Breaching By-Laws? It's going to cost you!

The NSW Civil and Administrative Tribunal (the "**Tribunal**") held that a lot owner had breached two by-laws of a strata scheme (the "**Scheme**") for damaging common property and their conduct on the Scheme, pursuant to section 147 of the Strata Schemes Management Act 2015 (NSW) (the "**SSMA**").

Section 147: Civil penalty for breach of by-laws

Section 147 of the SSMA provides that an owners corporation may apply to the Tribunal seeking an order that a person pay a monetary penalty of up to 10 penalty units ($1,100) if the owners corporation has given notice to the person in question and that they have broken the by-law since the notice has been issued. This penalty can be set as high as 20 penalty units, if the Tribunal is satisfied that the individual has contravened a by-law within 12 months of the Tribunal imposing a monetary penalty for the breach of the by-law.

The Owners-Strata Plan No 84716 v Purcell [2023] NSWCATCD

In *The Owners-Strata Plan No 84716 v Purcell [2023] NSWCATCD* ("**Purcell**"), an owners corporation submitted an application for the breach of a notice to comply with three by-laws related to causing damage to common property, the behavior of owners and occupiers and depositing rubbish on common property.

The three by-laws in question consisted of the following:

By-law 5 Damage to common property

5.1 An owner or occupier of a lot must not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property except with the prior written approval of the owners corporation.

5.2 An approval given by the owners corporation under clause (1) cannot authorise any additions to the common property.

By-law 7 Behaviour of owners and occupiers

An owner or occupier of a lot when on common property must be adequately clothed and must not use language or behave in such a manner likely to cause offence or embarrassment to the owner or occupier of another lot or to any person lawfully using common property.

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By-law 10 Depositing rubbish and other material on common property

An owner or occupier of a lot must not deposit or throw on the common property any rubbish, dirt, dust or other material or discarded item except with the prior written approval of the owners corporation.

In Purcell, the substance of the application was that the respondent lot owner had verbally harassed other lot owners and residents of the Scheme. The owners corporation submitted evidence from another lot owner of a video of the respondent lot owner breaching by-law 5 and testimonial evidence from other lot owners of the respondent lot owner breaching by-law 7. The respondent lot owner did not deny that they had committed this conduct nor that they were the person in the video evidence.

The respondent lot owner submitted that the Tribunal had no jurisdiction to hear the proceedings. The basis of the respondent's issue with the owners corporation was that the plan was subject to a compulsory strata manager that the respondent lot owner did not recognize the authority of.

Decision

The Tribunal held that the Respondent lot owner had breached By-laws 5 and 7, for their damage to common property and conduct on the Scheme.

Regarding their breach of by-law 5 for damage to common property, the video evidence displayed the respondent lot owner driving up to the bins on the common property of the plan, using a hammer to remove the bolt attaching the bins to the wall, moving the bins and then driving away. Other evidence from the owners corporation were photographs, showing the words "*No trespassing, private property*" that the respondent lot owner had written on a sign next to a gate and two common property walls.

Regarding by-law 7, the video evidence submitted was sufficient in convincing that the respondent lot owner engaged in the alleged misconduct.

Penalty

The owners corporation had established two breaches of the notice to comply with by-law 5. The Tribunal held that the breaches were serious and deliberate. The Tribunal held that a penalty of 8 penalty units ($880) was appropriate.

The owners corporation had established one breach of the notice to comply with by-law 7. The Tribunal held that the respondent lot owner's contravention was of a moderate level of severity and was satisfied that this conduct was likely to disturb persons who could hear the respondent at the time of their actions. The Tribunal considered the deterrence of this behavior in contemplating the penalty and decided that a penalty of 4 penalty units ($440) was appropriate.

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In total, the respondent lot owner was ordered to pay the owners corporation the amount of $1,320.

In addition to the financial penalty, the Tribunal also made an order for the respondent lot owner to pay the owners corporation's legal costs.

The decision in Purcell, illustrates the importance of by-laws in strata schemes. By-laws provide rules and regulations for how people behave and how they interact with each other on the property of a strata scheme.

If you require assistance in handling a situation of a lot owner or occupant breaching the by-laws of your strata scheme, please contact Bannermans Lawyers on 02 9929 0226 or on enquiries@bannermans.com.au for advice on how to proceed.

****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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