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GOOD NEWS FOR COMPULSORY STRATA MANAGERS

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Introduction

Strata Managers are often unfairly the focus of criticism by lot owners, when something happens which those owners don't like. Occasionally, a dysfunctional owners corporation will have a compulsory strata manager appointed, pursuant to section 237 of the Strata Schemes Management Act 2015 (the **Act**), to try and get things back on track.

Strata Managers often receive a request to put their name forward to be appointed as a compulsory strata manager, in circumstances where there is a dysfunctional owners corporation, and where there may be one or more lot owners agitating for various things to occur, such as remedial building works. It can be a difficult decision to make, as to whether to agree to put yourself forward.

A recent decision of the Appeal Panel of the NSW Civil and Administrative Tribunal provides helpful guidance, and offers some hope to strata managers who have been compulsorily appointed pursuant to section 237 of the Act.

The Original NCAT Proceedings

Various sets of proceedings had been commenced by a lot owner in NCAT against, and in relation to, the owners corporation of a 44 lot building situated in Homebush, NSW.

Under one of those sets of proceedings, NCAT had made an order for the compulsory appointment of a strata manager for a period of 12 months, having been satisfied that the owners corporation was not functioning satisfactorily. The source of the difficulty in the owners corporation was in relation to the need to undertake certain remedial building work to the common property, and the inability of the owners to agree on a way forward in relation to that work.

The Applicant lot owner had also brought separate proceedings, seeking that NCAT make orders for the owners corporation to comply with its obligations under section 106 of the Act, to carry out certain building works to the common property. At the time that this Application came on for hearing in NCAT, the compulsory strata manager had already been appointed by NCAT in the earlier proceedings.

NCAT found that the compulsorily appointed strata manager had in fact begun the process of dealing with the necessary remedial work (even though the compulsory strata manager had only been appointed for approximately 2 months by the time of the hearing). Therefore, NCAT took the view that the compulsorily strata manager was best placed to continue that process, and NCAT dismissed the lot owner's application for separate orders pursuant to section 106 of the Act.

NCAT also found that the lot owner had significantly contributed to the delay and cost of having the works done. Therefore, NCAT decided that it did not intend to exercise its discretion to make the orders which the lot owner sought.

NCAT concluded that the compulsory strata manager should be given the opportunity to properly investigate and continue with planning to repair relevant defects in the common property, and therefore that there was no reason that NCAT should exercise its power or discretion to interfere with those plans.

The NCAT Appeal

The lot owner appealed to the Appeal Panel of NCAT against NCAT's decision to dismiss his application for the owners corporation to be ordered to carry out certain work to the common property. The decision of the Appeal Panel is found in *Guo v The Owners – Strata Plan No. 70067* [2019] NSWCATAP 219.

The Appeal Panel considered the totality of the circumstances. These circumstances included the fact that:

- the Lot Owner had initiated 13 sets of proceedings since 2014 against the owners corporation;
- the process for remedial building works had been commenced by the compulsorily appointed strata manager;
- that process was apparently under control.

In all the circumstances, the Appeal Panel agreed that NCAT should not further interfere with the operation of the owners corporation.

The Appeal Panel agreed that the compulsorily appointed strata manager should be given the chance to implement the processes designed to enable the remedial building works to take place.

Practical Implications of this Case

NCAT will always be concerned to know that an owners corporation is attending to its responsibilities pursuant to section 106 of the Act, as they relate to the need to maintain and repair common property.



However, where steps are being taken to deal with any issues, an owners corporation (and a strata manager) can take comfort in the reluctance of NCAT to continually revisit that process whilst it is occurring.

In particular, strata managers who are compulsorily appointed pursuant to section 237 of the Act may take some comfort in the approach of the Appeal Panel (and indeed in the approach of NCAT at first instance). By attending to the issue which had been the cause of the compulsory appointment (most often, the need for remedial building works), it is unlikely that NCAT, taking the approach in this decision of Guo, will want to interfere with the wheels that have been set in motion by the owners corporation or compulsory strata manager, particularly in circumstances where there is a vexatious lot owner that is a cause of the problem.

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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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