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# SUPREME COURT SAVES DEFECTIVE AGM'S

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## SUPREME COURT SAVES DEFECTIVE AGM'S

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The strata legislation contains a number of requirements which must be met for any AGM's. These include requirements for the AGM agenda to contain certain motions and for the AGM notice to be accompanied by various documents. What happens if these requirements are not met? Is the AGM invalid? A recent decision of the Supreme Court provides helpful guidance on this issue.

### **Introduction**

The case of *Sher Global Enterprises Pty Ltd -v- Owners – Strata Plan 31758* [2018] NSWSC1057 involved a claim by an owners corporation against a lot owner for unpaid strata levies that were raised at several AGM's. The lot owner disputed that the levies had been validly struck. This is because the owner claimed that various requirements in the strata legislation concerning the AGM's were not met. The Supreme Court had to decide whether or not the AGM's were valid even though some of the requirements of the strata legislation concerning the AGM's were not met.

### **Requirement 1 – Service of Meeting Notice**

The strata legislation requires the notice of an AGM to be served on every lot owner. The legislation also requires lot owners to provide the owners corporation with their address for service of notices. However, what happens if an owner provides an incorrect address for service of notices? Does the owners corporation still have to serve AGM notices to the incorrect address?

This is what happened in the *Sher* case. The lot owner provided the owners corporation with an address for service of notices which was an empty office space. The Supreme Court held that the owners corporation did not have to serve notice of its AGM's on the lot owner to the empty office space as that would have been meaningless. In this case, the owners corporation sent notices of the AGM's to the address of the lot owner's solicitor which the Court said was good enough.

Importantly, the Court also concluded that there was no statutory requirement for an owners corporation to track down a correct address for service of notices of an owner. For these reasons the Court decided that it did not matter that notice of the AGM's was not sent to the owner's current address and that the AGM's were not invalid for that reason.

### **Requirement 2 – Service of Previous Meeting Minutes**

The strata legislation previously required the notice of a general meeting to be accompanied by a copy of the minutes of the last such meeting. In this case, the owners corporation did not include the minutes of the last general meeting in the notice of each AGM. *Sher* argued that this meant that the owners corporation did not comply with the requirements in the strata legislation concerning the AGM notices and that therefore the AGM's were invalid. The Court disagreed. The Court concluded that the requirement to send the minutes of the last general meeting together with the notice of an AGM was procedural only and the failure to comply with that requirement would not render an AGM invalid.

### **Requirement 3 – Mandatory Motions**

The strata legislation also requires the agenda of an AGM to contain certain motions, such as motions to adopt financial statements, confirm the insurance policies held by the owners corporation, to restrict the powers of the strata committee, to prepare or review a 10 year capital works fund plan, and to consider the appointment of an auditor and the election of a strata committee. None of these motions were included in the AGM agendas issued by the owners corporation. The Court concluded that the inclusion of these motions was procedural and not mandatory as a result of which the failure to include those motions in the agendas of the AGM's did not make the AGM's invalid.

### **Requirement 4 – Financial Statements**

The strata legislation also requires the notice of an AGM to include certain financial statements. In this case, the owners corporation did not include those financial statements in the notice of its AGM. The Court said this did not matter. The Court concluded that whilst the owners corporation should have included the financial statements in the notices for its AGM's the omission of those statements did not invalidate the AGM's.

### **The Wash-Up**

The Court reached the conclusions that it did because it recognized that if an AGM was invalidated because certain motions were missing from the agenda or documents were not attached to the AGM notice, this would cause substantial administrative inconvenience for the owners corporation and would not further the objects of the strata legislation which are to provide for the orderly management of strata schemes. As a result of its conclusions, the Court found that Sher was liable to pay the levies that had been raised at the AGM's.

### **Conclusion**

The decision in the *Sher* case is a victory for common sense. It means that not every single requirement of the strata legislation must be met in order for an AGM to be valid and provides owners corporations with some degree of flexibility in the event that they make mistakes in relation to their AGM's. However, there are still some mandatory requirements in the legislation which must be met in order for an AGM to be valid. This means it is still important to ensure that the requirements in the legislation concerning AGM's and other general meetings are met so that owners are not given an opportunity to dispute the validity of meetings and the decisions made at them.

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**About JS Mueller & Co Lawyers**

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

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