



Civil and Administrative Tribunal
New South Wales

Case Name: Abraham v The Owners Strata Plan No 61419

Medium Neutral Citation: [2023] NSWCATCD 119

Hearing Date(s): 07 June 2023

Date of Orders: 25 September 2023

Decision Date: 25 September 2023

Jurisdiction: Consumer and Commercial Division

Before: B Koch, General Member

Decision: The application is dismissed.

Catchwords: LAND LAW – Strata title – owners corporation –
Accounts and records of owners corporation

PRACTICE AND PROCEDURE – Renewal of
proceedings – Sch 4 cl 8 to Civil and Administrative
Tribunal Act 2013

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

Cases Cited: Abraham v The Owners Strata Plan No 61419 [2021]
NSWCATCD 7
Blessed Constructions Pty Ltd v Vasudevan [2018]
NSWCATAP 98
Jackson v NSW Land and Housing Corporation [2014]
NSWCATAP 22
Long v Metromix Pty Ltd [2019] NSWCATAP 198
Madic Construction Pty Ltd v Noble [2023] NSWCATAP
130
Mania v NSW Land and Housing Corporation [2022]
NSWCATAP 376
Sunaust Properties Pty Ltd t/as Central Sydney Realty
v The Owners – Strata Plan No 64807 [2023] NSWCA

188

Texts Cited: Nil

Category: Principal judgment

Parties: Ellen Marie Abraham (Applicant)
The Owners Strata Plan No. 61419 (Respondent)

Representation: Mr G Sisson (Applicant)
Dr A Tankel and Dr N Abraham (Respondent)

File Number(s): SC 23/06086

Publication Restriction: Nil

REASONS FOR DECISION

- 1 On 8 February 2023, the applicant lodged a renewal of proceedings application in respect of an order made on 17 December 2021 in SC 21/34322 between the same parties.
- 2 The applicant is a lot owner in SP 61419, a strata scheme known as Nautilus at Sapphire Beach, north of Coffs Harbour, New South Wales. There is a history of disputes between the applicant and the respondent Owners Corporation in recent years in relation to the subject matter of the present application, being the entitlement of a lot owner to inspect the records of an owners corporation.

Relevant Legal Principles

- 3 Before turning to the principles underpinning the substantive dispute between the parties, in the circumstances of the present application, it is relevant to set out the principles relevant to a renewal of earlier proceedings in the Tribunal. Clause 8 of Sch 4 of the *Civil and Administrative Tribunal Act 2013* (NSW) (**NCAT Act**) is in the following terms:

8 Renewal of proceedings in respect of certain Division decisions

- (1) If the Tribunal makes an order in exercise of a Division function in proceedings, the Tribunal may, when the order is made or later, give leave to the person in whose favour the order is made to renew the proceedings if the order is not complied with within the period specified by the Tribunal.
- (2) If an order has not been complied with within the period specified by the Tribunal, the person in whose favour the order was made may renew the proceedings to which the order relates by lodging a notice with the Tribunal,

within 12 months after the end of the period, stating that the order has not been complied with.

(3) The provisions of this Act apply to a notice lodged in accordance with subclause (2) as if the notice were a new application made in accordance with this Act.

(4) When proceedings have been renewed in accordance with this clause, the Tribunal—

(a) may make any other appropriate order under this Act or enabling legislation as it could have made when the matter was originally determined, or

(b) may refuse to make such an order.

(5) This clause does not apply if—

(a) the operation of an order has been suspended, or

(b) the order is or has been the subject of an internal appeal.

- 4 In *Long v Metromix Pty Ltd* [2019] NSWCATAP 198 at [73], the Appeal Panel considered the scope of renewal proceedings (in the context of a home building application):

While the Tribunal can make a range of orders in renewal proceedings, it cannot hear the original case all over again. If, in the substantive proceedings, the Tribunal decides that a specified scope of work is required to rectify a defect, renewal proceedings are not an opportunity to have the Tribunal hear that case all over again in the hope that the Tribunal will reach a different conclusion. Whether the Tribunal's original decision to make a work order is correct is a matter to be agitated in appeal proceedings.

