



Civil and Administrative Tribunal
New South Wales

Case Name: Gill v The Owners – Strata Plan No. 17913

Medium Neutral Citation: [2024] NSWCATAP 37

Hearing Date(s): 5 December 2023

Date of Orders: 12 March 2024

Decision Date: 12 March 2024

Jurisdiction: Appeal Panel

Before: M Harrowell, Deputy President
S Thode, Principal Member

Decision: Leave to appeal is refused and the appeal otherwise dismissed

Catchwords: LAND LAW – Strata title – Order to remove strata committee member – eligibility of lot owner to be a member of the strata committee as well as building manager – scope of power of Tribunal to make orders under s 24 of the Strata Schemes Management Act 2015 (NSW) – general orders concerning SMS system to notify lot owners of building works and other matters

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

Cases Cited: Collins v Urban [2014] NSWCATAP 17
Coulton v Holcombe (1986) 162 CLR 1; [1986] HCA 33

Texts Cited: None cited

Category: Principal judgment

Parties: Karen Marie Gill (Appellant)
The Owners – Strata Plan No. 17913 (First Respondent)

Warwick Young (Second Respondent)

Representation: F Felgueras (Agent) (Appellant)
M Starr (Agent) (First and Second Respondents)

File Number(s): 2023/00306802

Publication Restriction: Nil

Decision under appeal:

Court or Tribunal: Civil and Administrative Tribunal of New South Wales

Jurisdiction: Consumer and Commercial Division

Citation: N/A

Date of Decision: 12 September 2023

Before: D Robertson, Senior Member

File Number(s): 2023/00395934 (previously SC 23/21358)

REASONS FOR DECISION

Introduction

- 1 This appeal relates to strata proceedings SC 23/21358 (application) in which the appellant sought various orders under the *Strata Schemes Management Act 2015* (NSW) (SSMA) against The Owners – Strata Plan No. 17913 (owners corporation).
- 2 Warwick Young (Mr Young), building manager, was subsequently joined as a party in connection with his role as a building manager within the strata scheme. Mr Young is the owner of lot 55 in the strata scheme that has a total of 55 lots and is also the chairperson of the strata committee.
- 3 The orders that were sought in the application can be summarised as follows:
 - (1) Orders under s 232 of the SSMA to obtain information concerning the operation of the strata scheme including concerning decisions made and payments to the building manager, Mr Young and the performance of his duties;
 - (2) An order under s 232 of the SSMA for the Owners Corporation to “clarify” why is necessary to pay “a Building Manager who is also Head of the strata committee” to undertake the property’ s upkeep.

- (3) An order under s 238 of the SSMA “to remove and invalidate Mr Young’s roles as committee and building manager/cleaning services contractor”;
- (4) An order under s 232 of the SSMA that a “new Committee and the new Building Manager” carry out various maintenance work;
- (5) An order under s 232 of the SSMA that a new sign be installed or the existing sign on the ground floor amended to read “that residents with urgent cosmetic repairs in the units need to affix a typed or hand-written announcement inside the lift for the repairs duration so as not to surprise and disturb other residents with their noise” and that tradesmen do likewise.
- (6) An order under s 232 of the SSMA that “the new Committee and the new Building Manager” be “invested with the power to actively investigate noises, cigarette smoke drift (exacerbated recently), or other complaints”. In relation to this matter the appellant said:

The Strata and those appointed will no longer expect the residents themselves to investigate, which may lead to violence among residents. For speed and simplicity, when residents report the above or report noise from water pipes, including a not-announced-resident urgent cosmetic repair, or any violation of by-laws (**even when not located**), the new Committee or the new Building Manager will **take heed**, briefly SMS the owner-occupiers, or tenants to **all 55 units simultaneously** about the event, informing what the complaint has been, **and warn that an investigation is underway, thus make the violator/s aware.**

- (7) An order under s 232 of the SSMA prohibiting leasing to smoking tenants, it being said that it is “evident that they continue to smoke on balconies”.
 - (8) An order under s 188 of the SSMA that the owners corporation “provide to the owner of unit 37 a copy of the function/s the owners corporation has endowed the Strata with”.
- 4 On 12 September 2023 the Tribunal made the following orders:

1. By consent, The Owners - Strata Plan No 17913 are to provide to the applicant, Karen Marie Gill, a copy of the current strata managing agency agreement by 19 September 2023.
2. The application is otherwise dismissed.

