

Your Behaviour in Tribunal Proceedings Matters - It Affects the Costs Order!

In recent Tribunal proceedings with respect to the appointment of a compulsory managing agent for a strata scheme, parties faced an urgent demand. The Tribunal allowed them less than 24 hours to find a local managing agent and promptly issued the order to confirm the appointment. Additionally, the Interested Party, who was a lot owner, was directed to pay 80% of the applicants' (other lot owners) costs incurred during the proceedings on an ordinary basis.

The strata scheme at the center of this case is situated in Newcastle and consists of 7 commercial or industrial lots. Notably, one of these lots holds a significant entitlement, representing 50% of the aggregate unit entitlement of the entire scheme. The lot owner holding 50% of the unit entitlement has consistently voted against nearly all motions at the annual general meetings, extraordinary general meetings, and strata committee meetings over the past few years.

As a consequence, the owners corporation had been unable to fulfill its statutory obligations. The management of the building had therefore been mired in a prolonged deadlock, impeding crucial tasks such as raising levies, repairing common property, placing insurance and managing various administrative functions.

Faced with this frustrating predicament caused by a single lot owner, the remaining lot owners (the "**applicants**") initiated an application with the Tribunal. Their aim was to appoint the then-current strata manager as the compulsory managing agent, empowering them to execute all functions of the owners corporation and circumvent the deadlock.

During the proceedings, that single lot owner was recognised as the interested party. Despite the Tribunal's directions for both parties to submit their evidence, the interested party remained silent until just one week before the final hearing. By that time, the due date for filing their evidence had already passed by three weeks.

Rather than seeking leave before the due date had lapsed, the interested party approached the applicants, requesting their consent to adjourn the final hearing, which was rightfully rejected. Subsequently, the interested party filed two separate interim applications. These applications aimed to obtain leave to submit their late evidence and also sought summary judgment for the dismissal of the applicants' case. Additionally, they demanded cross-examination of the applicants' witnesses at the final hearing – all of these requests were made within five days before the final hearing.

During the hearing, the Senior Member considered the two interim applications submitted by the interested party and concluded that there was no basis for the order sought in the application requesting summary judgment. Additionally, the Tribunal deemed the costs associated with these two interim applications to be included as part of the overall costs of the existing proceedings.

In considering the order to appoint a compulsory managing agent, the Tribunal referred to section 237 of the Strata Schemes Management Act 2015 (the "**SSMA**"). Section 237(3) of the SSMA outlines the circumstances under which such an order can be made which is extracted below.



T: (02) 9929 0226 M: 0403 738 996 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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“237 Orders for appointment of strata managing agent

...

(3) Circumstances in which order may be made *The Tribunal may make an order only if satisfied that—*

- (a) the management of a strata scheme the subject of an application for an order under this Act or an appeal to the Tribunal is not functioning or is not functioning satisfactorily, or*
- (b) an owners corporation has failed to comply with a requirement imposed on the owners corporation by an order made under this Act, or*
- (c) an owners corporation has failed to perform one or more of its duties, or*
- (d) an owners corporation owes a judgment debt.”*

Given the deadlock caused by the interested party's dissenting votes, which showed no signs of changing, the Tribunal expressed its intention to appoint a compulsory managing agent to undertake the functions of the owners corporation. However, the proposed strata manager's location, suggested by the interested party, was deemed too far from the location of the strata scheme. The Tribunal preferred a local strata manager, who could better engage with suitable local tradespeople and save time and costs for meetings and inspections.

With respect to the existing strata manager, who had served for over a decade, regrettably, the Tribunal decided in favor of selecting a fresh managing agent to "smooth the waters."

Both parties were given one day to find a suitable and local strata manager, and fortunately, the applicants secured one with the consent of the interested party. The Tribunal then issued an order confirming the appointment for a period of one year, as requested by the applicants.

With respect to the costs, the Tribunal considered that 80% of the expenses incurred in the proceedings could and should have been avoided, and the actions of the interested party warranted costs in favor of the applicants under section 60 of the *Civil and Administrative Tribunal Act 2013*.

Appointing a compulsory managing agent through a section 237 application is no easy task, with numerous factors to consider. For any concerns regarding your strata scheme's operation, feel free to chat with us, we are here to help you find suitable solutions.

**Prepared by Bannermans Lawyers
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