- 5 The proper construction of cl 8, and in particular cl 8(4), has been considered by the Appeal Panel on a number of occasions. In *Mania v NSW Land and Housing Corporation* [2022] NSWCATAP 376 (*Mania*), the Appeal Panel set out the following principles:

25 Renewal proceedings are a means of enforcing and promoting timely compliance with Tribunal orders: *Blessed* at [26] agreeing with the Appeal Panel decision in *Johnson v Dibbin; Gatsby v Gatsby* [2018] NSWCATAP 45 at [83].

26 The nature of renewal proceedings being for the purpose of enforcement is supported by the decision of the Supreme Court of New South Wales in *von Reisner v State of NSW* [2010] NSWSC 1356 (*von Reisner*). That case dealt with s 43 of the now repealed *Consumer Trader and Tenancy Tribunal Act 2001* (NSW) which was in the same terms as Sch 4 cl(8) save that the heading of s 43 was "Enforcement of certain Tribunal orders". In *von Reisner*, Ball J said at [24]:

The *Consumer, Trader and Tenancy Tribunal Act 2001* (**CTTT Act**) provides its own mechanism for enforcement of orders made by the CTTT. If a party has obtained an order in the CTTT and the order is not complied with, that party can apply to the CTTT to renew the

proceedings (if 12 months have not expired since the order was made, leave must be obtained): CCCT Act, s 43. An order of the CTTT for payment of money can be filed in the registry of a court having jurisdiction to give judgment for a debt of the same amount as the amount stated in the certificate. That order then operates as a judgment of that court: CCT Act (sic), s 51(3). Failure to comply with an order of the CTTT is also an offence: CCT Act (sic) ss 52, 82.

27 Leave is required to bring renewal proceedings. Leave may be granted when the original orders are made or at a later time, provided that any renewal application is brought within 12 months from the end of period specified for compliance by the Tribunal: NCAT Act Sch 4 cl 8(1)-(2).

28 We accept the respondent's submissions that the Appeal Panel is able to grant that leave, even at this late stage. We propose to do so because the respondent concedes in this case such an order should be made, consistent with the objects and guiding principle in s 3(d) and s 36(1) of the NCAT Act.

29 Schedule 4 cl 8(4) provides:

- (4) When proceedings have been renewed in accordance with this clause, the Tribunal—
 - (a) may make any other appropriate order under this Act or enabling legislation as it could have made when the matter was originally determined, or
 - (b) may refuse to make such an order.

30 The meaning of the expression “other appropriate order under this Act or enabling legislation” was considered by the Appeal Panel in *Blessed*. Of the word “other” the Appeal Panel said at [32]:

First criterion

32 The first criterion, that an order made on renewal be “other”, presents little difficulty. All that is required is that the order made is different in some material respect from the order originally made that has not been complied with.

31 That is, the order made on renewal must be “different in some material respect”.

32 As to the word “appropriate”, the Appeal Panel in *Blessed* said at [33]:

... Since the order is being made on a renewal application, it would be natural to construe “appropriate” as requiring the order to be fitting or suitable having regard to the purpose for which a renewal application is made, the circumstances giving rise to the renewal application and any other relevant circumstances whenever arising. ...

33 The Appeal Panel then continued at [35]:

... A renewal application is, however, designed to deal with a situation where there has been non-compliance with the original order that the Tribunal thought was appropriate when the matter was first determined. The circumstances will inevitably have changed since that time, if for no other reasons than because there has been non-compliance with the order that had been made. What was appropriate originally may well not be appropriate at the time of the hearing of the

renewal application. To limit the orders that could be made on renewal to those that would have been appropriate when the matter was originally determined would be likely to prevent the Tribunal from doing justice between the parties, having regard to the non-compliance with the original order and to any other circumstances that had changed materially since the proceedings were originally determined. This would render the right to renew proceedings ineffective in a significant number of cases.

