NCAT
NSW Civil &
Administrative Tribunal

December 2017

Notice of Appeal

NCAT INTERNAL APPEAL PANEL

Complete this form to appeal from a decision to the NCAT Internal Appeal Panel under section 80 of the *Civil and Administrative Tribunal Act 2013*. Before completing this form and proceeding with an internal appeal or asking for leave to appeal, read NCAT Guideline 1 – Internal Appeals because:

- There are some types of NCAT decisions that cannot be appealed internally.
- An NCAT decision may be able to be set aside or varied as an alternative to an appeal.
- Appeals must be lodged within the applicable time period.
- You may need permission or 'leave' to appeal.
- You may not be entitled to be represented without the permission or 'leave' of the Tribunal.

Appeal Panel File Number
Office use only

1. DIVISION

Select Division in which decision being appealed was made

☐ **Administrative and Equal Opportunity** ☑ **Consumer and Commercial** ☐ **Guardianship** ☐ **Occupational**

2. DETAILS OF DECISION

Provide details of decision of completed proceedings you want set aside or varied. Attach a copy of the orders made by NCAT and any written reasons.

NCAT File Number

Date of Decision **Date notice of decision was received**

☑ **Copy of NCAT orders and any written reasons are attached**

3. APPELLANT

Provide details of party seeking to appeal from the decision of the Tribunal. For multiple applicants, attach details on a separate sheet. If a company include Australian Company Number (ACN).

Full name

Postal Address

Contact details Daytime telephone N/A Mobile

Email

☐ **Tick if you have a representative and want them to receive correspondence on your behalf**
Note: You may have to ask for the Tribunal's permission to have a representative.

REPRESENTATIVE DETAILS (IF APPLICABLE)

Full name

Name of firm or organisation

Postal Address

Contact details Daytime telephone Mobile

Email

4. RESPONDENT

Insert name of other party to the original proceedings. For multiple respondents attach details on a separate sheet. If a company include Australian Company Number (ACN).

Full name

Postal Address 298 Railway Pde Carlton, NSW 2218

Contact details Daytime telephone 02 8567 6400 Mobile

Email Tyson.Major@netstrata.com.au

☐ **Tick if the other party had a representative when the decision was originally made.**

REPRESENTATIVE DETAILS (IF APPLICABLE)

Full name

Name of firm or organisation

Postal Address

Contact details Daytime telephone Mobile

Email

5. GROUNDS FOR APPEAL

A. ORDERS CHALLENGED ON APPEAL

List the orders that were made by the Tribunal that you want to have changed by the Appeal Panel. *Use a separate sheet if needed.*

See attached.

B. GROUNDS OF APPEAL

List below a short summary of each reason why you consider the Tribunal was wrong when it decided to make the order/s appealed from. *Use a separate sheet if needed.*

See attached.

C. ORDERS THE NCAT APPEAL PANEL SHOULD MAKE

List below the orders which you say the NCAT Appeal Panel should make if you are successful on the appeal. *Use a separate sheet if needed.*

See attached.

6. LEAVE TO APPEAL

Unless you are appealing a final or ancillary decision of the Tribunal on a **question of law only**, you need permission or 'leave' to appeal. Refer to NCAT Guideline 1 – Internal Appeals for further information on the types of decision and leave to appeal. You are encouraged to seek independent legal advice regarding your appeal and whether it is on a question of law.

Are you appealing from a decision of the Consumer and Commercial Division?

☐ **No** If 'No' complete section A

☐ **Yes** If 'Yes' complete section B

A. APPLICATION FOR LEAVE TO APPEAL

Are you asking for leave? ☐ Yes ☐ No

Reasons why the NCAT Appeal Panel should grant leave to appeal against the decision/s *Use a separate sheet if needed.* Note: The Tribunal can decide whether to give leave on the papers without having an oral hearing.

B. APPLICATION FOR LEAVE TO APPEAL FROM A CONSUMER AND COMMERCIAL DIVISION DECISION

Unless you are appealing a final or ancillary decision of the Consumer and Commercial Division on a **question of law only** you need permission or 'leave' to appeal. For some decisions of the Consumer and Commercial Division there is no right to ask for permission or 'leave' to appeal. Refer to NCAT Guideline 1 – Internal Appeals for further information.

Are you asking for leave? ☐ Yes ☐ No

If yes, the Appeal Panel can give leave only if it is satisfied that the Appellant may have suffered a substantial miscarriage of justice because:

i. the decision was not fair and equitable
ii. the decision was against the weight of evidence
iii. significant new evidence is now available that was not reasonably available at the time of the hearing.

