

Points of Claim

NCAT Ref No. SC 17/48920

APPLICANT: Michael Raczkowski

And

RESPONDENT: Owners Corporation SP 48920

Over the course of 2.5 years from 28 Jul 2015 until the present, the Owners Corporation has failed in a number of duties and had numerous breaches under **Strata Schemes Management Act 2015 No 50 NSW**. These are as follows:

**1. Part 2 Division 2 Management of Strata Schemes**

**Section 9** - Owners corporation responsible for management of strata scheme

**(3) (c)** Maintaining and repairing the common property of the strata scheme

- a) Failure to provide any proposals to expand the garbage area (Section 6 Page 27)*
- b) Significant delay in providing an architectural scope of the courtyard (Section 6 Page 27)*
- c) Significant delay in installing child window safety locks (Section 7 Page 41)*
- d) Failure to repair cracked concrete (Section 9 Page 47)*
- e) Significant delay in providing Demlakian report to address waterproofing of courtyard (Section 10 Page 49)*
- f) Significant delay to repair down pipe. Only after the owner ceased paying his strata fee did anything happen (Section 13 Page 85)*
- g) Failure to provide sufficient notice to owners of change of entry codes (Section 14 Page 126)*
- h) Failure to repair fountain (Section 16 Page 136)*
- i) Failure to repair front step (Section 17 Page 146)*
- j) Significant delay in placing a simple lock on the garbage room to prevent homeless people rummaging through rubbish (Section 18 Page 150)*
- k) Failure to repair the hot water system leading to its failure (Section 19 Page 159)*
- l) Failure to adjust lighting schedule (Section 23 Page 200)*
- m) Failure to provide initial levy notices (Section 26 Page 353)*
- n) Failure to hold Mr Thompson accountable for not providing on site reports and regular site inspections (Section 1 Page 1 & Section 30 P421)*
- o) Failure to install soft close mechanism on side door (Section 31 Page 485)*
- p) Delay in installation of wheel clamping signs (Section 32 Page 487)*
- q) Delay in repairing Intercom (Section 36 Page 527)*
- r) Significant delay in repairing leak in U40 (Section 37 Page 533)*

**2. Part 3 Division 2 Functions of Strata Committee**

**Section 37** Duty of members of strata committee

It is the duty of each member of a strata committee of an owners corporation to carry out his or her functions for the benefit, so far as practicable, of the owners corporation and with due care and diligence.

- a) Failure to carry out duties as in Part 2 Division 2 Section 9*

- b) Failure to hold Mr Thompson accountable for the theft of wheel clamps (Section 30 Page 421 & Section 39 Page 610)*
- c) Failure to enforce wheel clamping by-laws (Section 40 Page 626)*
- d) Failure to hold regular meetings as stated (Section 25 Page 207 & Section 30 Page 421)*
- e) Failure take U44 to Tribunal for continuously parking illegally (Section 38 Page 551)*

### 3. Part 4 Division 2 Functions of Strata Managing Agent

**Section 52** Owners corporation may delegate functions to strata managing agent

**(2) (b)** A decision on a matter that is required to be decided by the owners corporation.

- a) Failure to inform the owners corporation of the decommissioning of the fountain or the right to choose if it is to be decommissioned (Section 16 Page 136)*

### 4. Part 4 Division 2 Functions of Strata Managing Agent

**Section 57** Breaches by strata managing agent

**(1)** If a strata managing agent has been delegated a function by an owners corporation and a breach of the duty by the owners corporation would constitute an offence under a provision of this Act, the agent is guilty of an offence under that provision (instead of the owners corporation) for any breach of the duty by the agent occurring while the delegation remains in force.

### 5. Part 4 Division 3 Accountability of Strata Managing Agent

**Section 59** Provision of information about money received and other transactions

**(2)** An owners corporation may require strata managing agent to provide full particulars of any specified transaction that has been entered into by the agent on behalf of the owners corporation.

- a) Failure by Mr Thompson to provide evidence that a splitter was installed (Section 35 Page 518)*

**Section 60** Disclosure of commissions and training services

**(b)** any such commissions or training services and the estimated amount or value of any such commissions or training services that the agent believes are likely to be provided to or paid for the agent in the following 12 months.

