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TAMING KEYBOARD WARRIORS –

HOW TO DEAL WITH UNREASONABLE STRATA COMMUNICATIONS

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Introduction

A recent New South Wales District Court defamation case highlighted the dangers that lurk in communications (especially emails) passing between strata managers, strata committee members and strata residents.

The perennial problem of burdensome email communications also plagues many strata schemes and as the case highlighted can escalate into a defamation case. However, owners corporations do have the power to regulate communications to prevent his happening.

We look at the case and what owners corporations can do to stop unreasonable communications.

The defamation is in the email

In *Raynor v Murray* [2019] NSWDC 189, Mr Raynor, the chair of a strata committee for a building in Manly successfully sued fellow resident Ms Murray for her defamatory emails about him. The District Court ordered Ms Murray to pay to Mr Raynor $120,000 in damages.

A seemingly minor matter of common property maintenance and repair boiled over. An owners corporation is required to repair and maintain letter boxes for its strata building (see section 121 of the *Strata Schemes Management Act 2015*). In this case, Ms Murray did not lock her letter box. Mr Raynor was concerned about mail theft and email correspondence passed between them in which Mr Raynor requested she lock her letter box. Ms Murray did not do so. The correspondence culminated in Ms Murray sending an email to Mr Raynor and others that contained the words "*However, your consistent attempt to shame me publicly is cowardly. It is also offensive, harassing and menacing through the use of technology to threaten me. Please stop!*"

The District Court found that Ms Murray's email defamed Mr Raynor because it wrongly suggested that he unreasonably harassed her and acted menacingly towards her by consistently threatening her by email, that he was a malicious person who sent threatening emails to her and copied in other residents to publicly humiliate her, and that he was a small minded busybody who wasted the time of fellow residents on petty items concerning the running of the building. Ms Murray failed to establish any of this was true.

Dealing with unreasonable communications

It is fair to say that email is one of the banes of modern life. Very few job descriptions contain "answering emails" as an essential task of the job.

There are no express statutory provisions in the *Strata Schemes Management Act 2015* dealing with how owners, occupiers and their representatives communicate with an owners corporations, strata committee members and strata managers or how an owners corporation can regulate or prohibit unreasonable communications, and there appear to be no decisions in New South Wales dealing with the topic. However, there are reported adjudicators' decisions in Queensland under the Queensland strata legislation indicating that a by-law prohibiting unreasonable communications is valid and an owners corporation can adopt (even in the absence of a by-law on the topic) practices to regulate and prohibit unreasonable communications. We consider that such a by-law would be valid under the *Strata Schemes Management Act 2015* and that the NSW Civil & Administrative Tribunal (**NCAT**) would follow the Queensland decisions.

In *Tank Tower* [2015] QBCCMCmr 322, a Queensland adjudicator made orders restricting a lot owner's communications with an owners corporation based on a by-law that provided:

> *Owners and occupiers must communicate with the Committee in a reasonable manner and not in any way which may become an annoyance or a nuisance to any Committee member.*

The adjudicator ordered the lot owner in question to limit his communications with the strata manager and committee members so that:

- He could only send correspondence via the post and not by email.
- He could only send one piece of correspondence per week.
- Each piece of correspondence could not be more than 2 pages long and could not contain more than 1,000 words.
- The correspondence had to be courteous and not abusive.
- He could only telephone the owners corporation's representatives if they had invited him to do so.

In addition, the adjudicator made it clear that:

- The owners corporation's representatives could ignore any communication that did not comply with the above rules.
- The owners corporation's representatives did not have to acknowledge receipt of correspondence.
- The owners corporation's representatives had to act reasonably in determining whether any correspondence from the lot owner required a response.

The adjudicator also found that even in the absence of a by-law on the topic, an owners corporation could regulate unreasonable communications based on the following principles:

- An owners corporation and its strata committee must act reasonably when undertaking their functions and making decisions.

- Receiving and responding to correspondence from owners is a normal part of the administration of an owners corporation. Providing it acts reasonably in doing so, a strata committee is entitled to set conditions on how owners communicate with the owners corporation to ensure that correspondence is handled efficiently and to minimise the resource impacts. For example, strata committees can specify an address for correspondence, a primary point of contact for queries, or request communication in writing so that there is a record of the issue.

- Whether strata committee members are volunteers or paid agents of the owners corporation, the owners corporation cannot reasonably expect the recipients of correspondence to be exposed to voluminous, repetitive and abusive tirades. It is unfair on other lot owners and occupiers to have the resources of the owners corporation exhausted by the lengthy, repetitive and offensive communications of a single lot owner.

- Accordingly, a strata committee is entitled to decide to impose restrictions on unreasonable and excessive communications, even if those communications are not in breach of a by-law or the strata legislation.

The above principles were approved in the subsequent Queensland case of *Deagon Village* [2018] QBCCMCmr 208.

Conclusion – be cool like Fonzie!

American author and blogger Tim Ferris has a rule for followers posting to his website: *Remember what Fonzie was like? Cool. That's how we're gonna be — cool. Critical is fine, but if you're rude, we'll delete your stuff.*

While we don't expect NCAT will be quoting from Tim Ferris or Fonzie, the sentiment should be heeded by NCAT. Strata managers, committee members, owners and residents should be cool in their communications with each other and in doing so, they will avoid being a defendant in a defamation case like Ms Murray was.

By-laws dealing with unreasonable communications are also cool.

About JS Mueller & Co Lawyers

JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for over 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of strata law, building defects and levy collection.

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