If you just stand by and watch the NCAT Proceedings - you can't appeal later on

***The Owners – Strata Plan 2010 v Kahn* [2022] NSWCATAP 9**

The Appeal Panel in the matter of *The Owners – Strata Plan 2010 v Kahn* [2022] NSWCATAP 9 considered an appeal regarding an order made to appoint a strata managing agent to exercise the functions of the owners corporation. The effect of this appointment is that neither the previous members of the owners corporation, nor individual lot owners in the strata scheme can purport to represent the owners corporation of make decisions for it.

Under section 80 of the Civil and Administrative Tribunal Act 2013 (NSW), internal appeals from Tribunal's decisions may only be made "by a party to the proceedings in which the decision is made". Thus, lot owners are unable to lodge an appeal against the decision to appoint a strata managing agent if they have not been joined as a party to the original proceedings

The Appeal Panel in *The Owners – Strata Plan 2010 v Kahn* [2022] NSWCATAP 9 explained the four courses of action that lot owners may take after the appointment of a managing agent in the following list;

They may:

(1) seek to be joined as a party to the proceedings in which the appointment is being considered, to preserve a right of appeal;

(2) seek to have the owners corporation ask the Tribunal, if it is to make an order for the appointment of a managing agent, to carve out the functions of instituting and conducting an appeal from the order and, if it deems it appropriate, that of calling and conducting a general meeting of the owners corporation to approve legal services to advise or represent the owners corporation in the appeal, as required by s 103 of the Strata Schemes Management Act 2015 (NSW); or thereafter;

(3) apply to the Tribunal's Consumer and Commercial Division to vary the order for a plenary appointment of a manager to carve out the functions set out in (2) (Strata Schemes Management Act 2015 (NSW), s 237(7)) and then, if successful, decide in a meeting of the owners corporation to institute an internal appeal to this Appeal Panel and instruct legal representation; or

(4) seek leave from the Supreme Court to institute an appeal in the name of the owners corporation, relying on what is commonly described as the fifth exception to the rule in *Foss v Harbottle* (1843) 2 Hare 461; 67 ER 189: see for example *Carre v Owners Corporation - SP 53020* [2003] NSWSC 397; *Tan v The Owners Strata Plan 22014 (No 2)* NSWSC 1920.

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The lot owners in *The Owners – Strata Plan 2010 v Kahn* [2022] NSWCATAP 9 attempted to appeal against the decision to appoint a managing agent for the scheme, but as they had not been joined as parties to the original proceedings, the appeal had been irregularly commenced and was subsequently dismissed. The Appeal Panel held that they lacked the authority to make an order for joinder affecting the original proceedings. The Tribunal further refused to accept other arguments from the lot owners under sections 43, 38 and 36 of the Civil and Administrative Tribunal Act 2013 (NSW) or 237 of the Strata Schemes Management Act 2015 (NSW), as there was an avenue to seek relief in the Supreme Court.

Key takeaways

- Lot owners cannot appeal NCAT decisions unless they are joined as parties to the original proceedings.
- The Appeal Panel outlined four potential actions for lot owners after a managing agent's appointment.
- The case of The Owners – Strata Plan 2010 v Kahn illustrates the importance of being involved in the original proceedings.
- Legal avenues exist for lot owners to seek relief in the Supreme Court if they are not joined in the original NCAT proceedings.
- The Tribunal has limited authority to accept arguments from lot owners not joined in the original proceedings.

*****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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