**Section 62** Offences

**(1)** A strata managing agent must comply with a notice to provide information under this Division by giving a written statement, containing the information required, within 14 days after the notice is given.

- a) Failure by Mr Thompson to provide details of Insurance brokerage charged (Section 12 Page 69 & Section 20 Page 171)*

### 6. Part 6 Division 1 Common Property

**Section 106** Duty of owners corporation to maintain and repair property

**(1)** An owners corporation for a strata scheme must properly maintain and keep in a state of good and serviceable repair the common property and any personal property vested in the owners corporation.

**(2)** An owners corporation must renew or replace any fixtures or fittings comprised in the common property and any personal property vested in the owners corporation.

**(5)** An owner of a lot in a strata scheme may recover from the owners corporation, as damages for breach of statutory duty, any reasonably foreseeable loss suffered by the owner as the result of a contravention of this section by the owners corporation.

*a) As above Part 2 Division 2 Management of Strata Schemes Section 9*

*Any Lot owners who have sold their property, or have rental tenants should be compensated for potential losses. Those on the committee who have supported Mr Thompson should be excluded from any compensation, in particular Mrs Wendy Bosnjack, Ray Carter, and Peter Conroy.*

*In addition, owners should be compensated for additional cleaning services as a result of failing to secure the garbage area, and refund 2/3 of the lighting costs from the 2/2/2017 for failing to conduct a proper audit of the lighting.*

## 7. Part 6 Division 1 Common Property

**Section 109** Cosmetic work by owners

**(1)** An owner of a lot in a strata scheme may carry out cosmetic work to common property in connection with the owner's lot without the approval of the owners corporation.

**(2) Cosmetic work** includes but is not limited to work for the following purposes:

- (a) installing or replacing hooks, nails or screws for hanging paintings and other things on walls,
- (b) installing or replacing handrails,
- (c) paintings
- (d) filling minor holes and cracks in internal walls
- (e) laying carpet,
- (f) installing and replacing built-in wardrobes
- (g) installing or replacing internal blinds and curtains
- (h) any other work prescribed by the regulation for the purposes of this sub section.

**Section 110** Minor renovations by owners

**(3) Minor renovations** include but is not limited to work for the purposes of the following:

- (a) renovating a kitchen,
- (b) changing recessed light fittings,
- (c) installing or replacing wood or other hard floors
- (d) installing or replacing wiring or cabling or power or access points
- (e) work involving reconfiguring walls
- (f) any other work prescribed by the regulation for the purposes of this sub section.

**(4)** Before obtaining the approval of the owners corporation, an owner of a lot must give written notice of propose minor renovations to the owners corporation, including the following:

- (a) details of the work including copies of any plans,
- (b) duration and times of the work,
- (c) details of the persons carrying out the work, including qualification to carry out the work,
- (d) arrangements to managing any resulting rubbish or debris

*a) Failure by Mr Thompson to provide the owners corporation with plans for minor renovations (Section 30 Page 421)*

## 8. Part 6 Division 3 Work Carried Out By Owners Corporation

**Section 119** Work to rectify certain defects

(1) (b) any defect in any pipe, wire, cable or duct that provides, or through which passes, any water, sewage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil or other service (including telephone, internet, radio or television services) within a lot.

*a) Significant delay to repair down pipe. Only after the owner ceased paying his strata levies did anything happen (Section 13 Page 85)*

**9. Part 6 Division 5 Goods Left on Common Property**

**Section 125** Disposal of abandoned goods on common property

The regulations may make provision for or with respect to the following matters:

(a) conferring power on an owners corporation to store or dispose of, or authorise the disposal of, goods left on common property,  
(b) notices to owners and other persons as to disposal or proposed disposal of good by owners corporation.

