshire, who was at that time the owner of lot 15, but that lot has been sold by Mr Wiltshire and Mr Stocker does not seek any orders in respect of it.
- 9 Mr Hartley gave evidence that he did not know that consent from the Owners Corporation for the work was required.
- 10 When Mr Stocker began to raise concerns about the issue, Mr Hartley engaged Pinnacle Building Consultancy Pty Ltd to provide a building report. The report concluded that the removal of the bricks and installation of the bookcase had not affected the structural integrity of the wall. However, it also noted that it may have compromised the fire separating walls. Mr Hartley then commissioned a report from Credwell Consulting Pty Ltd and implemented their recommendations.
- 11 On 25 February 2021 the Owners Corporation resolved by ordinary resolution to give retrospective approval for the work.

### **The application under s 132 of the SSMA (to reinstate the common property)**

- 12 Mr Stocker seeks an order under s 132 of the SSMA which provides as follows:

132 RECTIFICATION WHERE WORK DONE BY OWNER

(1) The Tribunal may, on application by an owners corporation for a strata scheme, make either of the following orders if the Tribunal is satisfied that work carried out by or for an owner or occupier on any part of the parcel of the scheme has caused damage to common property or another lot--

(a) an order that the owner or occupier performs the work or takes other steps as specified in the order to repair the damage,

(b) an order that the owner or occupier pay to the owners corporation or the owner of the lot a specified amount for the cost of repairs of the damage and any associated costs, including insurance and legal costs.

(2) An amount payable by an owner or occupier to an owners corporation under this section is payable, and may be recovered, under this Act as if it were an amount of unpaid contributions.

**Note :** Section 86 provides for the recovery of unpaid contributions.

- 13 Mr Stocker does not have standing to seek the order under s 132. For that reason, the application cannot be entertained, and the application must be dismissed. In addition, even if the application could be entertained, it has not been brought within time (see Rule 23 of the Civil and Administrative Tribunal Rules 2014 which requires that unless the Tribunal extends time under s 41 of the Civil and Administrative Tribunal Act 2013, the application must be brought within 28 days from the day on which the applicant became entitled to bring the application.
- 14 It should also be noted that the Tribunal has a discretion as to whether to make an order under s 132. Even if the application was brought by the Owners Corporation, the Tribunal would need to consider all the circumstances before determining whether to make an order under s 132.

### **The application for an order that the retrospective approval given is invalid**

- 15 Mr Stocker argues that the resolution of the Owners Corporation on 25 February 2021 is invalid because it was passed by ordinary resolution and not a special resolution. He seemed to argue that all changes to common property require a special resolution. That submission is not correct. The correct interpretation is set out in *Endre v The Owners- Strata Plan No 17771* NSWCATAP 93:

40. Alterations to common property can, generally, only be made with the approval of an owners corporation. Part 6 Division 1 of the Management Act, particularly ss 108-110, regulates the type of works for which approval is required and whether such approval must be by way of special resolution and/or requires consent. Sections 109 (Cosmetic work by owners – which permits work without consent) and 110 (Minor renovations by owners – which

permits a work with consent given by ordinary resolution) in the Management Act are new and additional provisions to those found in the 1996 Act. They ameliorate the strict requirement for a special resolution found in s 108.

41. The definitions of permitted work in ss 109 and 110 are inclusive, there being the possibility of interpretive differences concerning what work is permitted without seeking approval, what work requires an ordinary resolution and what work requires a special resolution.

42. The powers of an owners corporation to approve work to common property must also be read in the context of the power of an owners corporation to make a common property rights by-law (including the power to grant special or exclusive use rights to particular Lot owners) under Part 7 Division 3 of the Management Act and the power of the Tribunal to review any unreasonable refusal as provided in s 149 of the Management Act.

43. Taken together, these provisions enable the approval of work and/or the granting to a Lot owner of exclusive use rights to common property, including on terms requiring the benefited lot owner to repair and maintain the common property to which the right relates. In respect of the granting of exclusive use by-laws, under s 149(2) (if the by-law has been unreasonably refused by an owners corporation) the Tribunal may approve the by-law. However the Tribunal is required to have regard to:

(1) the interests of all owners in the use and enjoyment of their lots and common property; and

(2) the rights and reasonable expectations of any owner deriving or anticipating a benefit under a common property rights by-law.

44. It seems clear from the above that the purpose of the powers given to an owners corporation (and the Tribunal in a permitted review of any refusal) is to enable the grant of rights over common property to individual Lot owners and to permit such Lot owners to carry out minor renovation or alterations or repairs. The power to do so is despite other Lot owners having an interest in the common property as tenants in common. That is, individual rights to object might be overridden, even if there is a loss of amenity suffered by an objector.

- 16 The issue then for determination is whether the removal of the bricks, and installation of the sound insulation, fire rated panels and bookcase is cosmetic work under s 109 of the SSMA, which does not require consent, or is a minor renovation as defined by s 110 of the SSMA which requires consent by way of ordinary resolution. If it is neither of these things, it will require a special resolution.
- 17 The work involved removal of a number of bricks, installation of fire rated panels and sound insulation, and installation of the bookcase. It resulted in the bookcase occupying an area of common property within the void.
- 18 The respondents submitted that it involved the reconfiguration of a wall, and thus required only an ordinary resolution under s 110 of the SSMA.

- 19 I am satisfied that the work cannot be regarded as cosmetic work under s 109 because the bookcase is not a built-in wardrobe. Even if it is regarded as a built-in wardrobe, there has been a reconfiguring of the wall, and work involving reconfiguration of a wall is excluded from the definition of cosmetic work.
- 20 I am however satisfied that the work is a minor renovation as defined by s 110. It involves the reconfiguration of the wall. It is not otherwise excluded from the definition of minor renovation because none of the exclusions in s 110 apply. A special resolution authorising the work was not required.

**Should Mr Hartley be removed from the strata committee?**

- 21 The Tribunal may make an order removing a person from a strata committee. Section 238 (2) provides:
- 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.
- 22 Mr Stocker argues that Mr Hartley did not seek consent before carrying out the work and for this reason he ought to be removed from the committee. He also alleges that Mr Hartley has “undue influence” on other committee members.
- 23 I am not satisfied that I should exercise my discretion to remove Mr Hartley from the committee. Whilst I accept that he did the work without obtaining the consent of the Owners Corporation, he has since that time taken steps to address the concerns raised by Mr Stocker. He commissioned a building report and a fire safety report and he undertook the work recommended. He put the matter to a meeting to obtain retrospective consent. There is no evidence of any failure to exercise due care or diligence, nor any evidence of serious misconduct.
- 24 I do not accept that because a committee member indicates that she does not need to see information if Mr Hartley has seen it is evidence of undue influence.
- 25 For these reasons I decline to make the order sought.

26 The application is dismissed.

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The image shows a handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right. Below the signature is a circular official seal. The seal features the text "NSW CIVIL & ADMINISTRATIVE TRIBUNAL" around its perimeter. In the center of the seal is the coat of arms of New South Wales, which includes a shield with a kangaroo and a sheep, topped by a crown and a crest with a star.

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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