Company Title more powerful than Strata Title?

Olsen v Easthaven Ltd [2026] NSWSC 1278

The Supreme Court of NSW recently handed down the decision of *Olsen v Easthaven Ltd* [2026] NSWSC 1278, which concerned a property located in Darling Point held in company title by the Defendant, Easthaven Ltd ("**Easthaven**").

The decision provides important guidance on the interpretation of company articles, attribution of liability for an occupant's conduct, the validity of disciplinary notices and resolutions, and the circumstances in which a company's conduct will amount to oppression.

Background

In 2017, the plaintiff, Ms Sue-Maree Olsen ("**Ms Olsen**"), purchased shares in Easthaven which granted her exclusive occupation of Unit 54 of the property.

The dispute between the parties arose in mid-to-late 2021, when Ms Olsen's daughter began living in Unit 54. Multiple residents complained of her daughter's behaviour, which included making loud noise, damaging common property, causing water and debris to fall onto the units below, installation and use of a CCTV camera, and other abusive and offensive conduct towards residents and staff.

On 7 November 2024, a notice was issued to Ms Olsen by the Board of Directors of Easthaven under Article 10(a) ("**10(a) Notice**") of Easthaven's Articles of Association ("**Articles**"), which Articles provided the directors of Easthaven with wide powers to regulate the cleanliness, condition, accessibility and safety of the building.

The 10(a) Notice alleged multiple breaches of the Articles, including that Ms Olsen parted with possession of her unit without the Board's approval by allowing her daughter to live there, and

BANNERMANS LAWYERS
T: (02) 9929 0226 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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required Ms Olsen to give her daughter notice to vacate the unit within 30 days. This was not complied with.

On 18 June 2025, Easthaven held an EGM where a resolution was passed unanimously ("**Resolution**"), to cease Ms Olsen's membership in Easthaven on the basis of her non-compliance with the 10(a) Notice. Article 11 provided that Ms Olsen was to transfer her shares to an approved person within 2 months. This transfer did not occur.

Ms Olsen commenced Supreme Court of NSW proceedings in August 2025. Ms Olsen argued that the 10(a) Notice was invalid, the EGM and Resolution were invalid, the directors had exercised their powers for an improper purpose, and Easthaven's conduct was oppressive.

Parting with Possession – Breach of Article 5(d)

The case explored what it means to 'part with possession' under Article 5(d), which provided that no shareholder '*shall lease or otherwise part with possession of a unit or penthouse without first obtaining the consent in writing of the Board*'.

Ms Olsen accepted that her daughter lived in Unit 54 under an informal living arrangement and did not pay rent, however submitted that she had not leased or parted with possession of the unit.

In this case, the Court found that the strict meaning of 'part with possession' established in *Lam Kee Ying Sdn Bhd v Lam Shes Tong* [1975] AC 247 could not apply to the construction of Article 5(d) as Ms Olsen's right in relation to Unit 54 was a contractual licence to use and occupy the unit, and did not amount to an estate in the unit. Ms Olsen's daughter was therefore not a lessee who held legal possession as an incident of a leasehold estate.

It was found that a member parts with possession where they do not themselves occupy it and someone else occupies it in their place. Whilst Ms Olsen visited Unit 54, and on occasion stayed there overnight, this did not constitute occupation of the unit. It was also undisputed that Ms Olsen did not seek, and the Board did not provide, consent to Ms Olsen's daughter living in the unit, and on the above basis, it was found that Ms Olsen had breached Article 5(d).

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Breach of Articles 5 and 9

Ms Olsen was further found to have breached Articles 5(b), 9(d), 9(h), 9(j) and 9(m), as the liability for the conduct of Ms Olsen's daughter was found to be attributable to Ms Olsen.

The relevant Articles used wording such as "do or permit or suffer", "throw or allow to fall or permit or suffer to be thrown or to fall", "permit", "deposit or permit to be deposited", and "make or permit", and Ms Olsen was found to have permitted the conduct of her daughter by failing to take reasonable steps to prevent such conduct where it was within her power to do so.

Validity of 10(a) Notice

The Court accepted that Articles 10 and 11 established a series of interlocking steps, in that a valid notice under Article 10(a) was a precondition to the calling of an extraordinary general meeting under Article 10(c), and to the operation of Article 11.

It was further found that the validity of the 10(a) Notice does not depend on whether each of the breaches alleged did in fact occur, and only required the Board to be 'of the opinion' that any of the provisions of articles 5, 7 or 9 have not been complied with. The Court found that this precondition was satisfied and that the requisite opinion was honestly held, meaning that the 10(a) Notice issued to Ms Olsen was valid, and the precondition in Article 10(c) to the calling of the EGM was satisfied.

Further, the demand set out in the 10(a) Notice was '*simultaneously a reasonable and appropriate condition capable of being required under Article 10 and a step required to be undertaken by [Ms Olsen] to permit her to be in compliance with Articles 5, 7 or 9*' and the notice was not issued for a purpose foreign to Article 10.

Validity of the EGM and the Resolution

Ms Olsen argued that in deciding whether a member 'shall cease to be a member', the EGM must be confined to the breaches alleged in the notice. Whilst the Articles did not provide any guidance on this issue, this approach was rejected by the Court. Matters relevant to such question include the conduct of the member and of the occupants of her unit, the effect of that conduct on other members' use and enjoyment of their units and of the building, its effect on Easthaven, the history

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of the member's non-compliance with the Articles and with notices given to her, and her response to them.

The Court found that the members at the EGM were not confined to the breaches raised in the 10(a) Notice, and they could consider the earlier notices, the conduct that gave rise to them, and their own experience of the conduct of Ms Olsen and her daughter.

The Court found that the members did not take into account any matter they were not permitted to consider and accordingly, the EGM and the Resolution were not invalid.

Oppressive Conduct

Ms Olsen sought a declaration under section 233 of the Act that the affairs of Easthaven have been and were being conducted in a manner that was oppressive to, unfairly prejudicial to, or unfairly discriminatory against her.

Ms Olsen alleged that several matters constituted oppressive conduct, including but not limited to, the late lodgement of financial reports, the refusal of requests for information, the removal of Ms Olsen's access to the members' portal, and the passing of the Resolution.

The Court found that Ms Olsen did not establish that the affairs of Easthaven have been conducted in a manner that is oppressive to, unfairly prejudicial to, or unfairly discriminatory against her. The actions of Easthaven were authorised by the company's constitution, were directed at genuine complaints and breaches, and were carried out through the prescribed process rather than for a collateral or improper purpose.

Decision

Ms Olsen's case did not succeed. The Court found that the resolution passed at the June 2025 EGM was validly passed at a meeting that was validly called and held, and was binding on Ms Olsen. As a result, it was found that the Board of Easthaven were entitled to find a purchaser for Ms Olsen's shares and were awarded judgment for possession of Unit 54.

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Key Takeaways

- A company-title corporation can validly terminate a shareholder's membership if the constitution or articles of association expressly permits it and the required procedure is followed.
- The Court will generally enforce the company's constitution, particularly where members agreed to those rules when acquiring their shares.
- Oppressive conduct requires more than a harsh or detrimental outcome, and will likely not be found where conduct is authorised by a company's constitution or articles of association, and has been engaged in for a proper purpose
- Conduct of an occupant in a company title structure can be attributed to a shareholder where the shareholder permits the conduct by failing to take reasonable steps to prevent it

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Prepared by Bannermans Lawyers

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BANNERMANS LAWYERS

T: (02) 9929 0226 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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