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GIVE ME BACK MY HOT SHOWER!

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GIVE ME BACK MY HOT SHOWER!

Can the chairperson of an owners corporation disconnect the hot water supply to common property showers in a swimming pool area without the authority of his owners corporation? A recent NCAT case grappled with this interesting issue.

Introduction

In about 2008, the chairperson of a strata building in Parramatta, Sydney disconnected the hot water supply to the common property showers in a pool area of the building. The chairperson did this due to the number of residents who were using the pool showers rather than their own showers. The hot water was disconnected by the chairperson without the authority of the owners corporation. Were the actions of the chairperson lawful?

The Case

In 2018, the owner of a lot in the building applied to NCAT for an order to force the owners corporation to reinstate the hot water in the showers in the pool area. The owner also sought an order for compensation as a result of the unavailability of hot showers in the pool area. In the case, the owners corporation accepted that the chairperson was not authorised to disconnect the hot water supply to the showers in the pool area. The owners corporation also accepted that the disconnection of the hot water service was an unauthorised alteration to the common property. However, the owners corporation proposed to deal with the issue by passing a special resolution at a general meeting to authorise the disconnection of the hot water supply to the showers in the pool area.

The Decision

NCAT considered that it was appropriate to allow the owners corporation to put to a vote at a general meeting, by special resolution, the motion on whether or not the hot water supply to the showers in the pool area should remain disconnected instead of making an order to require the owners corporation to reinstate the hot water supply to those showers.

The Appeal

The owner appealed against NCAT's decision. The appeal was unsuccessful. In the appeal, the NCAT Appeal Panel held that the duty of the owners corporation to maintain and repair the common property required the owners corporation to reinstate the hot water supply to the showers in the pool



area which had been disconnected without authority by the chairperson. However, after the initial NCAT decision, the owners corporation had passed the special resolution to disable the hot water taps in the showers in the swimming pool area. For that reason, the Appeal Panel concluded that it would not be appropriate to require the owners corporation to reinstate the hot water supply to the showers as it had passed a special resolution to alter the shower facilities in the pool area. Instead, the Appeal Panel concluded that if the owner wanted to challenge that decision made by the owners corporation, he could do so in separate proceedings in NCAT.

Compensation?

The owner also sought an order that the owners corporation pay compensation for its failure to reinstate the hot water supply to the showers in the pool area. The owner claimed that he was required to pay for and use a membership to the Parramatta Swimming Centre presumably because he was not prepared to swim in the pool area in the building as it did not have hot shower facilities. The compensation claim was rejected by NCAT. The Appeal Panel concluded that the owner's financial losses including membership fees were sustained prior to the commencement of the new strata legislation during a period when owners were not entitled to recover compensation from owners corporations who breached their duty to maintain and repair common property. The Appeal Panel also held that the owner's claim for compensation had been brought more than two years after the owner first became aware of his loss and was therefore out of time. The Appeal Panel was also not satisfied that any losses that had been suffered by the owner were caused by the lack of hot shower facilities in the pool area in the building.

Conclusion

The case highlights that office bearers and strata committee members are not entitled to unilaterally make changes to the common property without the approval of the owners corporation and that the owners corporation is required to reinstate to its previous condition any common property that is affected by those unauthorised changes. However, the case also highlights that there is an alternative path for an owners corporation to follow and that it is possible for an owners corporation to pass a special resolution and, if appropriate, a by-law, to enable any unauthorised changes to the common property that have been made by a strata committee member (or any other person) to be retained. The case also highlights the difficulties owners face proving a claim for compensation against an owners corporation: see *John Maait Properties Pty Ltd -v- The Owners – Strata Plan No. 50396* [2019] NSWCATAP 26.





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About JS Mueller & Co

JS Mueller & Co 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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