- 5 As recorded in the orders, oral reasons were given by the Tribunal. It does not appear a request was made for written reasons.

Tribunal decision

- 6 A transcript of the Tribunal’s oral reasons was provided to the Appeal Panel at the hearing of the appeal. A transcript of the whole hearing of the proceedings

at first instance, a matter about which we made directions at the conclusion of the hearing of the appeal, was subsequently provided. The transcript of the oral reasons has not been reviewed by the Tribunal. A copy of the sound recording was not provided to the Appeal Panel. Rather, a transcript and the oral reasons was provided in unedited form. As necessary, we will refer to these documents below.

7 As to the Tribunal's decision, the Tribunal noted an order was to be made by consent for the provision of the managing agent agreement. This became order 1 made 12 September 2023.

8 Secondly, the Tribunal noted that an order was sought for the removal of Mr Young as chairperson. The Tribunal made reference to s 238 of the SSMA concerning the powers of the Tribunal to:

- (1) remove a person or officer from a strata committee or
- (2) prohibit the strata committee from determining a specified matter and requiring the matter to be determined by the owners corporation.

9 The Tribunal noted that no relief was sought under s 24 of the SSMA which related to orders invalidating resolutions of the owners corporation. This occurred in circumstances where, having sought an order to remove Mr Young as building manager and a member of the strata committee, Mr Felgueras was unable to point to any provisions of this Act or the regulations said not to have been complied with in relation to the meeting appointing Mr Young, being the issue to which s 24 is directed. In this regard, the transcript records the concern of the appellant related to the so called "abuse of power" by Mr Young. The discussion concerning this matter is recorded in the transcript of the hearing at p 7 and following, the transcript indicating at p 11.4 that Mr Felgueras was not pursuing orders under s 24 of the SSMA.

10 As to an order seeking removal of Mr Young under s 238, the Tribunal noted the following reasons were advanced by the appellant's representative Mr Felgueras:

- (1) there was a conflict of interest arising by reason of Mr Young's dual role as building manager and chairperson;

- (2) because Mr Young had imposed an arbitrary ban on Mr Felgueras communicating directly with him, this was said to be an abuse of power and ostracising a member of the owners corporation;
- (3) Mr Young failing to engage with and/or assist Mr Felgueras on the day Mr Felgueras was concerned about a substantial water flow onto the balcony of the appellant's lot and failing to follow up complaints concerning smoke and noise in the building;
- (4) failure of Mr Young to ensure a rusting door closer was replaced and failing to rectify holes in the fire doors left after the door closer had been replaced; and
- (5) Mr Young's "persistent repetition of the proposition that it was not his role to investigate breaches of the by-laws".

11 Next, the Tribunal noted the responses of Mr Young to the claims made.

12 The Tribunal then referenced ss 36, 37 and 42 of the SSMA, in particular the duty of the members of the strata committee under s 37 of the SSMA and the functions of the chairperson under s 42. The Tribunal concluded:

- (1) The appellant has not demonstrated any basis to conclude that Mr Young is not fulfilling his obligations as chairperson or as a member of the strata committee.
- (2) The owners corporation has employed a strata manager. It is not exceptional that communications be directed to that person (who is not Mr Young).
- (3) The role of the chairperson, which is very limited in what it requires, is set out in s 42 of the SSMA. There is no suggestion that Mr Young is not fulfilling that role.
- (4) It may be presumed that the landowners who agreed to appoint Mr Young as building manager were conscious of his dual role and chose to accept the potential of a conflict of interest. In any event the Tribunal was not persuaded that there is any actual conflict of interest as the strata committee has oversight of the building manager and it is not left to Mr Young to police himself.
- (5) The role of building manager is not full-time, and any failure to respond in the early morning concerning the water issue was not a breach of his obligations.

13 Consequently, the application to remove Mr Young was dismissed.

14 In doing so, the Tribunal commented that the application "was generally misguided". In this regard the Tribunal indicated that if the strata scheme was not functioning satisfactorily, ordinarily a remedy may be available under s 237

of the SSMA. As to the sufficiency of the evidence in this case to support such an application the Tribunal said “I can say confidently that it was not”.

