Company Title Building Disputes – How can they be resolved?

Disputes will inevitably arise between people sharing a building, whether it be under strata title or company title. However, the applicable laws differ and so too does the method by which disputes are resolved. Specifically, the rules by which disputes are resolved and the courts which have jurisdiction to resolve disputes are different for company title building disputes.

There are some crucial differences between buildings strata owners corporations ("OCs") and companies operating company title buildings ("CT Company") and these result in different rules being applied to company title disputes and different courts having jurisdiction. In particular:

- A CT Company is typically incorporated under the Corporations Act 2001 and regulated by that act, although there are some qualifications discussed below in relation to company title disputes. An OC is a statutory corporation created under the Strata Schemes Development Act 2015 (or predecessor legislation) and regulated by that act and the Strata Schemes Management Act 2015, which differs significantly from the Corporations Act 2001.

- A CT Company will typically have a constitution (a.k.a. memorandum and articles of association). An OC will not and this function is performed by the strata management legislation and the OC's by-laws. A CT Company might also have by-laws (more commonly referred to as house rules), but these operate in a very different way to strata by-laws.

- The Supreme Court has jurisdiction to hear disputes involving companies incorporated under the Corporations Act 2001 and will be the usual forum, at least for disputes involving larger amounts and/or more complex issues. However, limited jurisdiction is also conferred on the Local Court in relation to company title disputes and that will be the usual forum for those. However, it is important to appreciate the limits of that jurisdiction and when recourse to the Supreme Court will be necessary. In this context, it is also important to appreciate that the Local Court is an inferior court lacking inherent jurisdiction, i.e. unlike the Supreme Court it only has whatever jurisdiction over whatever matters may have been allocated to it under the Local Court Act 2007 or other legislation.

As to Local Court proceedings:

- Corporations Act Section 1337E confers jurisdiction on the Local Court with respect to certain matters involving corporations:

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- This extends to civil matters, defined in Section 9 as a matter other than a criminal matter.

- This does not extend to superior court matters, defined in Section 9 as “a civil matter that this act clearly intends (for example, by use of the expression ***the Court***) to be dealt with only by a superior court”. This would span a wide range of issues which could arise in the context of a company title dispute, including oppression claims, claims relating to infringement of class rights and other shareholder rights, winding up and external administration.

- This is subject to the Local Court's jurisdictional limits, e.g. under Sections 29 and 30 $20,000 for the small claims division and $100,000 for the general division.

- Local Court Act 2007 Section 34A confers jurisdiction on the Local Court in relation to company title home unit disputes. Further, Section 34A(7) precludes “contracting out” by voiding provisions of constitutions or contracts excluding, limiting or modifying this jurisdiction. Corporations Act 2001 Section 5G & Local Court Act 2007 Section 34A provide that Section 34A is a Commonwealth legislation displacement provision, effectively excluding the Corporations Act 2001 to the extent of any inconsistency.

- Sections 34A(2) & (3) define "company title home unit dispute" as a dispute between interested parties about any of the following matters:

    - the health, safety and security of persons occupying or visiting the land owned by a company title corporation or residential premises located on that land (including, for example, safety of children on the premises and waste disposal),

    - the common property on the land owned by a company title corporation (including, for example, parking and vehicle access, repair and maintenance, design and appearance),

    - the use of residential premises located on the land owned by a company title corporation occupied by a shareholder of the corporation (including, for example, external appearance of premises or the keeping of pets),

    - the behaviour of persons occupying or visiting the land owned by a company title corporation or residential premises located on the land (including, for example, noise),

    - the refusal by a company title corporation to allow a shareholder of the corporation to grant a lease or licence to use or occupy premises located on the land owned by the corporation,

    - administrative matters relating to the running of a company title corporation (including, for example, levies).

    but excluding the following:

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- a dispute arising under a residential tenancy agreement to which the Residential Tenancies Act 2010 applies,
- a dispute arising under a lease to which the Landlord and Tenant (Amendment) Act 1948 applies,
- a dispute about the sale, transfer or other disposition of shares in a company title corporation or the forfeiture of such shares,
- a dispute about any matter that is a superior court matter within the meaning of the Corporations Act 2001 of the Commonwealth.