Provide information on each of those grounds that is applicable to this Appeal. Note: The Tribunal can decide whether to give leave on the papers without having an oral hearing.

i. Decision not fair and equitable

It is not enough simply to say the decision was not fair and equitable. You must describe in detail why the decision was not fair and equitable.

ii. Decision of the Tribunal against the weight of evidence

Dissatisfaction with the Tribunal Member's findings does not mean there has been a substantial miscarriage of justice. You must say why some evidence should have been given more weight than other evidence.

What evidence did you give at the hearing? What documents did you show the Tribunal?

What evidence did the other party give? What documents did the other party show the Tribunal?

What evidence should the Tribunal have given more weight to? Why?

iii. Significant new evidence is now available that was not reasonably available at the time of the hearing

It is not sufficient to state that you did not have the evidence or you were unaware of the evidence at the time of the hearing. You must show that the new evidence could not have been obtained with reasonable diligence at the time of the hearing and that the new evidence is significant and could have made a difference to the decision.

Why was this evidence (including documents) not available at the time of the hearing?

7. EXTENSION OF TIME

This appeal must be made within the applicable time period after the decision concerned was made. Refer to NCAT Guideline 1 – Internal Appeals for further information about time for filing. You are also encouraged to seek independent legal advice regarding your appeal.

The Tribunal has the power to grant an extension of time to lodge the appeal if the Tribunal finds that it is warranted in the circumstances. If an extension is required but is not granted the application may be dismissed because it is out of time.

Do you require an extension of time? ☐ Yes ☐ No

If yes, explain why the application was not lodged within the time limit, what effect extending or not extending the time would have on you and the respondents, and any other relevant considerations you want the Tribunal to take into account in deciding whether or not to extend the time. *Use separate sheet if needed.*

8. HEARING

A. SPECIAL NEEDS

Indicate whether you have any special needs such as a hearing loop or wheelchair access:

B. INTERPRETER

Do you require an interpreter for the hearing? ☐ Yes ☐ No

If yes, specify language and dialect:

9. SERVICE OF NOTICE OF APPEAL ON THE RESPONDENT

Once you have lodged your application the Tribunal will serve your Notice of Appeal and attachments on each respondent using the copies you have provided to the Tribunal.

10. NOTICE OF APPEAL CHECKLIST

☒ **Appeal lodgement fee has been paid or fee waiver obtained**
You must pay the 'internal appeal' lodgement fee when lodging your Notice of Appeal. Refer to the fee schedule available on www.ncat.nsw.gov.au. Payment can be made by attaching a credit card authority form or cheque/money order made to 'NSW Civil and Administrative Tribunal'. Cash, credit card and efpos payments can be made in person at NCAT Registry offices or Service NSW Centres.

N/A

If you are unable to pay the concession fee or are not eligible, NCAT may consider waiving the fee fully or partially. To request a fee waiver please complete the fee waiver request form.

☒ **All relevant documents are attached**
Attach all documents you are relying upon in support of your Notice of Appeal. Keep a copy of your Notice of Appeal and any attached information for your own records. **Note:** A copy of this Notice of Appeal and all material attached may be viewed by the Respondents. The person completing the documents is responsible for their content.

☒ **Multiple copies of this Notice of Appeal and attachments have been made**
You must provide multiple copies of this Notice of Appeal and any attachments to the Tribunal. The original and two copies for the Tribunal and one copy for each respondent must be lodged with the Tribunal.

N/A

☒ **Copy of original orders and any written reasons are attached**
A copy of the Tribunal's original orders and any written reasons provided must be attached to the Notice of Appeal.

11. SIGNATURE

Appellant's signature or signature of legal representative

Name

Signature

Date / /

Lodge your Notice of Appeal with the fee at your nearest NCAT Registry
Post to NCAT Appeal Panel Unit, PO Box K1026 Haymarket NSW 1240 or DX 11539 Sydney Downtown. For NCAT Registry locations refer to information on your Tribunal orders or NCAT correspondence. For all NCAT enquires telephone 1300 006 228 or visit www.ncat.nsw.gov.au.

NCAT
NSW Civil &
Administrative Tribunal
Consumer and Commercial Division

File No:
Quote in all enquiries
eNumber:

Notice of Directions Hearing

Please see over page for further details about your directions hearing and what you need to do to prepare.

An application to the Tribunal has been made concerning:

Applicant: **Respondent:** Michael Thompson

The application has been listed before the Tribunal and you are required to appear at:

Location: Room 14.7
Level 14, 66 Goulburn Street
Sydney NSW 2000

Date and Time: (AEDT)

Please arrive at least 15 minutes before the start of the hearing and report to the hearing attendant or security officer.