Notice of Appeal and history of appeal proceedings

15 The appellant filed a Notice of Appeal on 26 September 2023. The appeal was filed in time.

16 Section 5B of the Notice of Appeal records the grounds of appeal in the following terms:

The Tribunal was bias, favoured the respondents, and did not show in-depth interest in the case and the severe repercussions on our family. ‘Amended Orders 14/06/2023’ failed to acknowledge the Contractor’s neglect (e.g. soiled stairs, rusty Fire Doors Hinge, uncollected rubbish, etc). And abuse of power. The latter knows, as the appellant knows that he lied under oath (Evidence to be requested from Café by the Tribunal). It took bringing the respondents to the Tribunal and much of the appellant’s effort dealing with the Tribunal to obtain just one Order, 188, Agency Agreement, which the Strata Manager pretended not to understand when the appellant requested it repeatedly (Evidence: FORWARDED CONVERSATION).

17 The orders sought were:

- (1) an order under s 24 of the SSMA invalidating the resolution of the owners corporation “regarding the [Mr Young’s] role as a Contractor because of his absenteeism, inconsistency of duties, neglect, and abuse of power”;
- (2) an order under s 238 of the SSMA “to dismiss the Chairman of the strata committee for abuse of power”;
- (3) an order under s 232 of the SSMA that the “residents and Strata tradesmen ... affix a notice to the lift during noisy cosmetic repairs”; and
- (4) an order under s 232 of the SSMA “regarding noise/smoking on balconies” and an order “to implement SMS system”.

18 Leave to appeal was also sought, the reasons for asking for leave were said to arise from the inaction of the building manager and the strata committee to carry out various work and the failure to investigate noise and smoke drift affecting residents.

19 The appellant contended the decision was not fair and equitable or was against the weight of evidence as well is suggesting there was significant new evidence that was not reasonably available at the time of hearing. As necessary we will deal with the detail to these matters below.

- 20 The owners corporation filed a Reply to Appeal dated 11 October 2023. It said the Tribunal was correct in its decision and also that the grounds of appeal were not clear, particularly having regard to the reasons of the Tribunal.
- 21 In accordance with the directions of the Appeal Panel, each of the appellant and owners corporation filed submissions and documents in support of their respective positions.
- 22 Mr Young did not separately file a Reply to Appeal or submissions. However, Mr Young provided an email dated 9 October 2023. This email was in opposition to a stay sought by the appellant. However, it made clear that Mr Young's position was that the Tribunal had dealt with the appellant's claims and properly dismissed them.
- 23 The appeal was heard on 5 December 2023. At that time, the appellant was represented by Mr Felgueras and the owners corporation was represented by Mr Starr, the strata agent.
- 24 At the hearing, the appellant was asked to specify precisely what orders were sought in the appeal. Four orders were identified:
- (1) an order to implement a system of sending SMS messages in order to prevent smoking by notifying all lot owners and occupiers of the concern and that an investigation is underway, thereby avoiding the need for individual lot owners who are adversely affected having to investigate.
 - (2) An order under s 24 of the SSMA to remove Mr Young as the building manager as he is also a member of the strata committee.
 - (3) An order under s 238 of the SSMA to dismiss the chairman for abuse of power. The abuse was said to arise from only sending a plumber to the appellant's unit concerning a complaint about pipe noises, Mr Young saying he was doing Mr Felgueras a favour and by Mr Young engaging in conduct which constituted a rant.
 - (4) An order requiring the placement of a notice within lifts concerning noisy occupants and requiring inappropriate conduct to cease. Action should also be taken using the SMS system proposed by order 1 (the SMS system).
- 25 The parties made oral submissions concerning errors said to have been made in connection with the Tribunal failing to make each of the above orders as well relying on written submissions provided pursuant to the Appeal Panel's directions. As necessary we will refer to these submissions below.

Consideration

- 26 There is a right of appeal on a question of law, otherwise leave to appeal is required; s 80(2)(b) of the Civil and Administrative Tribunal Act 2013 (NSW) (NCAT Act). Leave may only be granted where an appellant can show they may have suffered a substantial miscarriage of justice because the decision was not fair and equitable, against the weight of evidence or there was significant new evidence not reasonably available at the time of the original hearing: Sch 4 cl 12(1) of the NCAT Act. *Collins v Urban* [2014] NSWCATAP 17 sets out the principles applicable to the grant of leave.
- 27 It is convenient to deal with the appeal under the following headings, which relate to the orders sought as identified at the hearing on 5 December 2023:
- (1) An order to implement a system of sending SMS messages in order to prevent smoking by notifying all lot owners and occupiers of the concern and that an investigation is underway.
 - (2) An order under s 24 of the SSMA to remove Mr Young as the building manager as he is also a member of the strata committee.
 - (3) An order under s 238 of the SSMA to dismiss the chairman for abuse of power.
 - (4) An order requiring the placement of a notice within lifts concerning noisy occupants and requiring inappropriate conduct to cease, including implementing the SMS system.

