



Civil and Administrative Tribunal  
New South Wales

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Case Name: Klewer v The Owners – Strata Plan No. 70149

Medium Neutral Citation: [2023] NSWCATCD 142

Hearing Date(s): 5 September 2023

Date of Orders: 30 October 2023

Decision Date: 30 October 2023

Jurisdiction: Consumer and Commercial Division

Before: K Ross, Senior Member

Decision: The application is dismissed.

Catchwords: STRATA SCHEMES

Legislation Cited: Strata Schemes Management Act 2015

Cases Cited: Nil

Texts Cited: Nil

Category: Principal judgment

Parties: Robert Klewer (Applicant)  
The Owners – Strata Plan 70149 (Respondent)

Representation: Lucy Klewer (Applicant)  
Gordon Prewett (Respondent)

File Number(s): SC 23/23970

Publication Restriction: unrestricted

## REASONS FOR DECISION

### Application

- 1 The applicant is a lot owner in SP 70149, a 14 lot scheme in Korora, NSW. The respondent is the Owners Corporation of the strata plan. The applicant seeks orders as follows:

An order setting aside the following decisions made by the respondent:

(a) Refusal to allow payment plan of levy arrears and accruing levies at the rate of \$1200 per month

(b) Refusal to waive all interest on arrears and fees and charges as well as debt recovery costs

(c) Refusal to reimburse the applicant \$3220 for common area repairs he paid out of his own pocket

(d) Refusal to allow unit valuations for the purpose of adjusting the levies fairly and proportionate to value of properties

(e) Refusal to take action against owner of lot 1 who refuses to cut limbs of tree in her private yard which ongoing causes damage to lot 4 due to shedding of needles on roof and blocking drains and downpipes and rots external timber structures

(f) refusal to make good repairs to the applicant's lot common area which includes the need for repairs to walls and timber structures.

- 2 The respondent opposes the orders sought.

### The facts

- 3 Many of the facts are not in dispute. I find that:

(1) The applicant purchased lot 4 in August 2021.

(2) The applicant's levies have been in arrears since 1 September 2021.

(3) By 19 December 2021, the arrears were \$4684.07.

(4) The Owners Corporation agreed to enter into a payment plan with the applicant, in respect of the levy due on 19 December 2021 in the sum of \$2001.00. That plan required 6 payments of \$286 and one payment of \$285, due on the first of each month with the last payment on 1 October 2022.

(5) The applicant made the six payments of \$286 on or about the due dates. The applicant made no other payments on account of levies continuing to accrue, such that by 22 December 2022 the arrears had risen to \$11,326.07.

(6) In late September 2022 the applicant advised the strata manager that he did not wish to be part of the strata anymore and would not be making any further levy payments.

- (7) On 18 November 2022 the applicant advised the Owners Corporation (amongst other issues canvassed) that because of incidents which had occurred in which:
- “RK and his mother Lucy were subject to threats of violence by owners of lots 6 & 7 (committee members), who charged towards them after they allowed their two savage dogs to rush towards them. Such dogs were not under control and one is quite large and the smaller one the most vicious.”,
- and because the strata manager had allegedly done nothing about the situation with the dogs, and because of increasing insurance and repair costs, the applicant had determined that he did not wish to be part of the strata anymore, and encouraged all owners to consider what would be in their best interests moving forward.
- (8) On 2 February 2023 the applicant paid the instalment of \$285.00 which was due on 1 October 2022.
- (9) In December 2022 the applicant requested the Owners Corporation to enter into a second payment plan, with the applicant proposing to pay the arrears at \$1000 per month.
- (10) On 18 January 2023 the strata manager advised the lot owner that the strata committee would accept the owner’s offer to pay the arrears (which by then totalled \$12008.95) by payments of \$1000 per month. The email included advice that ongoing levies would be payable in addition to the arrears payments.
- (11) On 18 January 2023 the applicant withdrew the offer, on the basis of an allegation that the treasurer:
- “had forced our villa 4 visitors out of the pool area and at such time had claimed he was the complex manager.”
- (12) On 18 January 2023 the strata manager advised the applicant that the strata committee reserved the right to commence legal action to recover the money owing.
- (13) The applicant commenced making payments in February 2023, which have been applied to outstanding levies and interest accrued. By 1 August 2023, the arrears stood at \$8,833.19 with interest accrued of \$493.35, and a balance outstanding of \$9,326.54.
- (14) By the date of the hearing the arrears stood at \$10,185.42 including \$299.00 in interest.
- (15) Since 1 June 2023 the applicant has been making payments of \$1200 per month. Levies are continuing to accrue at \$2001 per quarter.