It is important that you are on time as the Tribunal may decide the matter in your absence. The decision made will be binding on you.

There are security procedures at all venues.

M Tiga
for the Registrar
Date: **20 November 2017**

Level 14 Civic Tower, 66 Goulburn Street, SYDNEY NSW 2000
GPO Box 4005, SYDNEY NSW 2001
ccdsydney@ncat.nsw.gov.au
Direct Ph: 9307 6496 Toll free Ph: 1300 006 228 Fax: 9307 6301
www.ncat.nsw.gov.au

IMPORTANT INFORMATION ABOUT DIRECTIONS HEARINGS

NCAT lists matters for hearing depending on the type of application and the nature of the dispute. All Consumer & Commercial Division hearings are open to the public. The following explains the type of hearing you will be attending.

Directions hearing

This matter has been listed for a 'directions hearing'. Directions hearings are used to prepare for the formal hearing. They are used in complex matters where there may be a need to establish jurisdiction, identify issues in dispute, set a time frame for the hearing, or make directions for the exchange of evidence.

All parties are required to attend the first and any subsequent directions hearings and must comply with procedural directions or the matter may be dismissed. Failure to attend may also result in the matter being finally determined.

If your application concerns a home building dispute you should read the Procedural Directions on home building disputes over $30,000.

As this is a directions hearing **you are not required to bring witnesses.** However you should bring with you all relevant documents or materials related to your case.

If you cannot attend

You can seek to have the hearing postponed by asking for an 'adjournment'. Adjournment requests must be made in writing and addressed to the Registrar. A copy should be sent to the other party. Include any supporting documentation such as a copy of the medical certificate or airline ticket. If you have the consent of the other party your request is more likely to be considered favourably.

If you have resolved the dispute

If you are the applicant and you have been able to resolve your dispute and no longer require a hearing, you need to withdraw your application. You must advise the other party and the Registrar in writing prior to the hearing. This should be done as soon as possible prior to your hearing date. If written notice is received by the NCAT before the hearing you will not have to attend.

Tell us

Contact the NCAT Registry immediately in the following circumstances:

- If you need an interpreter (the NCAT arranges and pays for this service)
- If you have changed your address or phone number
- If you have special needs so we can discuss what assistance you may require.

Outcome of the directions hearing

The Tribunal Member will generally tell you the decision at the end of the hearing. Written orders will be provided at the hearing or sent to you by post.

Need more information?

Visit **www.ncat.nsw.gov.au** or call 1300 00 6228.

NCAT
NSW Civil &
Administrative Tribunal
Consumer and Commercial Division

File No: SC
Quote in all enquiries
eNumber:

Application to the Tribunal concerning Australia -

On 9/11/17 the Registrar received your application seeking an order under s.237 of the Strata Schemes Management Act 2015 . It is a legislative requirement that you provide the following information:

- copy of the strata roll

This information must be provided by 28/11/17.

Should you require any further information you may contact NSW Fair Trading on 133 220 or the Registry of the NSW Civil & Administrative Tribunal.

M Tiga
for the Registrar
21/11/17

Level 14 Civic Tower, 66 Goulburn Street, SYDNEY NSW 2000
GPO Box 4005, SYDNEY NSW 2001
ccdsydney@ncat.nsw.gov.au
Direct Ph: 9307 6496 Toll free Ph: 1300 006 228 Fax: 9307 6301
www.ncat.nsw.gov.au

Subject: V's Thompson

From:

To: dianne.dmello@ncat.nsw.gov.au

Cc: ccdsydney@ncat.nsw.gov.au;

Date: Thursday, 23 November 2017, 10:16:06 am AEDT

Please find attached strata roll as requested.

Considering the difficulty in trying to obtain the strata roll from any strata manager, I recommend that these be provided by the strata manager. I was told by Mr Thompson and Mr Bell (the licensee) that I was not entitled to the strata roll due to privacy reasons, and that I am not on the executive committee.

