

JS Mueller & Co Forum | 17.04.15

STRATA AJUDICATIONS AND NCAT

Getting it Right?



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LAWYERS

Strata Dispute Resolution – Hierarchy

- NSW Fair Trading Mediation



- Strata Schemes Adjudicators



- NSW Civil and Administrative Tribunal (NCAT)



- NCAT Appeal Panel & District/Supreme Court



Types of NCAT Applications

- Application for Adjudicator's Orders (most common)
 - Breaches of by-laws (noise, pets)
 - Permitting Renovations
 - Invalidating Meetings
 - Compulsory Appointments
 - Urgent interim orders



Types of NCAT Applications

- Application for NCAT Orders (less common)
 - Re-allocate unit entitlements
- Application for NCAT Penalty
 - Breach of notice to comply (\$550)
 - Breach of Adjudicator's orders (\$5,500)
- NCAT Appeal Against Adjudicator's Orders



Strata Adjudications – How do they work?

- Paper Driven
- No face-to-face contact
- 4-6 weeks to lodge submissions
- Further 4-8 weeks for Adjudicator's decision
- Limited time for Adjudicator to make decision (typically 2 hours)
- Costs cannot be recovered
- Quick, cheap and nasty





NCAT
NSW Civil &
Administrative Tribunal

STRATA & COMMUNITY SCHEMES

REQUEST FOR AN INTERIM ORDER

Consumer & Commercial Division | Strata & Community Schemes Unit
Under the Strata Schemes Management Act 1996 or Community Land Management Act 1996

IMPORTANT INFORMATION

- A request for an interim order must accompany or relate to a substantive application for an order by an Adjudicator.
- Mediation is not a necessary requirement before lodging a request for an interim order, but it is necessary for your substantive application.
- You must pay a fee for the request for an interim order in addition to the fee for the substantive application.
- For more information about the NSW Civil & Administrative Tribunal (NCAT) telephone 1300 006 228 or visit www.ncat.nsw.gov.au.

DISPUTE DETAILS

1. Address of the scheme:

- ☒ Strata Scheme
☐ Community Scheme

[REDACTED] ROAD
BELLEVUE HILL Postcode: [REDACTED]

2. Strata Plan or Community Plan DP Number:

[REDACTED]

If a Community Scheme, is your lot in a:

- ☐ Community Plan ☐ Neighbourhood Plan ☐ Precinct Plan ☐ Strata Corporation

If a Community Plan, how many lots are shown on the plan? [REDACTED]

APPLICANT

3. Your Name:

Individual applicant or corporation

Full name/s:

THE OWNERS CORP [REDACTED]

Postal address:

PO BOX [REDACTED]
[REDACTED] NSW Postcode: [REDACTED]

Contact details:

Daytime telephone: [REDACTED]

Email address: [REDACTED]

4. Are you:

Tick where appropriate

If Strata Scheme

- ☐ Lot owner of Lot No. [REDACTED] ☐ Original owner ☐ Lessee
☒ Owners corporation ☐ Council, public authority or statutory body ☐ Other

If Community Plan

- ☐ Owner / proprietor of Lot No. [REDACTED] ☐ Occupier
☐ Association ☐ Strata corporation ☐ Manager ☐ Other

RESPONDENT

5. Respondent details:

Who is the application against?
Individual or corporation

If more than one party attach a
separate list

Full name/s:

Ms [REDACTED]

Postal address:

PO BOX [REDACTED]
[REDACTED] Postcode: [REDACTED]

Contact details:

Daytime telephone: [REDACTED]

Email address: [REDACTED]

6. Who is the respondent?

Tick where appropriate

If Strata Scheme

- ☐ Lot owner of Lot No. 7122
☐ Owners corporation
☐ Tenant / occupier of Lot No. [REDACTED]
☐ Lessee ☐ Other

If Community Plan

- ☐ Owner / proprietor of Lot No. [REDACTED]
☐ Community Association
☐ Precinct Association
☐ Neighbourhood Association
☐ Occupier ☐ Other