### **The dispute**

- 4 In relation to each of the orders sought by the applicant:

**Refusal to allow payment plan of levy arrears and accruing levies at the rate of \$1200 per month, and Refusal to waive all interest on arrears and fees and charges as well as debt recovery costs**

5 The *Strata Schemes Management Act 2015* (the Act) provides that an Owners Corporation funds its operations by way of levies raised in proportion to lot owners' unit entitlements. Section 85 then provides as follows:

85 INTEREST, DISCOUNTS ON CONTRIBUTIONS AND PAYMENT PLANS

(1) A contribution, if not paid when it becomes due and payable, bears until paid simple interest at an annual rate of 10% or, if the regulations provide for another rate, that other rate.

(2) Interest is not payable if the contribution is paid not later than one month after it becomes due and payable.

(3) However, an owners corporation may by resolution determine (either generally or in a particular case) that a contribution is to bear no interest.

(4) An owners corporation may, by resolution at a general meeting, determine (either generally or in a particular case) that a person may pay 10% less of a contribution levied if the person pays the contribution before the date on which it becomes due and payable.

(5) An owners corporation may, by resolution at a general meeting, agree to enter into payment plans, either generally or in particular cases, for the payment of overdue contributions. A payment plan is to be limited to a period of 12 months but a further plan may be agreed to by the owners corporation by resolution.

(6) The regulations may prescribe requirements for payment plans.

(7) The existence of a payment plan does not limit any right of the owners corporation to take action to recover the amount of unpaid contributions.

(8) The Tribunal or a court may, on application by an owner, order that no interest is chargeable on a specified contribution if the Tribunal or the court is satisfied that the owners corporation should reasonably have made a determination not to charge interest for the late contribution.

6 The Owners Corporation has a discretion as to whether to enter into a payment plan, and as to whether to impose interest on any overdue levies. The Tribunal can make an order that no interest is to be charged if the Tribunal is satisfied that the owners corporation should reasonably have made a determination not to charge interest.

*Interest*

7 The Act provides that late payments attract interest. It is then a matter for the Owners Corporation to consider whether it should waive that requirement. In determining whether the Owners Corporation has acted reasonably in not

making a determination not to charge interest, I take into account that the applicant has consistently been in arrears in the payment of levies since he became an owner. Not one levy payment has been made on time. The owner has determined not to pay levies because he has been unhappy about the actions of other lot owners, or the strata committee members, or the strata manager. None of these issues or concerns excuse a lot owner from making levy payments as and when they fall due.

- 8 I also take into account that the arrears are not insubstantial. This is not a case where one payment was not received because of an error, or a problem with the Bank or financial institution. This is a case where the lot owner has wilfully refused to make the payments as and when they fall due.
- 9 I am satisfied that the Owners Corporation has not acted unreasonably in deciding not to waive the interest payable under the Act.

#### *The payment plans*

- 10 The Owners Corporation has proposed a payment plan which would enable the arrears to be paid within twelve months. However, the applicant insists that the proposed payment plan also cover the accruing levies. The proposed payments are insufficient to cover both the arrears and the accruing levies. Levies are accruing at \$2001 per quarter. If the applicant pays \$1200 per month, and that payment is applied first to the new levies and then to the arrears, the arrears will be reduced by only \$1599 per quarter, or approximately \$533 per month. The Act provides for a payment plan over 12 months, but the proposed plan would result in there still being arrears at the end of twelve months.
- 11 I am satisfied that it was not unreasonable for the Owners Corporation to refuse to enter into a payment plan of \$1200 per month for both arrears and ongoing levies.

#### *The fees and costs incurred*

- 12 I am satisfied that it was not unreasonable for the Owners Corporation to engage a lawyer, in circumstances where the applicant remained in arrears, and had indicated an intention not to pay his levies as and when they fell due.

It is not unreasonable for the applicant to bear those costs which otherwise are payable by all owners, including those whose levies are paid on time.

**Refusal to reimburse the applicant \$3220 for common area repairs he paid out of his own pocket**

- 13 This claim relates to replacement of the common property deck which services the applicant's lot. The Owners Corporation proposed that the deck be replaced with Merbau timber. At the time, that timber was unavailable. The applicant was advised that there would be a benefit in using Eco timber which does not require annual oiling, as the merbau deck would. At the applicant's request the Owners Corporation agreed for the replacement of the deck to be carried out in Eco timber and the applicant agreed to pay the difference in the cost, \$3220.
- 14 The applicant says that, as there is a benefit to the Owners Corporation in having the Eco deck, he should be reimbursed. He seeks reimbursement of the amount paid for the upgrade to Eco timber.
- 15 I am not satisfied that the applicant is entitled to reimbursement. He agreed to pay for the upgrade at the time. It is impossible for the Owners Corporation to properly budget if owners select the way in which a repair of common property is to proceed, on the basis that the owner will contribute to the cost, only to have the lot owner then renege on that agreement.