Have you or anybody from your office attempted to obtain the strata roll from a strata manager?



aur-p748775_23-11-2017_10-01-53.pdf
855.7kB

NCAT
NSW Civil &
Administrative Tribunal
Consumer and Commercial Division

1

File No: SC
Quote in all enquiries
eNumber:

Application to the Tribunal concerning
Australia -

Applicant:
Respondent: Owners Corporation SP and Network Strata Services Pty Ltd

On 20-Dec-2017 the following orders were made:

1. By Determination of member, on 20 December 2017 the hearing was adjourned to a date to be fixed by the Registrar.

2. The applicant has clarified that his application for compulsory appointment of a strata managing agent is based on the mismanagement of the strata plan including by:

(a) Failure to repair and maintain the property in a timely manner or at all, for example in relation to:

- obtaining architect and building consultant reports
- provision of child window locks
- rectification of drain pipe
- decommissioning of water feature
- rectification of front steps
- installation of lock on garbage room
- rectification of hot water system
- rectification of lighting timers

(b)Failure to comply with and enforce By-laws including the parking by-law which allowed wheel clamps to be placed on vehicles parked on the common property

(c) the conduct and mismanagment of the current strata manager

Schedule 4, Clause 10(2) of the NSW Civil & Administrative Tribunal Act 2013 provides the following:

(a) If the party is causing the disadvantage is the applicant – order that the proceedings (or part of the proceedings) be dismissed or struck out, or

(b) If the party causing the disadvantage is not the applicant:
  (i) determine the proceedings (or part of the proceedings) in favour of the applicant and make any appropriate orders, or
  (ii) order that the party causing the disadvantage be struck out of the proceedings (or part of the proceedings).

2. Owners Corporation SP is joined as an respondent.

3. The respondent's name Michael Thompson, is amended to Network Strata Services Pty Ltd.

4. The applicant shall provide to the respondent and the Tribunal, either in person or by post, a copy of their submission and all documents (see note below), on which the applicant intends to rely at the hearing by 19-Jan-2018.

5. The respondent shall provide to the applicant and the Tribunal, either in person or by post, a copy of their submission and all documents (see note below), on which the respondent intends to rely at the hearing by 09-Feb-2018.

IMPORTANT NOTE:
For the purpose of these directions "document" means:
- Witness statements / statutory declarations or affidavits
- Expert reports
- Photographs
- Accounts or receipts
- Quotations
- Any other document to be relied upon

And all documents must be legible and in colour (if the original is in colour).

6. The documents provided by each party must be placed in a folder, each page must be numbered to provide easy identification by all concerned at the hearing. Folders provided to the Tribunal and to the other party(ies) must be identical and in the same order. The folder(s) should be marked with the name of the party and include:
- an index
- a chronology of significant events
- all documents required by these directions

And all documents must be legible and in colour (if the original is in colour).

7. If a party requires an extension of time to comply with these directions, an application should be made in writing to the Registrar no later than the day prior to the date of submission of documents to the Tribunal.

8. A failure by a party to provide documents in accordance with the Tribunal orders may result in the party not being able to rely on the documents at the hearing, unless leave is granted to do so.

9. All evidence from a party's witness(es) in support of that party(ies) must be in the form of a statement, statutory declaration, affidavit or expert report as appropriate.

A separate written notice of the new hearing date will be sent to you in the near future.

S Corley

Schedule 4, Clause 10(2) of the NSW Civil & Administrative Tribunal Act 2013 provides the following:

(a) If the party is causing the disadvantage is the applicant – order that the proceedings (or part of the proceedings) be dismissed or struck out, or

(b) If the party causing the disadvantage is not the applicant:
  (i) determine the proceedings (or part of the proceedings) in favour of the applicant and make any appropriate orders, or
  (ii) order that the party causing the disadvantage be struck out of the proceedings (or part of the proceedings).

Tribunal Member
20/12/17

Schedule 4, Clause 10(2) of the NSW Civil & Administrative Tribunal Act 2013 provides the following:

(a) If the party is causing the disadvantage is the applicant – order that the proceedings (or part of the proceedings) be dismissed or struck out, or

(b) If the party causing the disadvantage is not the applicant:

  (i) determine the proceedings (or part of the proceedings) in favour of the applicant and make any appropriate orders, or

  (ii) order that the party causing the disadvantage be struck out of the proceedings (or part of the proceedings).

Level 14 Civic Tower, 66 Goulburn Street, SYDNEY NSW 2000
GPO Box 4005, SYDNEY NSW 2001
ccdsydney@ncat.nsw.gov.au
Ph: 9307 6496 Fax: 9307 6301
www.ncat.nsw.gov.au

NCAT
NSW Civil &
Administrative Tribunal
Consumer and Commercial Division

File No: SC
Quote in all enquiries
eNumber:

Notice of Hearing

Please see over page for further details about your hearing and what you need to do to prepare.

An application to the Tribunal has been made concerning:

Applicant:

Respondent: Owners Corporation SP & Network Strata Services Pty Ltd

The application has been listed before the Tribunal and you are required to appear at:

Location: Room 14.4
Level 14, 66 Goulburn Street
Sydney NSW 2000

Date and Time: (AEDT)

Please arrive at least 15 minutes before the start of the hearing.
It is important that you are on time as the Tribunal may decide the matter in your absence.
The decision made will be binding on you.