An order to implement a system of sending SMS messages in order to prevent smoking by notifying all lot owners and occupiers of the concern and that an investigation is underway.

- 28 This matter was raised in the application to the Tribunal: see order 6 both in the original application and the proposed amended application dated 14 June 2023 (attached to the Notice of Appeal). However, during the oral hearing on 12 September 2023, no specific order was proposed when the Tribunal asked the appellant's representative, Mr Felgueras, to identify what orders were sought.
- 29 The only reference that might remotely be regarded as specifying what orders were sought is found at page 7 of the 77 page transcript where, when asked by the Tribunal what orders under s 232 of the SSMA, Mr Felgueras said:

Operation, administration, management functions under that.

30 Otherwise, the oral submissions and oral evidence predominantly focused upon the conduct of Mr Young and his role as the chairperson and building manager, matters dealt with below.

31 The only mention of the SMS system is found at page 76 of the transcript where the following exchange occurred:

Mr Felgueras: “Sir, I am not suggesting a police force, but in my submission I put through an idea that’s perfectly well done at other strata schemes, and it’s the following. As opposed to actually going and ... knocking on doors and trying to find out who the person is, who is smoking or who is making noise. There are others, I know from one scheme on the North Shore that they have over 80 units.

...

And they send an SMS.

Member: This might be an idea, Mr Felgueras, ... but is it something that ... is essential for an owners corporation to be fulfilling its obligations?

Mr Felgueras: That could help find the solution to the ... smoking problem ... , and noise and other.

32 It was not suggested in the Notice of Appeal that the Tribunal had wrongly failed to consider this item of claim. The grounds of appeal in the Notice of Appeal in section 5B do not make such a suggestion. However, section 5C of the Notice of Appeal, being the orders which the appellant says the Appeal Panel should make, do seek an order for the implementation of an SMS system.

33 The basis for seeking the orders is that the appellant appears to contend that it is an appropriate means for notifying lot owners in respect of building works and noise in the strata scheme and will provide an incentive to those who might be contravening by-laws by smoking or creating noise to cease doing so. This is in addition to the use of temporary signs in lifts or on notice boards for the purpose of informing lot owners.

34 In this regard, the appellant also says that such system may reduce the risk of harm to lot owners who might otherwise engage in investigative action to identify and stop contraveners of by-laws.

- 35 As noted above, The Tribunal found that that “the applicant was generally misguided” in relation to the orders sought in the application. In doing so the Tribunal made a general finding that there was no sufficient evidence to show that the owners corporation or the strata committee was not functioning satisfactorily, this comment being made in the context of s 237 of the SSMA which permits the Tribunal to make an order appointing a strata managing agent to exercise some or all of the functions of an owners corporation and/or the functions of the chairperson, secretary, treasurer or strata committee of the owners corporation.
- 36 The issue is whether there is any appellable error, whether arising from a question of law or because an error was made concerning the evidence and relevant findings of fact.
- 37 In our view there was not. Our reasons are as follows.
- 38 The appellant did not identify any evidence suggesting that the strata scheme was not being properly managed. To the contrary, below where we deal with the application under s 238 of the SSMA, we set out the evidence of Mr Felgueras to the effect that, in his opinion, the strata scheme was being properly managed.
- 39 As made clear in the transcript where the SMS system was discussed, the implementation of such a system was an idea of the appellant or Mr Felgueras as to what he and the appellant thought was an appropriate way for managing this strata scheme and addressing issues including noise and smoking. However, there was no suggestion that a proposal for such a system had been placed before a general meeting of the owners corporation, let alone rejected by such a meeting. At the hearing of this appeal, we were not referred to any evidence suggesting such a meeting had occurred.
- 40 It is unclear whether such a proposal was ever put to the strata committee. Even if it was, the strata committee was not required to implement such a proposal simply because it was suggested by a lot owner. Rather, the strata committee was entitled to determine what should be done and make decisions which it was otherwise authorised to make exercising its own judgement.