OFFICE USE ONLY:

File No: [REDACTED]

Classification: [REDACTED]



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ORDER DETAILS

7. Specify the terms of the interim order requested

- That access be provided to lot 22 (garage) in order for the Owner's Corporation to have suitably qualified building consultant inspect concrete slab laid after completion of plumbing works as approved by OC - in order to respond to adjudication file No 35514/

8. What are your reasons for requesting the interim order?

Describe the urgent circumstances of the situation. Give details of when and what is happening or going to happen if the interim order is not made. Attach supporting information such as minutes of meetings, experts reports, any correspondence etc.

Owner will not allow access in order for us to have an inspection done & report provided unless we pay her \$900 + GST.
Owner has obtained their own report, we'd also like to have our own report done in order to include in our submission.

9. Address of Managing Agent:

Or Secretary of Owners Corporation / Association

PO Box

Postcode:

10. Related file numbers:

List all previous applications involving the same or related dispute

11. Important information: Application fee and attachments

☒ Is your application fee included?

Refer to the fee schedule on the NCAT website www.ncat.nsw.gov.au. Cheque or money order payments are to be made out to NSW Civil and Administrative Tribunal. Credit card payment can be made by submitting an authority form with your application. Payment can be made in person at any NCAT Registry Office, Fair Trading Centre or Service NSW Centre. Concession fee applicants must provide a photocopy of their concession card.

☒ Have you included your attachments?

Attach details of multiple applicants or respondents, or further information about the orders you are seeking. Keep a copy of your application and any attached information for your own records. Note: A copy of this application and any attachments will be sent to the respondent.

12. Your Name/s (Please print)

Your Signature/s

Your position title (if company)

Date

STRATA MANAGER

23/1/2015

Return application with fee to: NSW Civil and Administrative Tribunal (NCAT)

For all NCAT Consumer & Commercial Division Registry Offices ☎ T: 1300 006 228 🌐 www.ncat.nsw.gov.au

Sydney Registry
Level 12, 175 Castlereagh Street
Sydney NSW 2000
GPO Box 4306, Sydney NSW 2001

Perth Registry
Grand Place, 2-4 Station Street
Perth NSW 2750
PO Box 999, Perth NSW 2751

Liverpool Registry
Level 3, 33 Moore Street
Liverpool NSW 2170
PO Box 723, Liverpool NSW 2171

Tamworth Registry
Sullo 3-5, Kable Corner Complex
Cor Kable Ave & Darling St
PO Box 1935, Tamworth NSW 2340

Newcastle Registry
Level 1, 175 Scott Street
Newcastle NSW 2300
PO Box 702, Newcastle NSW 2306

Wollongong Registry
Level 3, 43 Buxton Street
Wollongong NSW 2500
PO Box 319, Wollongong NSW 2509



NCAT
NSW Civil &
Administrative Tribunal



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APPLICATION

For an order that access be granted to lot 22 (garage) in order for the Owners Corporation to have suitably qualified building consultant inspect concrete slab laid after completion of plumbing works as approved by Owners Corporation in order to respond to adjudication file SCS 14 [REDACTED]

REASONS FOR DECISION

1. The Minister has appointed me as an Adjudicator under section 217 of the *Strata Schemes Management Act 1996* ("the Act"). As an Adjudicator, I have the powers set out in Chapter 5 of the Act. The powers include the power to make an interim order under section 170 where an applicant for an order under another provision of Chapter 5 requests the making of such an order. As noted above, in this case an application for substantive orders has been made. I therefore have the power to consider the application for interim orders.
2. On 27 November 2014, the respondent filed an application for an adjudicator's order pursuant to section 138 of the *Strata Schemes Management Act 1996* that the Owners Corporation carry out the necessary repairs to the concrete slab of Lot 22 to ensure that the slab complies with AS for residential slabs. It appears that the Owners Corporation sought access to the premises to conduct an inspection, and that such access was granted only on the basis of unacceptable conditions sought to be imposed by the Lot Owner.
3. On 28 January 2015, the Owners Corporation filed its own application for an Adjudicator's order pursuant to section 145 of the Act seeking access to the Lot. On the same date, this application for an interim order was filed and I therefore have jurisdiction to decide this application.