Also, query the scope of some of the included areas, e.g. withholding consent to grant of a lease is covered, but does that extend to unauthorised subletting or is unauthorised subletting covered by use of premises or behaviour? Is refusal to provide or correct accounts an administrative matter?

- Sections 34A(2) & (3) provide that the Court may make any of the following orders:
  - an order requiring a person to do, or refrain from doing, any act,
  - an order for the payment of damages or other money,
  - an order involving a declaration as to rights and obligations under a constitution or other agreement, construction of a term of such a constitution or agreement or the validity or enforceability of such a term.

  Subject to monetary jurisdictional limits. $20,000 for the small claims division and $100,000 for the general division.

- Jurisdiction of the court to hear the particular issue and to make the requested orders is necessary, but not sufficient, as one also needs to demonstrate an entitlement to the relief sought, e.g. a statutory right or other cause of action such as breach of contract or negligence.

The practical impact of this is as follows:

- Proceedings relating to company title disputes can still be commenced in superior courts, most likely the Equity Division of the Supreme Court and may need to be, depending on the nature of the dispute and the relief sought. There is potential for a cross-claim to raise issues or seek relief leading to an application to transfer the proceedings to the Supreme Court. Such circumstances could involve:
  - Disputes outside the scope of the Local Court's jurisdiction, e.g. disputes involving sale of shares, forfeiture of shares, liquidation, external administration & oppression.
  - Disputes in excess of the Local Court's monetary jurisdiction.

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- Disputes requiring orders outside the scope of orders available to the Local Court, e.g. more complex injunctive relief.

- Proceedings can also be brought in the Local Court in many cases. This would generally involve the following types of dispute:
  - Arrears levy contributions.
  - Misbehaviour.
  - Common property issues such as parking, access, maintenance and safety.
  - Non-approval of a proposed lease.

- This will assist many aggrieved parties:
  - One would expect Local Court proceedings to be more straightforward and less expensive.
  - The powers given to the Local Court will likely transcend the technical legal problems likely to be experienced in higher courts enforcing statutory contracts such as a company title constitution, e.g. a different approach to interpretation and doubt as to the availability of damages as a remedy.

- However:
  - A claimant will still need to demonstrate an entitlement to the relief sought, as a right under the constitution, as a consequence of breach of another party's obligation or pursuant to another valid cause of action.
  - Some constitutions will be framed in such a way that the Local Court is unable to assist. For example, if the prescribed remedy under the constitution for specified conduct is compulsory sale or forfeiture of the member's shareholding, there is a problem, as both are outside the scope of the Local Court's jurisdiction.
  - Many company title disputes will be beyond the scope of the Local Court's jurisdiction, either as to the type of dispute or the monetary limit.
  - Initiation of proceedings will in many cases trigger a cross claim asserting matters or seeking relief beyond the scope of the Local Court's jurisdiction and leading to an application to transfer the proceedings to a superior court. For example, a defendant may make a cross claim based on oppression or seek an order for winding up or external administration.
  - As a result, it may be necessary for an aggrieved party contemplating a Local Court claim to consider carefully the issues which will be raised and the relief which will

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be sought, to minimise the risk of being unsuccessful or perhaps worse unintentionally becoming involved in superior court proceedings.

If you need any assistance with your company affairs or disputes please reach out to contract one of our group title specialists on 02 9929 0226 or **enquiries@bannermans.com.au**.

Related Articles:

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Key takeaways

- Company title disputes are governed by different laws compared to strata title disputes.
- The Supreme Court and Local Court have specific jurisdictions over company title disputes.
- Local Court has limits on the amount it can adjudicate in company title disputes.
- Company title disputes may involve issues of health, safety, and security for occupants.
- Understanding the jurisdictional limits is crucial for resolving disputes effectively.

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