Again, any disagreement with these decisions was a matter to be dealt with in a general meeting.

41 In these circumstances, we are not satisfied there is any dispute about which it is appropriate to make an order under s 232 of the SSMA and no error is shown in the Tribunal dismissing the application in relation to this matter.

42 In reaching this conclusion, we have doubts that it would be appropriate for the Tribunal to intervene simply because a minority of lot owners considered a strata scheme should be managed differently. Having said that, the present case is not one suitable for expressing views about such issues.

43 Finally, we note that the reason why the appellant said the SMS system should be implemented was for the purpose of assisting in obtaining compliance with by-laws in respect of smoking and noise. If there is a breach of by-laws, it is open to an owners corporation to issue a notice to comply under s 146 of the SSMA or for the owners corporation or for a lot owner to seek orders directly against the contravener. Of course, this will require identification of the contravener and, if an application is made to the Tribunal, relevant evidence to prove any contravention. As to noise said to emanate from pipes, an application can be made to the Tribunal for orders requiring repairs if the owners corporation fails to comply with its statutory obligations in respect of common property. Again, appropriate evidence will be required.

44 Accordingly, leave should be refused and the appeal on this matter fails.

An order under s 24 of the SSMA to remove Mr Young as the building manager as he is also a member of the strata committee.

45 This matter can be dealt with shortly.

46 An application for an order under s 24 of the SSMA was not pursued at the original hearing. Therefore it cannot be pursued on appeal: *Coulton v Holcombe* (1986) 162 CLR 1 at [9]; [1986] HCA 33.

47 Further, and in any event, this ground has no merit.

48 The claim for relief under s 24 is misconceived. Relevantly, s 24 provides:

24 Order invalidating resolution of owners corporation

(1) The Tribunal may, on application by an owner or first mortgagee of a lot in a strata scheme, make an order invalidating any resolution of, or election held by, the persons present at a meeting of the owners corporation if the Tribunal considers that the provisions of this Act or the regulations have not been complied with in relation to the meeting.

(2) The Tribunal may, on application by an owner or first mortgagee of a lot in a strata scheme, make an order invalidating any resolution of, or election held by, the persons present at a meeting of the owners corporation if the Tribunal considers that the provisions of Part 10 (other than Division 6 or 7) of the Strata Schemes Development Act 2015 have not been complied with in relation to the meeting.

(3) The Tribunal may refuse to make an order under this section only if it considers—

(a) that the failure to comply with the provisions of this Act or the regulations, or of the Strata Schemes Development Act 2015, did not adversely affect any person, and

(b) that compliance with the provisions would not have resulted in a failure to pass the resolution or affected the result of the election.

(4) The Tribunal may not make an order invalidating a resolution under subsection (2) if an application for an order has been made under Division 6 of Part 10 of the Strata Schemes Development Act 2015 in relation to the same or a related matter.

49 The section does not permit the removal of Mr Young as the chairperson of the strata committee because he also holds the position of building manager.

50 The restriction on who can be a building manager and hold a position as a member of the strata committee is found in s 32 of the SSMA. Subsection 32(1) provides:

32 Persons who are not eligible to be appointed or elected to strata committee

(1) The following persons are not eligible for appointment or election as a member of a strata committee, unless the person owns a lot in the strata scheme—

(a) the building manager for the strata scheme,

(b) a real estate agent carrying out functions in connection with the leasing of a lot in the strata scheme,

(c) a person who is connected with the original owner of the strata scheme or the building manager for the scheme, unless the person discloses that connection at the meeting at which the election is held and before the election is held or before the person is appointed as a member,

(d) any other person prescribed by the regulations for the purposes of this section.

51 Mr Young is a lot owner and therefore eligible to be a member of the strata committee, including the chairperson: s 31 SSMA. The chapeau to s 32(1) makes clear the exclusion under that section of a building manager to hold a position on a strata committee does not apply to a lot owner.

52 Accordingly, leave should be refused and this challenge should be dismissed.

An order under s 238 of the SSMA to dismiss the chairman for abuse of power.

53 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.

54 In oral submissions, the appellant identified the circumstances said to give rise to the allegation of abuse of power and said to give rise to circumstances warranting an order under s 238 as those found in the appellants bundle (AB) filed 3 October 2023 at AB 23-4.