34 Once it is accepted that the purpose of the renewal provision is to provide a mechanism for enforcement of or timely compliance with the original orders, it seems to us that the making of the same order but for a different date neither has the effect of enforcing the original order nor ensuring the timely compliance with that order. Rather, an “other” order requiring the same work to be done but by a later date is not materially different and has the effect of relieving a party from original obligations (at least as to time) and not enforcing the original order which has not been complied with according to its terms.

35 The appellant submitted that, in so far as *Blessed* was authority for a narrow construction of the word “other,” it should not be followed. We decline to take a different view to *Blessed* for two reasons. First, this interpretation has stood for a number of years. Secondly, we think the interpretation is correct. In this regard, it serves little or no purpose for the same order to be made; simply changing the date for compliance would not promote finality to proceedings.

36 Further, in so far as a date change is required, there is adequate provision to address such a need by s 41 of the NCAT Act. This section gives the Tribunal power to extend time. Also, in respect of residential tenancy proceedings, s188 of the RT Act may permit variation of the December orders.

37 Otherwise, enforcement in connection with a work order is usually achieved by making a suitable award for compensation, where such relief is available. Such an award permits the person in whose favour an order has been made to engage and pay for others to perform the required obligation sought to be enforced.

38 In making these observations, we leave for separate consideration whether a different work order could be made, for example, in circumstances where work done under the original order was defective and itself required to be rectified.

39 Otherwise, a party in whose favour an order has been made by the Tribunal must look to other means of enforcement provided in the NCAT Act or the relevant enabling legislation. The fact these other means of enforcement may be more complex is not a basis for interpreting Sch 4 cl 8 in a manner that permits other orders to be made that are not properly seen as a means of enforcing or ensuring compliance with the original orders.

- 6 The references to *Blessed* in the above extract from *Mania* are to *Blessed Constructions Pty Ltd v Vasudevan* [2018] NSWCATAP 98 (***Blessed***). The principles in *Blessed* and *Mania* were recently followed by the Appeal Panel in *Madic Construction Pty Ltd v Noble* [2023] NSWCATAP 130 (***Madic Construction***) at [18]-[27].

- 7 Turning to the principles underpinning the substantive dispute between the parties, s 182 of the *Strata Schemes Management Act 2015* (NSW) (**SSMA**) provides that an owner may request to inspect the records of the strata scheme:

182 REQUESTS FOR INSPECTION OF RECORDS OF OWNERS CORPORATION

(1) Persons who may inspect

An owner, mortgagee or covenant chargee of a lot in a strata scheme, or a person authorised by the owner, mortgagee or covenant chargee, may request the owners corporation to allow an inspection to be carried out under this section.

(2) Form of request

The request must be made by written notice given to the owners corporation and be accompanied by the fee prescribed by the regulations.

(3) Items to be made available for inspection

The owners corporation must make the following items available for inspection by the person who makes the request or the person's agent--

- (a) the strata roll,
- (b) any other records or documents required to be kept under this Part,
- (c) the plans, specifications, certificates, diagrams and other documents required to be delivered to the owners corporation before its first annual general meeting by the original owner or the lessor of a leasehold strata scheme,
- (d) if in its custody or under its control, the certificate of title comprising the common property or, in the case of a leasehold strata scheme, the certificate of title for the lease of the common property,
- (e) any applicable 10-year capital works fund plan,
- (f) the last financial statements prepared,
- (g) every current policy of insurance taken out by the owners corporation and the receipt for the premium last paid for each such policy,
- (h) if a strata managing agent has been appointed, a copy of the instrument of appointment,
- (i) if a strata renewal plan has been given to owners for their consideration under Part 10 of the *Strata Schemes Development Act 2015*, a copy of the plan,
- (j) any other record or document in the custody or under the control of the owners corporation,
- (k) if the duties of the owners corporation under this subsection have been delegated to a strata managing agent, any other records

(including records of the strata managing agent) relating to the strata scheme that are prescribed by the regulations,

(l) if a building manager agreement is in force or has been entered into but has not yet commenced, a copy of the building manager agreement,

(m) particulars of any service agreement entered into by the owners corporation,

(n) particulars of any agreement entered into with a local council for a strata parking area,

(o) if the request is made within 5 years after the end of the initial period, particulars of any orders made under section 27 and copies of any related contracts or other documents.

