

ACCAL 12TH ANNUAL CONFERENCE 2017

NSW CASE LAW UPDATE

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An Overview

- Supreme Court decided several strata cases in its original jurisdiction.
- NCAT decided numerous strata cases.
- NCAT decisions are not published.
- *Yau* is the most important decision.

The Owners – Strata Plan No. 57164 -v- Yau [2016] NSWSC 1056

- Executive committee holds urgent meeting.
- Proper notice of meeting not given.
- Executive committee authorises senior counsel to settle case (which he does).
- 16 months later owners corporation applies to Court to set aside settlement.

Yau (cont'd)

- Owners corporation claims executive committee meeting invalid.
- Owners corporation says executive committee not authorised to promise to pass special resolutions or spend money not included in budget.
- Court disagrees.
- Executive committee meeting valid even though proper notice not given.
- Owners corporation ratified settlement agreement.

James -v- The Owners – Strata Plan No. 11478 [2016] NSWSC 1558

- Owners corporation dysfunctional.
- ACM appointed as compulsory strata manager by CTTT.
- ACM organises building repairs.
- ACM arranges for construction of balconies and demolition of rear stairs.
- ACM raises substantial contributions exceeding \$1million to fund repairs and construction.

James (cont'd)

- Ms James does not want rear stairs demolished.
- Ms James does not want to pay substantial contributions.
- Ms James sues owners corporation and ACM.
- Ms James alleges ACM owed her duty of care to exercise functions of owners corporation reasonably so as to avoid her suffering economic loss.
- Owners corporation sues Ms James for overdue contributions.

James (cont'd)

- Court dismisses Ms James' claim and orders her to pay overdue contributions.
- ACM does not owe Ms James a duty of care to avoid economic loss.
- Duty of care would be:
 - novel
 - impossible to reconcile with strict statutory duties of owners corporation
 - cut across statutory scheme for dispute resolution
 - incongruous with inability of owner to sue for damages

McElwaine -v- The Owners – Strata Plan No. 75975 [2016] NSWSC 1589

- Defects in common property.
- Water leaks into unit.
- Unit becomes uninhabitable.
- Owner sues owners corporation for damages for breach of statutory duty to repair common property.
- Owners corporation puts on strike out motion relying on *Thoo*.
- Owner seeks leave to amend claim to rely on claim in nuisance.

McElwaine (cont'd)

- Court dismisses claim.
- Claim for breach of statutory duty not available (*Thoo*).
- Statutory scheme for dispute resolution nullifies common law claims.
- Adjudication exhaustive.
- No damages claim in nuisance available.

The Owners – SP72381 –v- The Owners – SP71067 [2016] NSWSC 1857

- World Tower in Sydney CBD.
- Governed by strata management statement.
- Low rise owners install door in wall in lobby on level 10.
- Mid rise owners object to door.
- Mid rise claims lobby a shared facility which cannot be altered without its consent.
- Mid rise applies for injunction to remove door.

World Tower Case (cont'd)

- Wall in which door installed not a shared facility.
- Areas of lobby required for access to mid rise a shared facility.
- Consent of mid rise owners not required for door.
- Claim dismissed.

The Owners of Strata Plan 76888 -v- Walker Group Constructions Pty Ltd [2016] NSWSC 541

- Can an owners corporation repair common property by installing a structure that encroaches on a lot?
- Referee upholds method of repair of waterproofing defect that will result in 3-4mm encroachment on lots.
- Owners corporation objects to repair methodology.

Walker Group Constructions (cont'd)

- Court agrees with referee.
- Owners corporation can enter lot to repair common property.
- Owners corporation can add to common property when carrying out repairs.
- Therefore owners corporation can repair common property in a manner that results in a structure encroaching on a lot.

The Owners – Strata Plan No. 13631 -v- McGrath & Anor (No. 1) [2016] NSWSC 1929

- Owners corporation applies for \$5,500 penalty.
- Owners corporation unsuccessful.
- NCAT orders owners corporation to pay costs of \$30,086.25.
- NCAT only empowered to award costs when imposing a penalty.
- Supreme Court quashes NCAT costs order.

Lipscher & Ors –v- The Owners – Strata Plan No. 30995 [2017] NSWCATCD 2

- Group of owners want to replace balcony balustrades.
- Another group of owners see nothing wrong with balustrades.
- Owners corporation purports to pass ordinary resolution to replace balustrades.
- Owners apply to NCAT to invalidate resolution and restrain balustrade replacement without special resolution.

Lipscher (cont'd)

- NCAT finds no evidence to prove balustrades deficient.
- NCAT holds no resolution passed at meeting.
- NCAT invalidates purported resolution and restrains owners corporation from replacing balustrades without special resolution.

Owners Corporation SP80454 -v- Eddy Investments Pty Ltd [2016] NSWCATCD

- Owners corporation claims strata management statement deficient.
- Owners corporation applies to NCAT to amend statement.
- NCAT finds it has power to amend statement but only to resolve management disputes.
- NCAT concludes amendments sought by owners corporation too extensive and beyond power.

Thank You!