55 These grounds included the manner in which the strata committee dealt with complaints concerning instances of loud noise and noise emanating from water pipes.

56 With regard to noise emanating from water pipes, the appellant made reference to the investigations carried out on behalf of the owners corporation

by a plumber called Damien. The appellant said that her unit “was the only unit Mr Young told [Damien] to visit” when a request was made to investigate pipe noises and the possibility of leakages that could occur in the water pipes. This action, the appellant contends, is evidence that the “sole focus of inspection demonstrated that [the appellant was] singled out”.

57 In addition, reference was made to defective and rusty hinges to the fire door exit at street level which, which, the appellant contended, “took a vigorous push to open”. While repairs were done, the appellant says that holes in the door have not been fixed and that the door “still does not comply because of existing holes in the door”.

58 Reference was also made to complaints concerning residents loud thumping, hammering and knocking noises in the building and smoking on balconies. Of this, the appellant said that “the committee made an A4 warning sign to affix inside the lift *only when needed*. And another sign permanently on the ground floor lobby”.

59 Next, the appellant said she requested a meeting with Mr Young to discuss various issues, including what she says was her being singled out concerning the investigations carried out by the plumber. A meeting occurred at a café where, the appellant says, “Mr Young went on a rant with a hostile and loud reaction in public and with cameras around ... [telling] me I was ‘accusing’ him.”

60 In short, the appellant said:

Mr Young is a one-stop shop Member of the Owners Corporation. AGM Secretary, Head of the Strata Committee. Paid Building Manager and Cleaning Services Contractor. The Owners Corporation *should assign* some of those functions to calm, apt and sensible owners. This portfolio encompasses a great deal of power in the hands of *one* individual, and autocracy can be a consequence.

61 As to Mr Young and his performance of his role as chairperson and building manager, and the application to remove Mr Young, the Tribunal reached the following conclusions:

Section 42 provides that the functions of the chairperson of an owners corporation include the following:

- (a) To preside at meetings of the owners corporation and the Strata committee of the owners corporation, and
- (b) To make determinations as to quorums and procedural matters at meetings of the owners corporation and the Strata committee of the owners corporation. ...

In my view the [appellant] has shown no basis to conclude that Mr Young is not fulfilling his obligations as chairperson or as a member of the strata committee. The owners corporation has employed a strata manager. It is not exceptional that communications are directed to be made through the Strata manager. The role of the chairperson is very limited in what it requires, as indicated by section 42.

... There is no suggestion that Mr Young is not fulfilling that role. It may be presumed that the lot owners who agreed to ... the appointment of Mr Young as building manager, were conscious of his dual role and ... chose to accept the potential of a conflict of interest.

I note that I am not persuaded that there is actually a conflict of interest as the strata committee has oversight of the building manager, ... Mr Young is not left to police himself. The building manager's role is limited in terms ... of the agreement which Mr Young entered into with the owners corporation. That document was included in the [appellant's] bundles. It is not a full-time role and it cannot be said that ... there was any breach ... [of] Mr Young's duties or functions as building manager by failing to respond immediately at 4:30 AM to a water issue raised by Mr Felgueras.

- 62 The reference to an incident at 4:30am concerned the alleged failure by Mr Young to attend the premises of the applicant at this time to investigate building defects.
- 63 In order to succeed on this aspect of the appeal, the appellant must show the Tribunal was in error in its findings of fact and that there were in fact circumstances warranting the making of an order for removal either by reference to the matters identified in s 238(2) of the SSMA or other matters that would warrant such an order. Leave to appeal is required for such a challenge.
- 64 In considering this aspect of the appeal, we have had regard to the transcript of proceedings and the documents which were filed in the proceedings at first instance. Oral evidence on this subject is found in the transcript at page 17 and following. It was given by Mr Felgueras.
- 65 At page 29.9 of the transcript the following exchange occurred:

Member: Are you saying that the building is not properly managed?

Mr Felgueras: I'm not saying the building is not properly managed, but it creates a conflict of interest on the Strata side.

Member: And ... that is discussed at general meetings?

Mr Felgueras: Hmm?

Member: Is that conflict of interest discussed at general meetings?

Mr Felgueras: No, not so far, no.

Member: You're saying that no one has said during the meeting, well, there is a conflict of interest. ... Do you agree that Mr Young leaves the room when ... his appointment as building manager comes up?