**Refusal to allow unit valuations for the purpose of adjusting the levies fairly and proportionate to value of properties**

- 16 The applicant points out that some lots have had an additional room added at some time. He has asked the strata manager to arrange revaluation of the units to enable a reallocation of unit entitlements. The strata manager advised the applicant that he needed to propose a motion for consideration by the owners in general meeting. So far as I have been able to ascertain, the applicant has not done so.
- 17 The Act provides:

236 ORDER FOR REALLOCATION OF UNIT ENTITLEMENTS

(1) Tribunal may make order allocating unit entitlements The Tribunal may, on application, make an order allocating unit entitlements among the lots that are

subject to a strata scheme in the manner specified in the order if the Tribunal considers that the allocation of unit entitlements among the lots--

(a) was unreasonable when the strata plan was registered or when a strata plan of subdivision was registered, or

(b) was unreasonable when a revised schedule of unit entitlement was lodged at the conclusion of a development scheme, or

(c) became unreasonable because of a change in the permitted land use, being a change (for example, because of a rezoning) in the ways in which the whole or any part of the parcel could lawfully be used, whether with or without planning approval.

(2) Matters to be taken into consideration In making a determination under this section, the Tribunal is to have regard to the respective values of the lots and to such other matters as the Tribunal considers relevant.

(3) Persons who may apply for order An application for an order under this section may be made by any of the following--

(a) an owner of a lot (whether or not a development lot) within the parcel for the strata scheme,

(b) the owners corporation,

(c) the lessor, in the case of a leasehold strata scheme,

(d) the local council, or by any other public authority or statutory body representing the Crown, being an authority or body that is empowered to impose a rate, tax or other charge by reference to a valuation of land.

(4) Application to be accompanied by valuation An application for an order must be accompanied by a certificate specifying the valuation, at the relevant time of registration or immediately after the change in the permitted land use, of each of the lots to which the application relates.

(5) Qualifications of person making valuation The certificate must have been given by a person who is a qualified valuer within the meaning of the Strata Schemes Development Act 2015 .

(6) Ancillary orders that may be made if original valuation unsatisfactory The Tribunal may, if it makes an order allocating unit entitlements that were not allocated in accordance with a valuation of a qualified valuer and, in the opinion of the Tribunal, were allocated unreasonably by an original owner, also order--

(a) the payment by the original owner to the applicant for the order of the costs incurred by the applicant, including fees and expenses reasonably incurred in obtaining the valuation and the giving of evidence by a qualified valuer, and

(b) the payment by the original owner to any or all of the following people of the amounts (if any) assessed by the Tribunal to represent any overpayments (due to the unreasonable allocation) for which liability arose not earlier than 6 years before the date of the order--

(i) the lessor, in the case of a leasehold strata scheme,

(ii) the owners corporation,

(iii) the owners of lots.

(7) Lodgment of order The owners corporation must ensure that a copy of an order made by the Tribunal under this section is lodged with the Registrar-General no more than 6 months after the order is made. Nothing in this section prevents a person who is entitled to apply for an order under this section from lodging a copy of an order made under this section.

Note : Section 246 contains provisions with respect to the recording of an order made under this section.

- 18 The Tribunal cannot determine an application under s 236 without a valuation. The applicant should either propose a motion to be considered by the Owners Corporation, or alternatively, make an application to the Tribunal with a valuation attached. Until the Owners Corporation has had an opportunity to consider whether to pursue the issue itself, by obtaining a valuation, it is not appropriate for the Tribunal to make an order compelling them to do so.

**Refusal to take action against owner of lot 1 who refuses to cut limbs of tree in her private yard which ongoing causes damage to lot 4 due to shedding of needles on roof and blocking drains and downpipes and rots external timber structures**

- 19 The applicant says that his lot is adversely affected by a tree in the adjoining lot 1. He alleges that the respondent has refused to take action against the adjoining owner.
- 20 The strata manager gave evidence that the Owners Corporation is negotiating with the adjoining owner to have the tree removed.
- 21 On this basis I am not satisfied that the applicant has proven that the Owners Corporation has “refused to take action against” the adjoining owner.
- 22 This claim is dismissed.

**Refusal to make good repairs to the applicant’s lot common area which includes the need for repairs to walls and timber structures.**

- 23 The applicant says that his lot requires repairs. So far as the Tribunal can determine, that includes repairs to a timber fascia, timber door frames, repair of render and external painting. The applicant also says that there is damage to roof tiles and masonry supports in the carport.
- 24 The Owners Corporation has provided evidence that it is in the process of engaging contractors to develop a scope of work for common property repairs



throughout the complex. It is proposed that a decision will then be made as to how that work is to be funded.

- 25 I am not satisfied that it is appropriate for the Tribunal to order the Owners Corporation to carry out repairs without a scope of work for those repairs. As the Owners Corporation is in the process of developing that scope of work, and intends to carry it out, there would appear to be no need for an order at this time. However, if the Owners Corporation does not resolve to address the repairs in a timely fashion, the applicant should consider bringing a fresh application, and in that case should ensure that there is some clarity to the order proposed (by reference to a scope of work which could be adopted in an order).

### **Orders**

- 26 For these reasons 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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