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NCAT APPROVES SECURITY FOB BY-LAW

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In a recent decision, NCAT upheld a security fob by-law made by an owners corporation. This is a good decision as it demonstrates that appropriately worded security fob and access key by-laws can be made by owners corporations.

Introduction

Many strata buildings contain security systems which restrict access to and egress from the buildings. These systems often include security access keys or fobs which are distributed to owners and occupiers to enable them to get into and out of the building.

Security Key By-Laws

The increase in the number of security systems present in strata buildings has resulted in many owners corporations adopting security fob and access key by-laws. These by-laws typically contain a regime for the distribution of access keys and fobs to owners and occupiers by the owners corporation and impose rules for the use of those access keys and fobs. These by-laws come in various shapes and sizes but it is unusual for them to be challenged.

The Case

In *John Maait Properties Pty Ltd -v- The Owners – Strata Plan No. 50396 [2019] NSWCATAP 26*, a lot owner in a large strata building in Parramatta, Sydney challenged the validity of a security key and fob by-law. The by-law entitled the residents to have a limited number of access fobs depending on the size of their apartments (e.g. three key fobs for a two bedroom apartment). The by-law also prevented investor owners holding any key fobs and required them to deliver all key fobs to their tenants. The by-law also allowed the key fobs to be programmed so as to restrict access to only those parts of the common property which a particular tenant might have a legitimate need to access. The owner challenged the by-law on the grounds that it was harsh, oppressive or unconscionable because it prevented a person obtaining access to particular common property where they had a legitimate need to do so and inappropriately limited the number of key fobs that could be issued for each lot.

The Decision

The owner's Application to NCAT was dismissed. The owner then appealed against NCAT's decision. In the appeal, the Appeal Panel upheld the by-law. The Appeal Panel concluded that the by-law was



enforceable and contained reasonable restrictions on the areas of the common property to which a person could gain access by use of their security fob. The Appeal Panel said that the by-law still entitled an owner or tenant to use their fob to gain access to the areas to which they would ordinarily require access which was reasonable. The Appeal Panel concluded that the by-law appropriately balanced the legitimate need to ensure the security of the building against a particular owner's need to access their lot and relevant common property. The Appeal Panel also held that the by-law provided sufficient flexibility to allow the owners corporation to grant a particular owner access to any specific part of the common property to which that owner had a legitimate entitlement to access. However, the Appeal Panel did say that any decision by the owners corporation to refuse a legitimate and reasonable request for additional access to other areas of common property made by an owner could be susceptible to challenge by the owner and review by NCAT.

Conclusion

The decision by NCAT is a good one because it confirms that owners corporations can validly make security key and access fob by-laws. However, the case highlights that those by-laws need to be drafted carefully to ensure that they are appropriately worded so that their terms are fair and reasonable otherwise they can be overturned on the grounds that they are harsh, unconscionable or oppressive.

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About JS Mueller & Co

JS Mueller & Co has been servicing the strata industry across metropolitan and regional NSW for 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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