Maximum penalty--5 penalty units.

(4) Meeting inspections For the purpose of complying with requirements for the giving of notice of a meeting of the owners corporation, the original owner (whether or not having ceased to be an owner) or an agent authorised in writing by the original owner is entitled to inspect the strata roll without payment on making a written application.

(5) Voting in secret ballots must not be disclosed Despite any other provision of this section, the owners corporation must not make available for inspection any record that would disclose how an owner voted in a secret ballot unless the owners corporation is directed to do so by the Tribunal or a court.

8 Section 188 of the SSMA provides the Tribunal with power to make an order that an owners corporation supply information if satisfied that the applicant is entitled to the information and the information has been “*wrongfully withheld*”:

188 ORDER TO SUPPLY INFORMATION OR DOCUMENTS

(1) The Tribunal may, on application by a person, order an owners corporation, strata managing agent, officer or former strata managing agent of an owners corporation to supply to the applicant information that the Tribunal considers that the owners corporation, strata managing agent, officer or former strata managing agent has wrongfully withheld from the applicant and to which the applicant is entitled under this Act.

(2) The Tribunal may, on application by a person, order an owners corporation, strata managing agent, officer or former strata managing agent of an owners corporation to supply or make available to the applicant a record or document if--

(a) the Tribunal considers that the owners corporation, strata managing agent, officer or former strata managing agent has wrongfully failed to make the record or document available for inspection by the applicant or the applicant's agent, and

(b) the applicant is entitled under this Act to inspect the record or document.

(3) The order may specify the manner in which information is to be supplied or made available.

Relevant Background

9 On 5 May 2021, the Tribunal made an order in proceedings with file number SC 20/47202 (**May 2021 Order**), being proceedings between the same parties to the present application. The May 2021 Order engaged the same provisions of the SSMA set out above and were in the following terms:

1 The Owners Corporation is to make available to the applicant, at a time and place to be agreed between the parties, and failing agreement, at the office of the strata managing agent at midday on 19 May 2021, the following documents or records:

- (1) Any records and registers which are required by the service agreement to be kept by the Building Manager and made available to the Owners Corporation (including without limitation any preventative maintenance records, any repairs and maintenance records, any register of maintenance and testing of emergency equipment, and any records in respect of evacuation plans), and
- (2) A monthly maintenance report, to be generated from Mybos, and
- (3) The hazardous goods register, and
- (4) Access to the records maintained in the Mybos computer program, to the extent that those records have not been provided to the applicant.

10 The Tribunal's reasons for making the May 2021 Order are set out in *Abraham v The Owners Strata Plan No 61419* [2021] NSWCATCD 7.

11 On or about 5 August 2021, the Tribunal received an application by the applicant to renew proceedings SC 20/47202. Those renewal proceedings were given file number SC 21/34322. In those proceedings, the applicant alleged that not all documents required to be made available by the May 2021 Order had been provided by the Owners Corporation. Further, the applicant sought an order under s 238 of the SSMA removing Dr Alan Tankel as secretary of the Owners Corporation and from the strata committee.

12 On 16 December 2021, the Tribunal made the following orders in SC 21/34322 (**December 2021 Orders**):

1. By consent, by 31 January 2022 the Owners Corporation is to:
 - (a) Make the boxes of documents relating to the legal proceedings in respect of the dispute between the Owners Corporation and the Service Provider available to the applicant for inspection, and
 - (b) Provide "View Only" access to the Mybos records to the applicant.

2. The following issues remain to be determined by the Tribunal, and the decision in respect of those issues is reserved:

(a) The applicant's right to view email communications to and from the email account committee@nautilusoc.org

(b) the application to remove the secretary from the strata committee.

