

# **Don't You Dare Sue Me – Overstepping the Mark**

## **Strata Lot Owner and Owners Corporation in Dispute**

Is it legitimate for a lot owner to pressure an owners corporation not to sue her or defend legal action she takes against the owners corporation? And what happens when the lot owner oversteps the mark? Can the owner be held in contempt of court? A recent NCAT case considered that very issue.

### **Background**

There is an apartment building on Sydney's lower North Shore which contains 6 lots. For several years, the owners corporation and a lot owner have been in dispute about various matters. The dispute culminated in proceedings being commenced by both the owners corporation and the owner in NCAT against each other. The owners corporation alleged that the owner engaged in conduct which was intended to intimidate, harass and deter the owners corporation from defending the proceedings she had commenced in NCAT against the owners corporation or to improperly induce a settlement of those proceedings. The owners corporation applied to NCAT to have the owner referred to the Supreme Court for contempt or a finding that the owner was in contempt of NCAT and that she be punished and restrained from communicating with representatives of the owners corporation in certain ways.

### **Owner's Conduct**

The conduct of the owner which the owners corporation considered constituted contempt included threats of disciplinary action against the owners corporation's solicitor

made by the owner, communications by the owner which impugned the professional and mental capacities and motives of the owners corporation's solicitor, contact by the owner with partners of the firm at which that solicitor worked concerning the conduct of the solicitor, contact by the owner with employers of strata committee members and references to family members of the strata committee members made by the owner in various communications. The case of the owners corporation was that those communications by the owner impermissibly sought to pressure the owners corporation into deciding not to defend, or to settle, the proceedings in NCAT that the owner had commenced against the owners corporation.

## **The Law**

A person can commit a contempt of court if he or she seeks to dissuade a litigant from prosecuting or defending proceedings by making unlawful threats, by abuse or by misrepresenting the nature of the litigation. The law distinguishes between proper and improper pressure in punishing interference with litigants. The question is whether the pressure sought to be applied in a particular case can be described as improper which, in turn, depends on all the circumstances of the case. Improper pressure can interfere with the administration of justice and that is why it can constitute a contempt of court.

## **The Outcome**

NCAT concluded that whilst some of the owner's communications were inappropriate and included abusive emails that were puerile in their tone and content, the owners corporation did not prove that those communications caused the representatives of the owners corporation to be intimidated or caused the owners corporation to capitulate or settle the proceedings the owner had commenced against it. In other words, even though the owner may have engaged in conduct which was intended to intimidate the owners corporation or its solicitor to

discourage them from defending the proceedings, the evidence did not establish that the owner had been successful in doing so or had deterred, or was reasonably likely to deter, the owners corporation from defending the proceedings the owner had commenced against it or from prosecuting the proceedings it had commenced against the owner. Consequently, NCAT concluded that it had not been established that the owner committed a contempt and therefore refused to refer the owner to the Supreme Court.

## Anything Else?

The NCAT case contains an interesting, albeit brief, discussion of the consequences for an owner who sends threatening, rude or offensive communications to representatives of an owners corporation. NCAT concluded that the owner's communications may expose her to the risk of defamation proceedings and observed that communications which attempt to threaten, intimidate or influence witnesses are unlawful under the *Crimes Act 1900* and that use of telecommunications devices, such as emails, that threaten or harass any person also constitutes criminal conduct under the *Crimes Legislation Amendment (Telecommunications Offences and other Measures) Act (No. 2) 2004*. That indicates that representatives of the owners corporation who receive abusive, rude and offensive communications from an owner are not without remedy.

Case: *The Owners – Strata Plan No. 38308 v Gelder* (No. 2) [2023] NSWCATEN 7.



## **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.