



Civil and Administrative Tribunal
New South Wales

Case Name: Pidgeon v Nagle

Medium Neutral Citation: [2022] NSWCATCD 61

Hearing Date(s): 03 May 2022

Date of Orders: 04 May 2022 [amended 18 May 2022]

Decision Date: 4 May 2022

Jurisdiction: Consumer and Commercial Division

Before: M Harrowell, Deputy President

Decision: The Notice of Order issued on 4 May 2022 is amended under Section 63 of the Civil and Administrative Tribunal Act 2013, and should read as follows:
(1) Pursuant to s 237(1) of the Strata Schemes Management Act 2015, 113 Pty Ltd trading as Chapman Property (Agent) is appointed as a strata manager agent for a period of 1 year from the date of this order to exercise all functions of owners corporation of Strata Plan No. 80285.
(2) The Agent has and may exercise all the functions set out in s 237(2)(a)-(c) of the Strata Schemes Management Act 2015.

Catchwords: LAND LAW — Strata title — Strata managing agent — appointment under s 237 of the Strata Schemes Management Act 2015 (NSW) – dispute regarding which strata managing agent should be appointed – factors relevant to determining whether a particular strata managing agent should be appointed

Legislation Cited: Strata Schemes Management Act 2015 (NSW)
Property and Stock Agents Act 2002 (NSW)

Cases Cited: Nil

Texts Cited: Nil

Category: Principal judgment

Parties: Pamela Alice Pidgeon (First Applicant)
Guy Brandon Pidgeon (Second Applicant)
Belinda Nagle (First Respondent)
Michael Johnson (Second Respondent)
Paula Johnson (Third Respondent)
The Owners – Strata Plan No. 80285 (Fourth Respondent)

Representation: First Applicant(Self-represented)
Second Applicant (Self-represented)
First Respondent (Self-represented)
Second Respondent (Self-represented)
Third Respondent (Self-represented)

File Number(s): SC 22/07344

Publication Restriction: Nil

REASONS FOR DECISION

Introduction

- 1 These proceedings relate to Strata Plan No. 80285. The strata scheme is a three lot scheme. The applicants are the owners of Lot 3 in that strata scheme. The strata scheme is located in Rutherford, north-west of Newcastle near Maitland.
- 2 The first respondent is the owner of Lot 3 and the second and third respondents are the owner of Lot 2. The owners corporation is also a party to the proceedings.
- 3 The applicants had filed application SC 22/07344 on 24 February 2022. That application sought the appointment of a compulsory strata managing agent pursuant to s 237 of the Strata Schemes Management Act 2015 (NSW) (SSMA), in part based on the failure of the owners corporation to hold an annual general meeting. In addition, the applicant sought the imposition of a civil penalty under s 247A on the basis that there had been non-compliance with orders made by the Tribunal on 12 January 2022 in application SC 21/37571.

- 4 The proceedings were initially listed for directions on 23 March 2022. At that time, the application was amended to remove the application for the imposition of a civil penalty.
- 5 On that day, orders were made by consent to appoint a strata manager under s 237 of the SSMA. The appointment was for a period of 2 years and the order was made on condition that the proposed agent, Lake Group Property Services Pty Ltd trading as Lake Group Strata provided a form of consent complying with s 237(4)(b) of the SSMA.
- 6 Lake Group Strata subsequently declined to provide the relevant consent. Consequently directions were made to permit the parties to nominate an alternative agent to be appointed under s 237. The application was then listed on 3 May 2022 for the purpose of determining who should be appointed as the managing agent

Evidence

- 7 The applicants propose the appointment of 113 Pty Ltd trading as Chapman Property (Chapman Property), a strata management company located in Newcastle.
- 8 Chapman Property provided the following information:
 - (1) details of their corporate licence and a licence of one of the principals, Mr Colin Chapman issued under the Property and Stock Agents Act 2002 (NSW);
 - (2) a strata managing agency agreement indicating Chapman Property would undertake the work for a base fee of \$1000 plus rebates, discounts and commissions together with additional services at the rates specified in the written agreement.
- 9 No budget of the likely total agent's costs was provided with the letter from Chapman Property confirming they would consent to appointment under s 237 of the SSMA. There was no estimate of the likely levies for providing services such as gardening and the like provided by the agent.
- 10 However, during the hearing on 3 May 2022 the strata department manager for Chapman Properties, Jody Sams, was contacted by the Tribunal and asked to provide further information concerning the proposed appointment. Ms Sams indicated to the Tribunal:

- (1) her company was experienced as a managing agent, including appointments under s 237 of the SSMA;
 - (2) she provided further information concerning charges for the services of the agent and estimated that the total fees her company might charge for providing services would be approximately \$2000-\$3000 per annum, \$3000 being the outside range;
 - (3) there would be no additional insurance costs, on the assumption that a relevant policy of insurance was in place for the owners corporation; and
 - (4) services provided by third parties, including gardening, termite inspections and any expert assistance in preparing a 10 year management plan would be subject to obtaining quotations.
- 11 In providing this information, Ms Sams indicated that her company had not inspected the strata scheme prior to providing the fee estimate.
- 12 The respondents, Ms Nagle and the Johnsons, propose the appointment of Townhouse Strata Pty Ltd. This company is apparently owned and operated by Mr Alan Hunter, effectively as a sole trader. The company is located at Caves Beach, south of Newcastle.
- 13 Townhouse Strata provided the following information:
 - (1) details of the corporate licence and a licence of Mr Hunter issued under the Property and Stock Agents Act 2002 (NSW);
 - (2) a strata managing agency agreement indicating Chapman Property would undertake the work for a base fee of ten thousand dollars plus rebates, discounts and commissions together with additional services at the rates specified in a written agreement.
- 14 The covering letter indicated that the annual charges would be \$2408 per annum. This was made up of an estimated management fee of \$2150 and disbursements of \$258.
- 15 In addition, and unlike Chapman Property, Townhouse Strata also provided a document entitled "Strata Levy Budget for SP 80285". This document indicated that additional fees would be charged by the agent (called Schedule B fees) of \$3700 amounting to 20 hours of work for other matters associated with managing the scheme. In addition the budget included amounts reinsurance (\$2800) termite inspection (\$800) gardening (\$1000), backflow check (\$250) and bylaw review and update (\$1070). The budget estimated the required administrative fund levies at \$12,028. In addition the budget allowed for an

amount of capital works of \$2000, the budget estimating for the year 2022-23 total levies of \$14,028 or quarterly levies of \$1169 per unit.

- 16 The Tribunal also attempted to call Mr Hunter to obtain further information. However, he was not available on either his landline or mobile phone number.

Submissions

- 17 After receiving further information from Ms Sams, the parties were afforded an opportunity to make submissions concerning who the Tribunal should appoint. The Tribunal offered the parties an opportunity to adjourn the proceedings if they wish to proceed by way of formal evidence rather than the informal enquiries which the Tribunal had made. The parties agreed that a further hearing would not be necessary and that the Tribunal should make a determination based on the information provided and the enquiries made.
- 18 In making submissions, all parties agreed that the term of any appointment should be reduced from two years to one year. The Tribunal will make that order by consent, the Tribunal being satisfied that an appointment for one year will be sufficient to undertake a review of the strata scheme, including putting in place an appropriate 10 year management plan, reviewing existing maintenance activities and raising levies for necessary works.
- 19 The applicants submitted that Chapman Property should be appointed. Their submissions can be summarised shortly:
- (1) the fees proposed to be charged by Chapman Property were less than Townhouse Strata;
 - (2) Chapman Property was not a one-man operation and was located in Newcastle, closer to Rutherford;
 - (3) Ms Sams indicated that there were no insurance issues likely to lead to increased costs;
 - (4) the fee structure of Townhouse Strata was likely to lead to increased costs to all lot owners.
- 20 The respondents submissions can be summarised as follows:
- (1) While more expensive than Chapman Property, Townhouse Strata had conducted an inspection of the strata scheme.
 - (2) Townhouse Strata had provided a budget not only for their fees but also for likely levies;

- (3) some of the lot owners have low incomes and the proposed budget provided some certainty concerning the amounts which might be payable as quarterly levies;
 - (4) Mr Hunter had indicated to the Johnsons that he would attend the site to provide services and that his fees would be reduced if it various services were not required.
- 21 In making these submissions, the respondents referred to other discussions with Mr Hunter concerning his reasons for leaving larger agencies. They also mentioned Mr Hunter had been working in the industry for the last 30 years and that they felt he could bring a fairer outlook and assist the owners in working together.