Mr Felgueras: In the ... one instance ... the one AGM that I attended was in October of last year, he left when he actually put his contract in front of us. He left the room.

Member: You could then have a discussion about his contract.

...

66 Mr Felgueras then said at page 30.8 of the transcript:

No, this was actually ... put through to us and I have no problems in agreeing to him being having that contract because up until that moment he had actually improved his conduct. There are quite a few issues there that you are not aware of Mr Robertson and this and I haven't had the chance to actually put them through yet. So really there's... a need for more backgrounding information.

67 Mr Felgueras then gave further evidence of matters of concern, variously referring to documents in the appellant's bundle of original evidence and services provided by Mr Young as building manager, as well as issues said to exist in the management and maintenance of the strata scheme. In doing so, Mr Felgueras also made allegations of "corruption" said to arise from the manner in which Mr Young dealt with him and the appellant. Mr Young's conduct was described as quote "unprofessional", "very stealthy" and "very dishonest": see transcript page 49.6.

68 Having reviewed the evidence, there is absolutely no basis to conclude Mr Young's conduct was in any way unprofessional, stealthy or dishonest. These types of allegations, even from self-represented parties, should not be made without some proper foundation.

69 As to the issue of whether Mr Young should be removed as a member of the strata committee and officer of the owners corporation under s 238, there is no material to which we have been referred which would justify the grant of leave,

let alone upholding this ground of challenge. Certainly, it could not be said that “the evidence in its totality preponderates so strongly against the conclusion found by the tribunal at first instance that it can be said that the conclusion was not one that a reasonable tribunal member could reach”: *Collins* at [77].

- 70 To the contrary, as the Tribunal found, the appointment of Mr Young as building manager was discussed at an annual general meeting in his absence and was approved. The part-time role as building manager or as chairperson does not require the sort of action which the appellant suggests Mr Young was required to perform. Consequently, there was no basis to make an order dismissing Mr Young as chairperson or a member of the strata committee.
- 71 Further, the Tribunal’s findings on this matter are consistent with the evidence of Mr Felgeuras, which we have set out above, to the effect that no suggestion was made that the building was not being properly managed.
- 72 It follows that leave to appeal should be refused and this ground of appeal dismissed.

An order requiring the placement of a notice within lifts concerning noisy occupants and requiring inappropriate conduct to cease, including implementing the SMS system.

- 73 The evidence shows that, from time to time, notices were placed in the lifts raising with lot owners conduct issues concerning noise and smoking which might constitute breach of by-laws. This was acknowledged by Mr Felgueras as we noted above.
- 74 The complaint made concerning the Tribunal dismissing a claim for an order concerning the placement of notices and/or the implementing of an SMS system appears to be that the appellant says more should be done in informing the 55 lot owners and any tenants of those lots about inappropriate conduct.
- 75 On the other hand, the evidence also shows that the strata committee took the view that excessive notices was likely to have less impact on lot owners and unlikely to be an effective means of managing noise issues in the strata scheme.

- 76 At best, these matters show minds might differ about how to communicate with lot owners and ensure compliance with by-laws. However, in our view, the evidence does not provide any proper basis for the Tribunal is to make orders in connection with the management of the strata scheme.
- 77 Our comments above, concerning the appellant's request for an order to implement an SMS system to prevent smoking, equally apply to this request. That is, there is no suggestion the strata scheme is not being properly managed and it is open to the owners corporation or an individual lot owner to take action against an identified contravener by commencing proceedings in the Tribunal.
- 78 Insofar as there is dissatisfaction with particular decisions that are made by the strata committee, it is open to an individual lot owner who is not a member of that committee to seek appointment. Alternatively, a lot owner may raise issues of management at an appropriate general meeting of the owners corporation.
- 79 However, short of demonstrating some inappropriate conduct of the strata committee which might give rise to a finding of misconduct or mismanagement, there is no basis for the Tribunal to intervene and make orders simply because an aggrieved lot owner says there is a dispute.
- 80 In the present case, the appellant has failed to prove any circumstances warranting the intervention of the Tribunal under the SSMA or that the Tribunal made an error in dismissing the appellant's application in respect of the orders sought.
- 81 Accordingly, this challenge fails and leave is refused.

Orders

- 82 In light of our conclusions above, leave to appeal should be refused and the appeal otherwise dismissed. Those will be our orders.

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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