*a) Failure to have removed items left in car park by residents (Section 42 Page 682)*

**10. Part 7 Division 2 Establishment and Effect of By-laws**

**Section 135** Requirement to comply with by-laws

(1) The by-laws for a strata scheme bind the owners corporation and the owners of lots in the strata scheme and any mortgagee or covenant charge in possession, or tenant or occupier, of a lot to the same extent as if the by-laws:  
(a) had been signed and sealed by the owners corporation and each owner and each such mortgagee, covenant charge, tenant and occupier, and  
(b) contained mutual covenants to observe and perform all the provisions of the by-laws.

*a) Failure to enforce By-Laws (Section 38 Page 551 & Section 40 Page 626 & Section 42 Page 682)*

**11. Part 7 Division 4 Enforcement of By-laws**

**Section 146** Notice by owners corporation to owner or occupier

(1) An owners corporation for a strata scheme may give a notice, in a form approved by the Secretary, to the owner or occupier of a lot in the scheme requiring the owner or occupier to comply with a specified by-law if the owners corporation is satisfied that the owner or occupier has contravened that by-law.

*a) As above, Part 7 Division 2 Establishment and Effect of By-laws Section 135*

**12. Part 9 Division 1 Owners Corporation Insurance Obligations**

**Section 166** Strata managing agent to obtain insurance quotations

A strata managing agent must provide the owners corporation with no less than 3 quotations from different providers for each type of insurance proposed by the agent to the owners corporation or provide written reasons to the owners corporation if less than 3 quotations are provided.

*a) Failure to provide any quotes to the Owners Corporation (Section 25 Page 207)*

**13. Part 10 Division 2 Provision of Information About Strata Schemes.**

**Section 182** Request for inspection of records of owners corporation

**(3)** The owner corporation must make the following items available for inspection by the person who makes the request or the person's agent:

- (a) the strata roll,
- (b) any other records or documents required to be kept under this Part,
- (c) the plans, specification, certificates, diagrams and other documents required to be delivered to the owners corporation before its first annual general meeting by the original owner or the lessor of a leasehold strata scheme,
- (d) if in its custody or under its control, the certificate or title comprising the common property or, in the case of a leasehold strata scheme, the certificate of title for the lease of the common property,
- (e) any applicable 10-year capital works fund plan,
- (f) the last financial statement prepared,
- (g) every current policy of insurance taken out by the owners corporation and the receipt for the premium last paid for each such policy,
- (h) if a strata managing agent has been appointed a copy of the instrument of appointment,
- (i) if a strata renewal plan has been given to owners for their consideration under Part 10 of the Strata Schemes Development Act 2015, copy of the plan
- (k) if the duties of the owners corporation under this subsection have been delegated to the strata managing agent, any other records (including records of the strata managing agent) relating to the strata scheme that are prescribed by the regulations

*a) Failure to provide details of Insurance brokerage commission (Section 12 Page 69 & Section 20 Page 171)*

*b) Attempt to prevent me from obtaining the strata roll by claiming that due to privacy laws and that I am not on the executive committee I am not entitled to receive a copy (Section 33 Page 514)*

**(4) Meeting inspections**

For the purpose of complying with requirements for the giving of notice of a meeting of the owners corporation, the original owner (whether or not having ceased to be an owner) or an agent authorised in writing by the original owner is entitled to inspect the strata roll without payment on making a written application.

**Section 183** Inspection of owners corporation documents

**(1)** An inspection under this Division is to take place at the time and place, or by the means, agreed on and, failing agreement, at the parcel at a time and on a date, or by the means, fixed by the owners corporation under this section.

**(2)** If an applicant and the owners corporation fail to reach an agreement within 3 days after the owners corporation receives the application the owners corporation must immediately give the applicant a written notice fixing a specified time (between 9 am and 8 pm) on a specified date (not later than 10 days after the owners corporation receives the application), or a specified means, for the inspection to take place.

**(3)** The means for inspecting documents may be in person or through electronic access to the documents or any other means agreed on or fixed under this section.

**(4)** A person entitled to inspect a document may take extracts from, or make a copy of, the document but must not, without the consent of the owners corporation, remove the document from the custody of the owners corporation.