Applicable principles appointing an agent

- 22 The appointment of a strata managing agent under s 237 of the SSMA involves giving to that agent full control over the relevant strata scheme and that the agent would be expected to review the operations of the strata scheme, put in place appropriate management processes and plans for the repair and maintenance of common property and relevant infrastructure and raise levies necessary to secure the proper functioning of the strata scheme.
- 23 In making an appointment, relevant considerations of the Tribunal include:
- (1) That consent is provided by the proposed agent and holds the requisite licence as required by s 237(4) of the SSMA;
 - (2) That the agent has the appropriate qualifications to perform the role of the administrator of the strata scheme and is able to exercise the powers granted in a manner that benefits all lot owners in the scheme and in accordance with the SSMA;
 - (3) Whether the agent has any conflict of interest or previous association with the strata scheme that makes their appointment inappropriate in the circumstances;
 - (4) Whether the agent has experience in acting as a compulsory managing agent, particularly in relation to addressing the circumstances giving rise to the appointment under s 237, namely:
 - (a) any management issues arising from the strata scheme not functioning or not functioning satisfactorily;
 - (b) any failure of the owners corporation to comply with a requirement imposed on it by an order made under the SSMA;
 - (c) any failure of the owners corporation to perform one or more of its duties; or

- (d) the owners corporation owing a judgement debt which has not been paid
 - (5) The proposed fee structure and the reasonableness of any fees;
 - (6) Whether there are any other circumstances that make the appointment of the agent inappropriate.
- 24 Where more than one agent is proposed, the Tribunal may require further nominations or may make a decision to select an agent from the list provided. The selection between possible appointees involves a consideration of the factors above and a consideration of the interests of all lot owners that might be effected by the choice made. Ultimately, the Tribunal must be satisfied that the person appointed will be able to administer the strata scheme in a manner that addresses the reasons for appointment and facilitates the implementation of management processes necessary to correct any omissions or dysfunctionality of the strata scheme and return management to the lot owners at the conclusion of any period of appointment

Appointment in the present case

- 25 In the present case both proposed agents appear to have the qualifications necessary to undertake the role of a strata managing agent appointed under s 237 of the SSMA. Both agents have consented to the appointment and have the requisite licence as required by s 237(4).
- 26 Matters favouring the appointment of Chapman Property is their proximity to the strata scheme and the lower fees, many of which are fixed for identified activities. Also favouring the appointment is that this organisation has a number of staff who can provide services, rather than being dependent upon a single person.
- 27 Matters favouring the appointment of Townhouse Strata is that Mr Hunter has attended the property, conducted a preliminary review of what needs to be done and provided a budget estimate to the Tribunal and to the parties, so that likely quarterly fees are known. In addition, two of the three lot owners support this appointment.
- 28 While submissions were made concerning the need for Lot owners to work together, and that the disagreement concerning the appointment of the agent was yet another example of friction between the lot owners, there is no material

before the Tribunal to suggest that one agent or the other might better be able to manage the strata scheme in a way that facilitated a level of mutual cooperation between the lot owners moving forward.

- 29 While the preparation of a budget by Townhouse Strata indicated a level of commitment and preliminary work by this proposed agent, it would seem on the limited information available that there will be a need for further work, including the preparation of a 10 year management plan.
- 30 Submissions were made about the financial capacity of various lot owners to meet their obligations to pay levies in light of their available income. This factor becomes relevant in making an order which is likely to minimise the cost to the parties of the appointed strata managing agent, as opposed to cost to repair and maintain common property and other recurring operational cost and capital works costs.
- 31 For costs other than the fees of the appointed strata managing agent, there is no reason why the Tribunal should not assume necessary services such as gardening, termite inspection etc. cannot be procured by either agent at about the same cost.
- 32 In the absence of any evidence to suggest that one agent or the other is more qualified or suitable to be appointed to the role, and balancing the interests of all lot owners, in the present circumstances it seems to me there is a relatively significant cost differential between the two agents.
- 33 As I indicated above, the information provided Ms Sams from Chapman Property suggests that the agent's fees from that company will be approximately \$2000, with a high (but unlikely) range up to \$3000. On the other hand, the fees for Townhouse Strata are estimated at \$6850 (being a management fee of \$2150 and Schedule B fees of \$3700). The budget also suggest an additional \$1070 for a "Bylaw Review and update" – presumably proposed to be done by Townhouse Strata.
- 34 In these circumstances I am satisfied that Chapman Property should be appointed as the strata managing agent under s 237 of the SSMA for a period of 12 months and I will make that order.

Orders:

- 35 Pursuant to s 237(1) of the Strata Schemes Management Act 2015, 113 Pty Ltd trading as Chapman Property (Agent) is appointed as a strata manager under s 237 of the Strata Schemes Management Act 2015 for a period of 1 year from the date of this order to exercise all functions of owners corporation of Strata Plan No. **80585**.
- 36 The Agent has and may exercise all the functions set out in s 237(2)(a)-(c) of the Strata Schemes Management Act 2015.



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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