The hearing will be sound recorded.

N Taua
for the Registrar
Date: **03 January 2018**

Level 14 Civic Tower, 66 Goulburn Street, SYDNEY NSW 2000
GPO Box 4005, SYDNEY NSW 2001
ccdsydney@ncat.nsw.gov.au
Direct Ph: 9307 6496 Toll free Ph: 1300 006 228 Fax: 9307 6301
www.ncat.nsw.gov.au

IMPORTANT INFORMATION ABOUT HEARINGS

NCAT lists matters for hearing depending on the type of application and the nature of the dispute. All Consumer & Commercial Division hearings are open to the public. The following explains the type of hearing you will be attending.

Hearing

This matter has been listed for hearing for a specific time and length. At this hearing the issues in dispute will be determined and a decision made.

All parties must comply with procedural directions or the matter may be dismissed. As this is a hearing, you should bring all relevant documents or materials related to your case which you intend to rely on during the hearing.

Parties must also exchange all evidence prior to the hearing or it may not be considered. If you are relying on evidence from witnesses, those witnesses must attend. Further information about witnesses is available at **www.ncat.nsw.gov.au**.

If you cannot attend

You can seek to have the hearing postponed by asking for an 'adjournment'. Adjournment requests must be made in writing and addressed to the Registrar. A copy should be sent to the other party. Include any supporting documentation such as a copy of the medical certificate or airline ticket. If you have the consent of the other party your request is more likely to be considered favourably.

If you have resolved the dispute

If you are the applicant and you have been able to resolve your dispute and no longer require a hearing, you need to withdraw your application. You must advise the other party and the Divisional Registrar in writing prior to the hearing. This should be done as soon as possible prior to your hearing date. If written notice is received by the NCAT before the hearing you will not have to attend.

Tell us

Contact the NCAT Registry immediately in the following circumstances:

- If you need an interpreter (the NCAT arranges and pays for this service)
- If you have changed your address or phone number
- If you have special needs so we can discuss what assistance you may require.

Outcome of the hearing

The Tribunal Member will generally tell you the decision at the end of the hearing. Written orders will be provided at the hearing or sent to you by post. NCAT decisions may also be available to the public via the internet.

Need more information?

Visit **www.ncat.nsw.gov.au** or call 1300 00 6228.

Hearing Facts

1. Do your research

Do as much research as possible and gather all the information you will need for the hearing. You may want to sit in on a NCAT hearing for an overview of the hearing process.

2. Get some advice or assistance

If you are unsure about your rights and responsibilities, there are many organisations that can help. Getting some independent advice may help you prepare for the hearing and organise your evidence.

3. Prepare your case

Write down, in simple point form, all the important issues and main arguments you wish to make, include a history of what happened and when. Your list should include important dates, facts and events relating to the dispute.

4. Gather your evidence

Bring all the documents or materials you need to prove your case. Organise them in a folder for easy access during the hearing. Copies of your documents need to be given to the other party and the Tribunal Member. Make sure you comply with any direction you are given about the exchange of documents.

5. Focus on the facts

During the hearing it is important to be concise and stick to the facts. Rehearse what you are going to say. This will help you to present your case without forgetting any important points and stay focused on the issues.

6. Arrive on time

Allow plenty of time to get to your hearing. Arriving early may help ease any nerves you may have. If you are running late call the NCAT Registry immediately as your case may be dismissed or orders made in your absence.

7. Attendance at hearing

Be prepared that you may be at the hearing longer than previously. A specific amount of time is allocated for your hearing, it may take longer than you expect especially if there are witnesses or a lot of evidence to be presented.

8. Speak clearly

It is important that you speak clearly and slowly. This ensures everyone understands what you have to say. This will be of great assistance should you need a sound recording.

9. Presenting your case

The person hearing your case is called a Tribunal Member. Listen to what the Tribunal Member asks you to do, and take notes so you can ask questions when it is your turn to speak. Be respectful of the Tribunal Member and do not interrupt or argue with the other party. You will both be given plenty of time to present your case.

10. Listen carefully

Listen very carefully when the Tribunal Member makes the orders and the reasons given. If you missed anything, ask for the orders to be repeated. You may also ask the Tribunal Member to explain them to you. A copy of the orders will be given to you either on the day or at a later date.