4. Under section 170 of the Act, an interim order can only be made if the Adjudicator is satisfied on reasonable grounds that urgent considerations justify the making of the order. If the Adjudicator is so satisfied, the Adjudicator may make any order that could otherwise be made by the Adjudicator or Tribunal. I note that there is no obligation to give notice of an application to make an interim order – see the Act s 168.
5. Interim orders are not granted lightly. Generally the word “urgent” connotes immediacy, that is, a situation in which it would be inappropriate for action to be delayed, or for time to intervene before a certain course is undertaken. In this case, for the reasons outlined below, I consider that the application for interim orders should not be granted.
6. The applicant has provided no evidence nor even submissions as to why there is the necessary urgency to grant this application, nor is that urgency at all obvious from the application (or indeed the respondent’s original application).
7. For these reasons the application for an interim order is dismissed.



Geoffrey Meadows
Strata Schemes Adjudicator
Civil and Administrative Tribunal of New South Wales



28 January 2015



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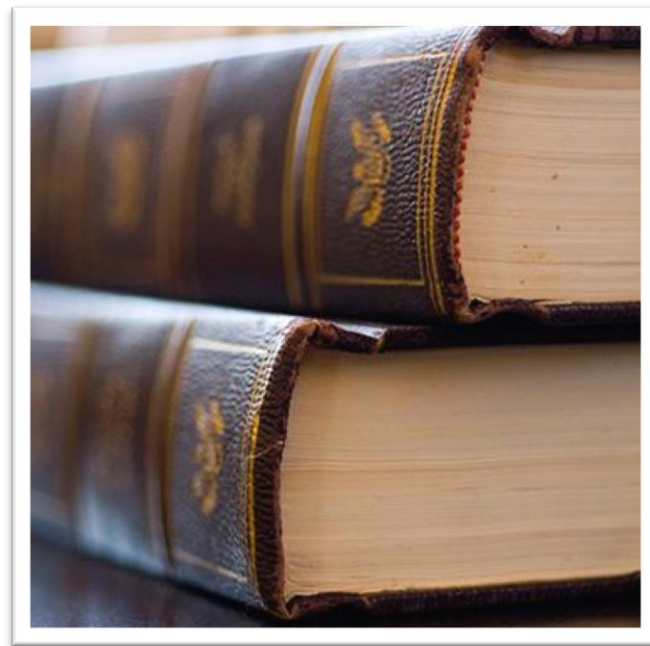
Cheat Sheets

- Identify the correct Applicant
- Identify the correct Respondent
- Specify the Orders Sought
 - Be clear
 - Be concise
 - Identify the section
 - Reality test (will it work?)
- Specify the Reasons for Seeking the Orders
 - Be clear
 - Be concise (1 page summary)
 - Be thorough (detailed summary of events)
 - Include a chronology



Cheat Sheets

- Include Evidence
 - The Applicant must prove its case
 - Bald assertions insufficient
 - Need to attach to Application:
 - Statutory Declarations
 - Witness Statements
 - Letters/Emails
 - Photographs



Strategy

- Who is running the show? Who will do the work?
 - Strata Manager?
 - Executive Committee?
 - Lawyer?
- When to brief lawyers?
- Detailed Application vs Skeleton Application
 - Pros (don't reveal your hand)
 - Cons (denial of procedural fairness)



Strategy

- Further submissions and evidence
 - From the Applicant
 - From the Respondent
 - From lot owners and residents
(Adjudicator's listen to lot owners)
- Submissions in Reply
- Meet the submission deadline
- Where is this all headed? Have a clear goal



THANK YOU

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