

Retrospective Approval of Unauthorised Works Possible

Introduction

The Supreme Court has confirmed that an owners corporation and NCAT can grant an owner retrospective approval of work or repairs done by the owner to the common property without the approval of the owners corporation.

However, the Court has also confirmed that there are some prerequisites that must be met before NCAT is able to grant retrospective approval for works done by an owner on common property without the approval of an owners corporation.

The Court has left open the question of whether an owner who does repairs to the common property which an owners corporation should have but did not perform can be compensated for the cost of those repairs.

Facts

Mr Colman owns a lot in a strata building in Pyrmont, Sydney. Mr Colman and his wife sought the approval of their owners corporation to undertake alterations to a terrace on their lot which affected the common property. Those alterations included removing and replacing tiles and waterproofing on the terrace. The Colmans alleged that work, or some of it, was necessary to repair defects in the common property which the owners corporation has failed or refused to fix. Ultimately the Colmans undertook those works without first obtaining the permission of the owners corporation.

The Case

Mr Colman applied to NCAT for orders approving the works he

did to his terrace on the grounds that the owners corporation had unreasonably withheld approval of those works and for the owners corporation to pay him damages. Mr Colman's application to NCAT was dismissed and an appeal to the Appeal Panel of NCAT was unsuccessful. Mr Colman then appealed to the Supreme Court but was also unsuccessful.

Ruling

In its decision, the Supreme Court made some key findings about the operation of the *Strata Schemes Management Act 2015* with respect to works done by owners that affect the common property. In summary, the Supreme Court found that:

- Both an owners corporation and NCAT can give retrospective approval of works or repairs already carried out by an owner to common property directly affecting the owner's lot, even if the owners corporation did not approve of those works before they were done;
- In the case of repairs to the common property undertaken by an owner without the consent of an owners corporation, the strata committee could retrospectively approve those repairs;
- If an owners corporation decides to retrospectively approve work that has been done to the common property by an owner after completion of the work, that approval must be given by special resolution if it involved major renovations;
- NCAT cannot grant retrospective approval for works or repairs that an owner has done to the common property without the permission of the owners corporation unless the owner has first sought the approval of the owners corporation for those works or repairs (even if that approval is sought after the works or repairs are done);
- Where an owner wants to do renovations that affect the common property, there is no reason why the owner cannot

seek the owners corporation's approval of those works and agree to take on responsibility for the maintenance and upkeep of the works by way of a special resolution approving a single by-law that both authorises the works and makes the owner responsible for their maintenance and upkeep – separate special resolutions to approve the works and then to adopt a by-law for the works are not necessary;

- An owners corporation can be taken to unreasonably refuse to approve an owner's request for consent to carry out works that affect common property, even if the owner's application for approval has not been voted on at a general meeting, for example, where the application for approval is urgent but the strata committee or secretary refuse to convene a general meeting to consider the issue or decline to do so within a reasonable time or accidentally omit it from the agenda of the next general meeting – in those circumstances there would be a constructive refusal of consent even though no formal decision has been made by the owners corporation at a meeting to reject the owner's application;
- A by-law cannot delegate to the strata committee power to approve major renovations undertaken by an owner;
- An owner cannot recover compensation from an owners corporation for the cost of repairs the owner does to the common property without the authority of the owners corporation or an order approving that work made by NCAT (either prospectively or retrospectively);
- The question of whether an owner who carried out repairs to the common property which an owners corporation fails to perform can recover compensation from the owners corporation for the cost of those repairs if they are approved by the owners corporation or NCAT remains open and previous cases which indicated that repair costs could not be recovered by the owner under the previous strata legislation do not necessarily shut the gate on

recovery of those repair costs under the current legislation;

- There is no need for an owners corporation to pass a resolution at a general meeting to authorise itself to carry out repairs to the common property – the decision to perform the repairs can be made by the strata committee;

Conclusion

The *Colman* case provided the Supreme Court with an opportunity to clarify a number of grey areas of strata law. In doing so, the Court has clarified the power for an owners corporation and NCAT to retrospectively approve of work that has been done by an owner to the common property and also clarified that in some circumstances, an owner's proposal to carry out work to common property can be rejected by an owners corporation even if the proposal is not put to a vote at a meeting, for instance, where the owners corporation delays dealing with the proposal.

Case citation: *Colman v The Owners – Strata Plan No. 61131* [2025] NSWSC 63



Adrian Mueller I BCOM LLB FACCAL I Partner

Since 2002 Adrian has specialised almost exclusively in the area of strata law. His knowledge of, and experience in strata law is second to none. He is the youngest person to have been admitted as a Fellow of the ACSL, the peak body for strata lawyers in Australia. [Profile](#) I [Linked](#)

Contact Us

For all strata law advice including by-laws, building defects and levy collections contact our specialist NSW and Sydney strata lawyers [here](#) or call 02 9562 1266, we're happy to assist.