NCAT
NSW Civil & Administrative Tribunal
Consumer and Commercial Division

NOTICE OF ORDER

File No: SC
Quote in all enquiries
eNumber:

Application to the Tribunal concerning Australia -

Applicant:
Respondent: Owners Corporation SP

On 14-Mar-2018 the following orders were made:

1. By Determination of member, on 14 March 2018 the hearing was adjourned to a date to be fixed by the Registrar.

2. Network Strata Services Pty Ltd is removed as an respondent.

3. The applicant shall provide to the respondent and the Tribunal, either in person or by post, a copy of all documents (see note below), on which the applicant intends to rely at the hearing by 04-Apr-2018. This is to include points of claim setting out the legal and factual basis upon which the claim is made.

4. The respondent shall provide to the applicant and the Tribunal, either in person or by post, a copy of all documents (see note below), on which the respondent intends to rely at the hearing by 24-Apr-2018. This is to include Points of Defence.

5. The documents provided by each party must be placed in a folder, each page must be numbered to provide easy identification by all concerned at the hearing. Folders provided to the Tribunal and to the other party(ies) must be identical and in the same order. The folder(s) should be marked with the name of the party and include:
   - an index
   - a chronology of significant events
   - all documents required by these directions

   And all documents must be legible and in colour (if the original is in colour).

Schedule 4, Clause 10(2) of the NSW Civil & Administrative Tribunal Act 2013 provides the following:

(a) If the party is causing the disadvantage is the applicant – order that the proceedings (or part of the proceedings) be dismissed or struck out, or

(b) If the party causing the disadvantage is not the applicant:
   (i) determine the proceedings (or part of the proceedings) in favour of the applicant and make any appropriate orders, or
   (ii) order that the party causing the disadvantage be struck out of the proceedings (or part of the proceedings).

For further information about your rights and obligations in relation to this order please read NCAT's Rights and Obligations Guideline available on the NCAT website at www.ncat.nsw.gov.au

Level 14 Civic Tower, 66 Goulburn Street, SYDNEY NSW 2000
GPO Box 4005, SYDNEY NSW 2001
ccdsydney@ncat.nsw.gov.au
Ph: 9307 6496 Fax: 9307 6301
www.ncat.nsw.gov.au

6. If a party requires an extension of time to comply with these directions, an application should be made in writing to the Registrar no later than the day prior to the date of submission of documents to the Tribunal.

7. A failure by a party to provide documents in accordance with the Tribunal orders may result in the party not being able to rely on the documents at the hearing, unless leave is granted to do so.

8. All evidence from a party's witness(es) in support of that party(ies) must be in the form of a statement, statutory declaration, affidavit or expert report as appropriate.

9. The parties are encouraged to obtain advice and to have further settlement discussions prior to the next hearing.

The applicant is to advise the Tribunal in writing immediately if the matter settles and if the application is withdrawn.

The Tribunal has today returned to the parties all of the documents received by the Tribunal in relation to directions that were made on 20 December 2017. This is to ensure that the documents are filed and served in accordance with these directions.

The respondent has confirmed that Mr Thompson from Network Strata Services Pty Ltd will represent the respondent in the proceedings. There are no submissions from any interested parties and no other parties are joined as respondent to the proceedings.

A separate written notice of the new hearing date will be sent to you in the near future.

M Eftimiou
Tribunal Member
14/03/18

Schedule 4, Clause 10(2) of the NSW Civil & Administrative Tribunal Act 2013 provides the following:

(a) If the party is causing the disadvantage is the applicant – order that the proceedings (or part of the proceedings) be dismissed or struck out, or

(b) If the party causing the disadvantage is not the applicant:
  (i) determine the proceedings (or part of the proceedings) in favour of the applicant and make any appropriate orders, or
  (ii) order that the party causing the disadvantage be struck out of the proceedings (or part of the proceedings).

For further information about your rights and obligations in relation to this order please read NCAT's Rights and Obligations Guideline available on the NCAT website at www.ncat.nsw.gov.au

Subject: NSW Civil & Administrative Tribunal - SC 17/^.
vs Owners Corporation SP

From:

To: ccdsydney@ncat.nsw.gov.au

Cc:

Date: Tuesday, 3 April 2018, 8:30:20 am AEST

Good Morning,

Unfortunately my submission will not be ready for tomorrow's deadline. I am hoping to have it completed and delivered to NCAT and Netstrata by 9th April 2018.

Thanks

Subject: NSW Civil & Administrative Tribunal - SC
vs Owners Corporation SP

From:

To: ccdsydney@ncat.nsw.gov.au

Cc:

Date: Thursday, 29 March 2018, 12:56:53 pm AEDT

Please note that I will be out of the country from 25 May 2018 to 12 June 2018. A date has yet to be set for the hearing, so could you please take this into consideration.