13 On 1 April 2022, the Tribunal made the following relevant order in SC 21/34322 (**April 2022 Order**):

1. The Owners Corporation is, at a time and place to be agreed, to make available for inspection all emails sent to or from the committee@nautilus.org email address which were sent or received by the Tribunal.

14 For completeness, in addition to the April 2022 Order, the Tribunal dismissed the applicant's application that Dr Tankel be removed as secretary and from the committee.

Present Application

15 In her application, the applicant alleged that the Owners Corporation had failed to provide "*complete records*" which had been the subject of

- (1) a request under s 182 of the SSMA dated 6 August 2020;
- (2) the May 2021 Order;
- (3) a request under s 182 of the SSMA dated 10 May 2021;
- (4) the December 2021 Orders;
- (5) a request under s 182 of the SSMA dated 25 January 2022; and
- (6) a request under s 182 of the SSMA dated 20 October 2022.

16 Having regard to these alleged failures, the applicant sought orders directing the Owners Corporation to provide the following:

A. Legal Dispute between the Service Provider and the Owners Corporation

- All documentation and writings whatsoever including without limitation, emails, meeting notes, letters of advice, general correspondence and all communications to and from all parties involved in an advisory or other capacity including without limitation the following entities or persons:
 - (a) the Law Society,
 - (b) the solicitor appointed by the Law Society to determine the dispute
 - (c) Breecass Pty Ltd and its legal representative
 - (d) Mr Ian Ponton
 - (e) the Owners Corporation and its legal representatives

- (f) Each and every individual committee member
- (g) the Strata Managers, SMS and/or its legal representatives

from the commencement date of dispute up to and including date of inspection.

B. Amended Service Agreement with Duties Statement, Heads of Agreement:

- All documentation whatsoever including without limitation, emails, meeting notes, letters of advice and written communications to and from all parties including:
 - (a) Deutsch Miller,
 - (b) Breecass Pty Ltd.
 - (c) Mr Ian Ponton
 - (d) the legal representative for Breecass Pty Ltd and/or Mr Ian Ponton
 - (e) the Owners Corporation and its legal representatives

The Secretary is the only member of the Strata Committee that is able to provide this detail, as he is the only member of the Strata Committee that was totally involved in a (sic) negotiations and amendments to the Service Agreement. Other past Strata Committee members have advised that the Secretary used his own email address for many of these communications, rather than the official Strata Committee email, and we request that these emails, which form part of the Strata Records be provided by the Secretary

C. Termination of Service Agreement and Replacement Service Provider and New Draft Agreement as proposed by Strata Committee for Decision at Owners Corporation General Meeting 4th February 2023:

- All documentation whatsoever including without limitation, emails, meeting notes, letters of advice and written communications to and from all parties including:
 - (a) Owners Corporation legal representative, and in the event no legal representation has been sought then any party who has provided advice to the Strata Committee if in fact there is one
 - (b) Breecass Pty Ltd.
 - (c) Mr Ian Ponton
 - (d) The Business Broker involved in the extensive discussions and negotiations in relation to the Service Provider matter
 - (e) the legal representative for Breecass Pty Ltd and/or Mr Ian Ponton

The reason for this request is that despite many requests for the Strata Committee to provide Owners sufficient detail in relation to this matter in order to appropriately vote at the 4th February 2022 (sic) General Meeting, they have refused

D. All records requested and outlined in the 20th October 2022 Section 182 Request for Inspection of Records of Owners Corporation...

E. Provide a copy of the signed copy of the “Attvest Premium Funding Contract/Loan Application” borrowing money to pay outstanding Insurance premium

In relation to all the Strata Records we wish to inspect, we request the records be provided in an organized compilation of electronic records. This can be in the form of a folder in the form of a folder (sic) with all applicable files compiled in a single and labelled named folder or a single file with all records clearly labelled and identifiable.

