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# ‘NOTHING TO SEE HERE’ OWNERS CORPORATIONS, LOT OWNERS AND SECURITY CAMERAS

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The use of surveillance cameras in both private and public spaces is increasing significantly. Cameras are installed by local councils and private enterprise, and you can expect to be digitally recorded walking into a shopping centre, travelling on public transport, and even taking the dog for a walk in a local park.

An often vexed issue is what rights lot owners and owners corporations have to install their own security cameras.

Two recent NCAT decisions confirm that lot owners generally do not have the right to install security cameras on common property without first obtaining the consent of the owners corporation. Where they do not obtain that consent, then the owners corporation is entitled to require the security cameras to be removed.

However, there are also lessons for owners corporations, with the possibility that owners corporations and lot owners may commit an offence under the *Surveillance Devices Act 2007 (NSW)*.

### **The First Case – A Couple of Cameras**

#### **Background**

In mid-2018, the lot owner moved back into a unit owned by her and which had been let to tenants. Due to her concerns about a level of “dispute” within the strata scheme, the lot owner installed 2 security cameras on the (common property) building – 1 outside the main bedroom of her unit, and 1 outside the kitchen.

The security cameras were motion-activated and recorded footage which was then stored on a hard drive.

This action by the lot owner, without the consent of the owners corporation, was the source of some unhappiness among other owners. Initially, the owners corporation instructed the strata manager to contact the lot owner. The purpose of such contact was to advise the lot owner that the owners corporation was not happy with the cameras being installed.

Shortly afterwards, the strata manager again contacted the lot owner advising her that she would need specific permission from the owners corporation to attach the security cameras to common property walls. There was no response from the lot owner and the owners corporation served a Notice to Comply on her. Still, there was no action from the lot owner.

Finally, the owners corporation gave the lot owner a deadline and indicated that if the lot owner did not remove the security cameras by that deadline then the owners corporation would take its own steps to do so.

The lot owner then commenced proceedings in the NSW Civil and Administrative Tribunal (NCAT) and obtained interim orders restraining the owners corporation from removing the security cameras pending the ultimate hearing of the matter. However, following that hearing, the original interim orders were revoked by the Tribunal, and orders were made for the removal of the cameras.

The decision of the Tribunal followed a fairly orthodox line of reasoning.

#### Need for Approval to Use Common Property

The Tribunal referred to By-Law 5 of the strata scheme which stated:

- “(1) An owner or occupier of a lot must not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property without the approval in writing of the owners corporation.*
- (2) An approval given by the owners corporation under clause (1) cannot authorise any additions to the common property.”*

The lot owner in this situation had not obtained consent. Since no consent had been obtained, the Tribunal had no difficulty in ordering that the security cameras be removed.

#### Surveillance Devices Act

The Tribunal also brought to the attention of the lot owner that in recording footage of persons outside of her lot, the lot owner was likely to be in breach of section 8 of the *Surveillance Devices Act*. The Tribunal noted that a breach of section 8 of the *Surveillance Devices Act* was punishable by a significant fine or imprisonment.

### **The Second Case – Half a Dozen Cameras!**

#### Background

In another decision handed down recently, the Tribunal was once again required to consider circumstances where a lot owner had installed multiple security cameras on common property walls.

In this case, the lot owner had installed:

- 3 CCTV cameras facing the backyard;
- 1 CCTV camera facing the main entry door of her lot;
- 1 CCTV camera facing her garage door and parking spots; and
- 1 CCTV camera facing the common property driveway containing the rubbish bins.

The lot owner did not obtain the consent of the owners corporation to the installation of any of these cameras.

### Failure to Comply with By-Law

As with the case referred to above, the owners corporation drew to the attention of the Tribunal one of its by-laws, being Special By-Law No. 3, which stated:

*“An owner or occupier of a lot must not, except with the prior written approval of the owners corporation, install, use or maintain an optical or audio surveillance device on their lot, or on common property in order to record visually or aurally, or observe or listen to the carrying on of an activity.”*

In light of the failure of the lot owner to obtain the owners corporation's approval, here the Tribunal made an order that if the lot owner did not remove the security cameras herself, that the owners corporation was entitled to do so, at the lot owner's cost.

In this case, the Tribunal again referred to the potential application of section 8 of the *Surveillance Devices Act*, and the risk that the lot owner placed herself in, in recording footage.

### Lessons for Owners Corporations

Almost every owners corporation will have a by-law or by-laws which will be able to prevent a lot owner from installing CCTV cameras on common property without the consent of the owners corporation, and owners corporations should not hesitate to require lot owners to comply by either obtaining consent from the owners corporation or removing CCTV cameras which have been installed without consent.

It is also timely for strata managers to bring to the attention of owners corporations the potential difficulties for individuals and for corporations under the *Surveillance Devices Act*, and the need to take great care when it comes to the installation of surveillance devices.

If owners corporations take the step of initiating security cameras themselves, they risk committing an offence pursuant to the *Surveillance Devices Act*.

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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 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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