Pet Owners in Strata Celebrate! Court of Appeal Invalidates No Pets By-Law

Update on 'No Pets' by-laws in Strata – The Miniature Schnauzer that Roared

The issue of pets in strata schemes has always been a controversial and fiercely contested issue.

Pets are often viewed as a member of the family by some, or conversely, an unpleasant annoyance by others.

Benefits can include increased property values and rents associated with pet friendly buildings together with health benefits associated with pet ownership. Downsides can include disharmony arising from disputes over pet ownership, increased noise and increased cleaning and maintenance costs for common property areas.

There have been a few recent decisions in the Tribunal invalidating 'no pets' by-laws over the last 18 months.

However, on 12 October 2020, the NSW Court of Appeal handed down the decision of *Cooper v The Owners – Strata Plan No. 58068 [2020] NSWCA 250* ("**Cooper**"). Here, the Court of Appeal overturned a previous decision of the NSW Civil and Administrative Tribunal Appeal Panel and deemed a by-law that provided an outright ban on pet ownership was "oppressive" pursuant to section 139(1) of the Strata Schemes Management Act 2015.

In the Cooper case, the owners corporation initially sought orders for the removal of a Miniature Schnauzer called Angus, a thirteen year old pup who was well trained and had lived in strata the majority of his life. The owners corporation also sought a penalty against Angus' owner for a breach of a notice to comply as a result of keeping the dog in the strata scheme.

Angus' owner then cross claimed against the owners corporation, seeking that the 'no pets' by-law was invalidated for being harsh, oppressive and unconscionable pursuant to sections 139(1) and 150 of the Strata Schemes Management Act 2015 ("**Act**").

Whilst Angus' owner was successful at first instance in the Tribunal, on appeal, the Tribunal's Appeal Panel overturned the Tribunal's previous decision and upheld the 'no pets' by-law.

Angus roared and the matter was appealed again to the NSW Court of Appeal.

The Court of Appeal overturned the Appeal Panel's decision, in particular deeming at [88] that the 'no pets' by-law was:

> *''oppressive pursuant to section 139(1) of the Act 'because it prohibits the keeping of animals across the board, without qualification or exception for animals that would create no hazard,*

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nuisance or material annoyance to others. By-law 14.1 thus interferes with lot holders' use of their real property in a respect and to an extent that is unjustified by any legitimate concern of others in the building".

The effect of this decision is that the Court of Appeal has now set a state wide precedent that 'no pets' by-laws will likely be deemed oppressive and have no force or effect. As a result, this has fundamental implications for every strata scheme in New South Wales that has or is seeking to have an outright prohibition on the keeping of pets.

Pets in your building

Our experience with pet disputes is that they are always divisive, extremely personal and fiercely contested.

The Court of Appeal decision has made it abundantly clearly that by-laws providing a blanket ban on pets will likely be found to be invalid. Therefore, as a general comment and as means to attempt to avoid disputes, most strata schemes would be better served in having a by-law that allows pets subject to certain conditions and criteria.

In light of the above, if you are having questions about pet by-laws or concerns about pets in your strata scheme, we have considerable experience and expertise in this area and can help.

Key takeaways

- The NSW Court of Appeal ruled that blanket 'no pets' by-laws are likely oppressive and invalid.
- The decision sets a precedent affecting all strata schemes in New South Wales regarding pet ownership.
- Strata schemes may benefit from allowing pets with specific conditions to avoid disputes.
- The case involved a Miniature Schnauzer named Angus, whose owner challenged the by-law.
- Pet ownership can increase property values and provide health benefits, despite potential drawbacks.

****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.*

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