- 17 The applicant relied upon a large volume of documentary material, submitted to the Tribunal both before and after the hearing conducted at Coffs Harbour on 7 June 2023. Mr Sisson, who represented the applicant at the hearing, gave evidence and took the Tribunal to a number of those documents.
- 18 The Owners Corporation relied upon a relatively short document filed shortly before the hearing on 7 June 2023. Dr Tankel and Dr Abraham gave evidence at the hearing. The Owners Corporation submitted a further short submission on 22 June 2023 in accordance with directions given by the Tribunal at the conclusion of the hearing.
- 19 The Tribunal has considered all of the material submitted by the parties. This is despite the applicant filing material following the hearing that ranged well outside the directions given by the Tribunal, a practice which is not to be encouraged. For the reasons that appear below, it is not necessary to set out in detail the many allegations and claims contained in that material. Suffice to say that there are very entrenched views on each side as to the conduct of the other.

Determination

- 20 During the hearing, the Tribunal was concerned to tether the application made by the applicant in this proceeding to the orders made by the Tribunal in previous proceedings. Mr Sisson for the applicant identified the following as the bases for the applicant’s entitlement to the documents identified in categories A to E set out at [16] above:
 - (1) As to categories A and B, the applicant relied upon the December 2021 Orders.
 - (2) As to category C, Mr Sisson could not identify any previous order or any request by the applicant under s 182 of the SSMA at the hearing. Two days after the hearing, Mr Sisson submitted to the Tribunal (without leave) requests under s 182 of the SSMA dated 17 February 2023 and

1 May 2023. Given the breadth of the request dated 1 May 2023 (which could be interpreted to extend to “all Strata Records”) it may be that the applicant relies upon that request to found a right to the documents in category C.

- (3) As to category D, on its face it invokes a request by the applicant under s 182 dated 2 October 2022.
- (4) As to category E, at the hearing, Mr Sisson relied upon certain paragraphs of the request under s 182 of the SSMA dated 2 October 2022. The request dated 17 February 2023 belatedly submitted by the applicant does appear to have a category directly relevant to category E.

21 It will be apparent that the only categories in respect of which the applicant points to previous orders of the Tribunal which she alleges were not complied with are categories A and B. The applicant rests her entitlement to an order requiring the Owners Corporation to provide the documents answering the description in categories C to E on requests made under s 182 of the SSMA which have not previously been the subject of an order under s 188 and, at least in the case of the requests dated 17 February 2023 and 1 May 2023, were made after the present application was filed.

22 The Tribunal is a creature of statute. By this application, the applicant has expressly (and solely) invoked the jurisdiction of the Tribunal granted by cl 8 of Sch 4 of the NCAT Act. Although the written submission provided by the Owners Corporation dated 1 June 2023 does briefly address each of categories C to E, it is plain on that submission that the Owners Corporation considered that the proceedings were “*renewal proceedings*” and that its primary submission was that it had complied with the May 2021 Order and the December 2021 Orders.

23 The Tribunal has considered whether it is open to it to, in effect, transmute renewal proceedings into an application under s 188 of the SSMA by reason of the “*guiding principle*” in s 36 of the NCAT Act “*to facilitate the just, quick and cheap resolution of the real issues in the proceeding*” and the procedural powers under s 38 of the NCAT Act:

38 Procedure of Tribunal generally

- (1) The Tribunal may determine its own procedure in relation to any matter for which this Act or the procedural rules do not otherwise make provision.

(2) The Tribunal is not bound by the rules of evidence and may inquire into and inform itself on any matter in such manner as it thinks fit, subject to the rules of natural justice.

...

(4) The Tribunal is to act with as little formality as the circumstances of the case permit and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