Thanks

Subject: Re: FW: NSW Civil & Administrative Tribunal - SC vs Owners Corporation SP

From:

To: ccdsydney@ncat.nsw.gov.au

Date: Tuesday, 10 April 2018, 12:47:50 pm AEST

Hello,

I have a question regarding my submission. I have approximately 1,000 photos relating to my case. Some are dependent on the time of day, meaning that our lights are on during the day when they shouldn't be, and some are related to the time of year.

Firstly, am i required to print ALL of these and attach to my submission, or is it sufficient to show them at the hearing using my laptop?

Secondly, if i print these off, how can you tell when these were created?

Thank you in advance

NCAT
NSW Civil &
Administrative Tribunal
Consumer and Commercial Division

File No: SC
Quote in all enquiries
eNumber:

Notice of Hearing

Please see over page for further details about your hearing and what you need to do to prepare.

An application to the Tribunal has been made concerning:

Applicant: **Respondent:** Owners Corporation SP

The application has been listed before the Tribunal and you are required to appear at:

Location: Room 14.3
Level 14, 66 Goulburn Street
Sydney NSW 2000

Date and Time:

Please arrive at least 15 minutes before the start of the hearing.
It is important that you are on time as the Tribunal may decide the matter in your absence.
The decision made will be binding on you.

The hearing will be sound recorded.

M Tiga
for the Registrar
Date: **16 April 2018**

Level 14 Civic Tower, 66 Goulburn Street, SYDNEY NSW 2000
GPO Box 4005, SYDNEY NSW 2001
ccdsydney@ncat.nsw.gov.au
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IMPORTANT INFORMATION ABOUT HEARINGS

NCAT lists matters for hearing depending on the type of application and the nature of the dispute. All Consumer & Commercial Division hearings are open to the public. The following explains the type of hearing you will be attending.

Hearing

This matter has been listed for hearing for a specific time and length. At this hearing the issues in dispute will be determined and a decision made.

All parties must comply with procedural directions or the matter may be dismissed. As this is a hearing, you should bring all relevant documents or materials related to your case which you intend to rely on during the hearing.

Parties must also exchange all evidence prior to the hearing or it may not be considered. If you are relying on evidence from witnesses, those witnesses must attend. Further information about witnesses is available at **www.ncat.nsw.gov.au**.

If you cannot attend

You can seek to have the hearing postponed by asking for an 'adjournment'. Adjournment requests must be made in writing and addressed to the Registrar. A copy should be sent to the other party. Include any supporting documentation such as a copy of the medical certificate or airline ticket. If you have the consent of the other party your request is more likely to be considered favourably.

If you have resolved the dispute

If you are the applicant and you have been able to resolve your dispute and no longer require a hearing, you need to withdraw your application. You must advise the other party and the Divisional Registrar in writing prior to the hearing. This should be done as soon as possible prior to your hearing date. If written notice is received by the NCAT before the hearing you will not have to attend.

Tell us

Contact the NCAT Registry immediately in the following circumstances:

- If you need an interpreter (the NCAT arranges and pays for this service)
- If you have changed your address or phone number
- If you have special needs so we can discuss what assistance you may require.

Outcome of the hearing

The Tribunal Member will generally tell you the decision at the end of the hearing. Written orders will be provided at the hearing or sent to you by post. NCAT decisions may also be available to the public via the internet.

Need more information?

Visit **www.ncat.nsw.gov.au** or call 1300 00 6228.

Hearing Facts

1. Do your research

Do as much research as possible and gather all the information you will need for the hearing. You may want to sit in on a NCAT hearing for an overview of the hearing process.

2. Get some advice or assistance

If you are unsure about your rights and responsibilities, there are many organisations that can help. Getting some independent advice may help you prepare for the hearing and organise your evidence.

3. Prepare your case

Write down, in simple point form, all the important issues and main arguments you wish to make, include a history of what happened and when. Your list should include important dates, facts and events relating to the dispute.

4. Gather your evidence

Bring all the documents or materials you need to prove your case. Organise them in a folder for easy access during the hearing. Copies of your documents need to be given to the other party and the Tribunal Member. Make sure you comply with any direction you are given about the exchange of documents.

5. Focus on the facts

During the hearing it is important to be concise and stick to the facts. Rehearse what you are going to say. This will help you to present your case without forgetting any important points and stay focused on the issues.

6. Arrive on time

Allow plenty of time to get to your hearing. Arriving early may help ease any nerves you may have. If you are running late call the NCAT Registry immediately as your case may be dismissed or orders made in your absence.

7. Attendance at hearing

Be prepared that you may be at the hearing longer than previously. A specific amount of time is allocated for your hearing, it may take longer than you expect especially if there are witnesses or a lot of evidence to be presented.

