When can directors of a company title building refuse the approved transfer of shares to another person

In 2023, the Supreme Court of NSW handed down the decision of *In the matter of Meglo-Yowrie Flat Units Pty Ltd* [2023] NSWSC 1634, which concerned a refusal by a company, Meglo-Yowrie Flat Units Pty Ltd ("**Meglo-Yowrie**"), to register a transfer of shares between its shareholders.

Meglo-Yowrie is the owner of a residential building located in Manly held in company title.

The plaintiff, Ms Tracy Blumentals, was the holder of a class of shares in Meglo-Yowrie. In October 2018, Ms Blumentals entered into a contract to purchase a second class of shares from Ms Frances Pope, another shareholder. The directors of Meglo-Yowrie declined to register the share transfer on multiple occasions, on the basis that the Articles granted them the power to do so if they did not approve of Ms Blumentals as a member of Meglo-Yowrie in respect of Ms Pope's class of shares.

In June 2022, Ms Blumentals commenced Supreme Court proceedings against Meglo-Yowrie, Ms Pope, and the other shareholders of Meglo-Yowrie, seeking declarations that the transfer of shares was valid, and that Meglo-Yowrie was required to register such transfer pursuant to section 1071F(2) of the *Corporations Act 2001* (Cth) (the "**Act**").

Ms Blumentals claimed that Meglo-Yowrie's directors had engaged in oppressive conduct and that, as the company had already approved Ms Blumentals as a holder of one class of shares, a refusal to register the transfer of Ms Pope's shares was not justified in the circumstances.

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The Court found that the directors acted in good faith and for a proper purpose in declining to register the share transfer on the first occasion. However, Meglo-Yowrie's continued refusal after years of treating Ms Blumentals as the beneficial owner of Ms Pope's shares (by requiring her to pay levies, contribute to expenses and bear responsibilities relating to those shares) became oppressive and objectively unfair. Put simply, Ms Blumentals was formally recognised as the holder of only one class of shares, however was treated as the holder of 2 classes of shares.

Accordingly, the Court made an order that, pursuant to section 233 of the Act, Meglo-Yowrie was required to register the transfer of shares from Ms Pope to Ms Blumentals.

Key Takeaways

- A constitutional power to refuse registration of a transfer of shares is not absolute, and Courts will scrutinise attempts to prevent purchasers from obtaining shareholder rights.
- A refusal to register a transfer of shares that was initially justified may later become oppressive if a company's subsequent conduct is inconsistent with the refusal.
- Approval of a person as the owner of one unit in a company title structure does not automatically entitle them to subsequently acquire another unit.

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