- 24 The breadth of those procedural powers was recently considered by the Court of Appeal in *Sunaust Properties Pty Ltd t/as Central Sydney Realty v The Owners – Strata Plan No 64807* [2023] NSWCA 188 (***Sunaust***), particularly at [160]-[162] per Basten AJA.
- 25 The issue in *Sunaust*, being the ability of the Tribunal to reopen a decision once pronounced, is far removed from the issue in the present case. It is difficult to see how it is just or in accordance with equity or good conscience to allow an applicant to fundamentally change the constitution of the proceedings and the nature of the jurisdiction it is invoking during the course of the hearing. That is particularly so having regard to the strict limits on the nature of renewal proceedings as imposed by cl 8 of Sch 4 of the NCAT Act, as construed by the Appeal Panel in *Blessed* and *Mania*. This is not simply a matter of “*technicalities or legal forms*”.
- 26 Having regard to those matters, the Tribunal will dismiss the application insofar as it relates to categories C to E. As there is a very real likelihood of further disputation between the parties in relation to those categories in properly constituted proceedings, the Tribunal will refrain from making any observations as to whether the applicant is entitled under the SSMA to inspect those documents and whether the Owners Corporation has wrongfully failed to make those documents available for inspection.
- 27 That leaves for consideration categories A and B which the applicant submitted the Owners Corporation had failed to provide in compliance with the December 2021 Orders.
- 28 Order 1 of the December 2021 Orders were to be complied with by 31 January 2022. The present application was not lodged until at least 2 February 2023 (being the date of the signatures of the applicant and Mr Sisson on the renewal of proceedings application) and the relevant fee was not paid until 8 February

2023. In those circumstances, the application was not lodged with the period required by cl 8(2) of Sch 4 of the NCAT Act. That is not an insuperable barrier to the applicant in circumstances where the Tribunal has power to extend time under s 41 of the NCAT Act. Given the relatively minor delay and having regard to the principles set out in *Jackson v NSW Land and Housing Corporation* [2014] NSWCATAP 22, the Tribunal would be minded to extend the time up to 8 February 2023, save for the matters which appear below.

29 The application to renew proceedings SC 21/34322 on the basis that the December 2021 Orders were not complied with suffers from more fundamental difficulties. That is so whether categories A and B fall within the scope of the December 2021 Orders or not.

30 If the records the subject of categories A and B do fall within the scope of the December 2021 Orders, the NCAT Act and the relevant authorities disclose that it is not open to the Tribunal in renewal proceedings to make an order that those documents, which the Owners Corporation has failed to produce at the time ordered, be produced at a subsequent time. As the Appeal Panel stated in *Mania* at [34]:

...an “other” order requiring the same work to be done but by a later date is not materially different and has the effect of relieving a party from original obligations (at least as to time) and not enforcing the original order which has not been complied with according to its terms.

31 The fact that what is sought by categories A and B is expressed in different terms to the December 2021 Orders does not assist the applicant if the records the subject of those categories were in fact within the scope of the December 2021 Orders. In *Madic Construction* at [23], the Appeal Panel stated:

Adopting the principles enunciated at *Mania* at [35], the purpose of the renewal provision is to provide a mechanism for enforcement of or timely compliance with the original orders, it seems to us that the making of the same order but with the added requirement of a “*certifier*”, neither has the effect of enforcing the original order nor ensuring the timely compliance with that order. Rather, an “other” order requiring the same work to be done but have it “certified” is not materially different.

32 Similarly, making an order that documents that fall within the terms of the original order, but describing those documents with more specificity is not “*materially different*” to the original order.

- 33 If the records the subject of categories A and B do not fall within the scope of the December 2021 Orders, then renewal proceedings are not an opportunity for the applicant to seek orders for the provision of different records. To repeat what the Appeal Panel stated in *Long v Metromix Pty Ltd* at [73], “*renewal proceedings are not an opportunity to have the Tribunal hear that case all over again in the hope that the Tribunal will reach a different conclusion*”. Further, as the Appeal Panel stated in *Mania* at [39], cl 8 of Sch 4 does not permit “*other orders to be made that are not properly seen as a means of enforcing or ensuring compliance with the original orders*”.
- 34 There appears to be very real, possibly insuperable, difficulties in commencing renewal proceedings in relation to orders made under s 188 of the SSMA. It may be that a party who considers that such orders have not been complied with “*must look to other means of enforcement provided in the NCAT Act or the relevant enabling legislation*”: *Mania* at [38].
- 35 For those reasons, the Tribunal will dismiss the application.

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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