

When consolidated by-laws go wrong

Errors made when consolidating by-laws can have significant consequences for lot owners and owners corporations. In *Keay v The Owners - Strata Plan 3132 [2026] NSWSC 1150*, the Supreme Court considered how errors which omitted a lot owner's common property rights from consolidated by-laws could be corrected, and the Court's power to facilitate that correction.

Background

The plaintiff, Mr Keay, was a lot owner in the strata scheme. The defendant was the owners corporation (**OC**). The dispute concerned errors in the registered consolidated by-laws. By-law 44 granted the respective lot owners exclusive use of parking spaces, while by-law 46 granted the respective lot owners exclusive use of storerooms. Both by-laws were registered before the *Strata Schemes Management Act 2015* (NSW) (**SSMA**) commenced.

In 2017, the OC registered a consolidated set of by-laws. Part of the final sentence of the original by-law 44 was omitted. The table in by-law 46, which identified the lots entitled to use storerooms 56 to 61, was also omitted. As a result, the registered consolidated by-laws did not record Mr Keay's exclusive use rights over his parking space and storeroom 61. The parties agreed that these omissions were errors.

Mr Keay commenced proceedings seeking, among other relief, declarations confirming his rights under the original by-laws and orders under s 138 of the *Real Property Act 1900* (NSW) (**RPA**) to facilitate correction and registration of the consolidated by-laws. He also relied on s 143 of the SSMA, including the requirement for the written consent of an affected owner to amend a common property rights by-law, and alternatively sought a mandatory injunction against the OC.

Key legal issues and the Court's reasoning

1. Was there sufficient controversy and utility to support declaratory relief?

The OC contended that no declaration should be made because it did not dispute the substance of Mr Keay's rights under the original by-laws. Alternatively, it argued that the declarations would have no utility because the Court lacked power under s 138 of the RPA to make the further orders sought. The Court rejected both arguments. Whether a party is a proper contradictor depends on whether it has an interest in opposing the relief, not on whether it actually disputes the underlying right. The

OC had an interest in relief concerning rights over common property and was therefore a proper contradictor.

The declarations also had practical utility. They determined Mr Keay's rights under the original by-laws and provided the necessary foundation for ancillary orders under s 138 of the RPA to correct the Register.

2. Did section 138 of the RPA permit orders resulting in amendment of a dealing?

Under section 138(2), the Court may make ancillary orders of the kind identified in s 138(3) where it has determined an estate or interest in land and considers the order necessary to give effect to that determination. Section 138(3)(b) permits the Court to order the Registrar-General to cancel, amend or make a recording in a folio of the Register.

The OC argued that s 138(3) concerned a folio, or a recording in a folio, and did not permit amendment of the underlying dealing. The Court rejected that narrow construction. Although the RPA distinguishes between a dealing and a recording in a folio, orders concerning an instrument may be made where necessary to give effect to the Court's determination. Section 138(5), which permits the Court to order delivery of an instrument to the Registrar-General, supported that construction. The corrected consolidated by-laws were an instrument capable of falling within s 138(5). Given the extent of the dispute, the Court considered orders requiring preparation, agreement and delivery of corrected consolidated by-laws to be necessary to give effect to the declarations.

3. Why was the mandatory injunction not available?

Mr Keay alternatively sought a mandatory injunction requiring the OC to register corrected by-laws. The Court held that an injunction is a remedy, not an independent cause of action. Mr Keay had not identified a cause of action against the OC that would support that relief. In particular, the absence of his consent to the 2017 consolidation did not, by itself, establish a cause of action warranting an injunction.

Outcome

The Court made declarations confirming Mr Keay's exclusive use rights under the original by-laws and made ancillary orders under s 138 of the RPA. In substance, the orders required the OC to prepare revised consolidated by-laws correcting the two admitted errors, provide them to Mr Keay for agreement and deliver the agreed instrument to the Registrar-General with the requisite form. The Registrar-General was then to record the corrected consolidated by-laws in place of the existing recording. Claims concerning a caveat were not determined because they had become moot by consent.

Comments

The decision illustrates that an erroneous consolidation does not necessarily extinguish an owner's existing common property rights. Declaratory relief may establish those rights and provide the foundation for ancillary orders correcting the Register.

The case also highlights two practical limits. First, the absence of an affected owner's consent to an amendment of a common property rights by-law does not, without an identified cause of action, independently support injunctive relief. Secondly, although the Registrar-General has an administrative correction power under s 12(1)(d) of the RPA, whether that process will be sufficient depends on the nature of the error and the extent of any dispute. Here, the Court considered formal orders appropriate given the disputation between the parties.

The practical lesson is that strata managers and lawyers preparing consolidated by-laws should carefully compare the consolidated instrument against every registered by-law, including schedules, tables and annexures. A verification checklist and independent final review may prevent substantive rights from being omitted during consolidation.

Key takeaways

- Errors in consolidated by-laws can significantly affect lot owners' rights.
- The Supreme Court can correct omissions in registered by-laws to uphold property rights.
- Declaratory relief can be granted even if the opposing party does not dispute the underlying rights.
- Section 138 of the Real Property Act allows for amendments to dealings when necessary.
- A mandatory injunction may not be available if alternative remedies are sufficient.

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Prepared by Bannermans Lawyers

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