*a) Failure to provide details of Insurance brokerage commission (Section 12 Page 69 & Section 20 Page 171)*

#### **14. Schedule 2 Part 2 Notices of Meetings.**

**Section 5** Notices of meetings for other strata schemes

**(1)** The secretary of the owners corporation of a strata scheme that is not a large strata scheme must give notice of a meeting to each other member of the strata committee at least 3 days before the meeting and to each owner.

**(2)** Notice is to be given by displaying the notice on the notice board maintained by the owners corporation or in accordance with section 263.

*a) Failure to provide notice to owners of the change of venue for the 2/3/2017 executive meeting (Section 25 Page 207)*

As such, I am seeking the following:

- a) Removal of Netstrata as the managing agent.
- b) Removal of the current Executive Committee to be replaced with a compulsory managing agent – Think Strata.
- c) Compensation for any Lot owners who has sold their property, or have rental tenants for potential losses. Those on the committee who have supported Mr Thompson should be excluded from any compensation, in particular Mrs Wendy Bosnjack, Ray Carter, and Peter Conroy. The services of a licenced Real estate agent should be engaged to determine any potential losses and paid for by the Owners corporation or Netstrata, whichever is applicable.
- d) Refund of ALL fees paid to Netstrata for breach of contract, negligence, and failure to maintain and repair common property of the strata scheme.

In addition, owners should be compensated for additional cleaning services as a result of failing to secure the garbage area, and refund 2/3 of the lighting costs from the 2/2/2017 for failing to conduct a proper audit of the lighting.

- e) Failing to implement the wheel clamping by-law, compensation for each breach of a resident parking in the visitors parking should be paid to the Owners corporation. It is estimated that in excess of 50 breaches have been documented. The exact figure will be provided at the tribunal due to time constraints.
- f) A nominal amount of \$100 for paper, and ink which has been used to compile this case.

Other breaches by Netstrata in accordance with the **Property, Stock and Business Agents Act 2002 No 66** include the following:

#### **Division 6 Unjust conduct by Licensees**

##### **53A Interpretation**

**(1)** For the purposes of this Division, conduct of a licensee is unjust if it is conduct:

- (a) that is dishonest or unfair, or

(b) that consists of anything done, or omitted to be done, in breach of contract, whether or not proceedings in respect of the breach have been brought, or  
(c) that consists of the contravention of this ACT, or the regulations or any other enactment administered by the Minister

- a) *Failure to provide any proposals to expand the garbage area (Section 6 Page 27)*
- b) *Significant delay in providing an architectural scope of the courtyard (Section 6 Page 27)*
- c) *Significant delay in installing child window safety locks (Section 7 Page 41)*
- d) *Failure to repair cracked concrete (Section 9 Page 47)*
- e) *Significant delay in providing Demlakian report to address waterproofing of courtyard (Section 10 Page 49)*
- f) *Significant delay to repair down pipe. Only after the owner ceased paying his strata fee did anything happen (Section 13 Page 85)*
- g) *Failure to provide sufficient notice to owners of change of entry codes (Section 14 Page 126)*
- h) *Failure to repair fountain (Section 16 Page 136)*
- i) *Failure to repair front step (Section 17 Page 146)*
- j) *Significant delay in placing a simple lock on the garbage room to prevent homeless people rummaging through rubbish (Section 18 Page 150)*
- k) *Failure to repair the hot water system leading to its failure (Section 19 Page 159)*
- l) *Failure to adjust lighting schedule (Section 23 Page 200)*
- m) *Failure to provide initial levy notices (Section 26 Page 353)*
- n) *Failure to hold Mr Thompson accountable for not providing on site reports and regular site inspections (Section 1 Page 1 & Section 30 P421)*
- o) *Failure to install soft close mechanism on side door (Section 31 Page 485)*
- p) *Delay in installation of wheel clamping signs (Section 32 Page 487)*
- q) *Delay in repairing Intercom (Section 36 Page 527)*
- r) *Significant delay in repairing leak in U40 (Section 37 Page 533)*

Mr Thompson misled residents and owners in regards to the following:

- a) The removal of wheel clamps,
- b) Meeting of architects
- c) Time of installation of Child window locks
- d) Dept fair Trading
- e) Hot water system
- f) U40 intercom and U40 leak