Interim Orders for Unauthorised Works to Common Property



Summary

Bannermans were given instructions for interim orders to stop a lot owner carrying out unauthorised works to common property including works requiring waterproofing. Interim orders were granted and served on the lot owner. The lot owner ceased works and agreed to requisition a motion and by-law regarding the works. The by-law was passed and registered. The lot owner continued the works in accordance with the by-law.

Background

A lot in a strata scheme was purchased by the lot owner. Prior to moving into the lot the lot owner wished to carry out renovation works including new kitchen and bathroom and flooring throughout the lot. When the Chairman of the executive committee became aware that the lot owner had commenced the works without obtaining formal consent from the owners corporation, the Chairman attended the lot and discussed the works with the contractor. The contractor claimed that the works being carried out did not involve works to common property and hence, consent from the owners corporation was not required. The contractor also pointed out the they had already notified the owners corporation of the works that it intended to carry out, by way of an email that it had previously sent to the strata managing agent. The strata managing agent had not responded to the email from the contractor.

The Chairman contacted Bannermans Lawyers to discuss the works and options available to the owners corporation. Bannermans pointed out the risks involved in allowing a lot owner to carryout unauthorised works to common property, and that a by-law should be in place consenting to the works and passing the responsibility of maintenance and repair of the works and parts of the common property affected by the works over to the lot owner.

Bannermans suggested that a letter of demand be sent to the lot owner and the contractor asking that the unauthorised works immediately cease and that a by-law be requisitioned regarding the works. If the owner did not comply with the letter of demand, it was suggested that interim orders be sought ordering the lot owner to cease carrying out the works.

The letter of demand was sent to the owner and contactor. The owner did not comply with the letter of demand. During a telephone call between the contractor and Bannermans, regarding the letter of demand, the contractor told Bannermans that even if it attempted to seek orders from New South Wales Civil and Administrative Tribunal (**NCAT**), by the time the orders were obtained it would have completed the works and be working on its next job.

BANNERMANS LAWYERS

T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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The contractor continued carrying out the unauthorised works. An application for mediation and interim and substantive orders was prepared and filled by Bannermans. The submissions in the application made specific reference to the works that were being carried out, noting that the works required waterproofing and that the works may also require certification from a structural engineer.

Orders Granted

Within 24 hours of filing the application, interim orders were made by NCAT that the lot owner immediately cease carrying out the unauthorised works. Orders were served on the lot owner who immediately ceased carrying out the works.

The lot owner then agreed to requisition a by-law under section 52 and 65(A) of the Strata Schemes Management Act 1996 for the works that had been carried out and the works still yet to be carried out. The by-law gave all of the usual protections to the owners corporation including indemnification against losses occurring as a result of the works and that waterproofing and structural engineer certifications be provided.

It should be noted that as a result of the lot owner not first seeking the proper authorisation for the works, many months of time was lost and unnecessary costs incurred. The moral of the story is, before carrying out works to common property, get the appropriate by-law in place.

Key takeaways

- Interim orders can be sought to stop unauthorised works to common property.
- A by-law must be in place to protect the owners corporation from liabilities related to the works.
- Failure to obtain proper authorisation for works can lead to significant delays and costs.
- Communication between contractors and owners corporations is crucial to prevent misunderstandings.
- Legal intervention may be necessary when informal resolutions fail.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

Prepared by Bannermans Lawyers
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BANNERMANS LAWYERS
T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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