8. Speak clearly

It is important that you speak clearly and slowly. This ensures everyone understands what you have to say. This will be of great assistance should you need a sound recording.

9. Presenting your case

The person hearing your case is called a Tribunal Member. Listen to what the Tribunal Member asks you to do, and take notes so you can ask questions when it is your turn to speak. Be respectful of the Tribunal Member and do not interrupt or argue with the other party. You will both be given plenty of time to present your case.

10. Listen carefully

Listen very carefully when the Tribunal Member makes the orders and the reasons given. If you missed anything, ask for the orders to be repeated. You may also ask the Tribunal Member to explain them to you. A copy of the orders will be given to you either on the day or at a later date.

Subject: RE: File No.

From: michael.thompson@netstrata.com.au
To: ccdsydney@ncat.nsw.gov.au;
Cc: Tyson.Major@netstrata.com.au
Date: Monday, 16 April 2018, 3:25:46 pm AEST

ATTN – NSW Civil & Administrative Tribunal

Dear Mr

The Notice of Order is very clear in which the documents you intend to rely upon at the hearing were to be submitted to the respondent and the Tribunal by the 04/04/18.

I refer to clause 6 & 7 of the Notice of Order which states;

6. If a party requires an extension of time to comply with these directions, an applicatio should be made in writing to the Registrar no later than the day prior to the date of submiss of documents to the Tribunal.

7. A failure by a party to provide documents in accordance with the Tribunal orders ma result in the party not being able to rely on the documents at the hearing, unless leave is granted to do so.

We have received no correspondence from yourself nor the Registrar seeking an extension.

Michael Thompson

Netstrata

Licensed Senior Strata Manager

298 Railway Parade

Carlton, NSW 2218

D: 02 8567 6431

T: 02 8567 6400

F: 02 9588 4644

W: www.netstrata.com.au

netstrata

strata community australia

CERTIFIED STRATA COMMUNITY MANAGER

Update your details | Priority Maintenance Request | 1300 638 787

From:
Sent: Monday, 16 April 2018 3:19 PM
To: Michael Thompson <michael.thompson@netstrata.com.au>; ccdsydney@ncat.nsw.gov.au;

Cc: Tyson Major <Tyson.Major@netstrata.com.au>
Subject: RE: File No.

I have nearly finished compiling everything. I should be finished in the next week or so. There are a lot of issues that need to be noted.

From: Michael Thompson [mailto:michael.thompson@netstrata.com.au]
Sent: Monday, 16 April 2018 3:00 PM
To: ccdsydney@ncat.nsw.gov.au;
Cc: Tyson Major
Subject: File No.

ATTN – NSW Civil and Administrative Tribunal

Dear Mr

We hereby notify you that we have not received any documents as noted in point 3 of the attached Notice of Order dated 14/03/18.

Michael Thompson

Netstrata D: 02 8567 6431

Licensed Senior Strata Manager

298 Railway Parade

Carlton, NSW 2218

T: 02 8567 6400

F: 02 9588 4644

W: www.netstrata.com.au

Please Note: All written, email communications and attachments received by our office remain on record of the relevant client scheme for a minimum of 7 years. These communications are available for inspection by owners or their nominated agent pursuant to section 183 of the Strata Schemes Management Act 2015. Discretion is advised when communicating with our office in written or electronic form.

Please Note: All written, email communications and attachments received by our office remain on record of the relevant client scheme for a minimum of 7 years. These communications are available for inspection by owners or their nominated agent pursuant to section 183 of the Strata Schemes Management Act 2015. Discretion is advised when communicating with our office in written or electronic form.

Subject: Re: NSW Civil & Administrative Tribunal - SC

From:

To: ccdsydney@ncat.nsw.gov.au

Date: Tuesday, 22 May 2018, 8:31:31 pm AEST

Hello,

Today by courier at approx. 5:00 pm I received the Owners Corporations SP (Respondent) reply and due to the complexity of the matter it does not leave me sufficient time to peruse their documents before the hearing dated Thursday 24th May 2018. I therefore request that the hearing be moved to a later date after 2nd July 2018. I will also be attending a wedding on 6 August 2018 and will be unavailable on this date.

NCAT
NSW Civil &
Administrative Tribunal
Consumer and Commercial Division

File No: SC
Quote in all enquiries
eNumber:

Application to the Tribunal concerning
Australia -

The request by the Applicant for an adjournment of the hearing listed at Room 14.3
Level 14, 66 Goulburn Street
Sydney NSW 2000 on Thursday 24th May 2018 9:15 AM has been refused.

Reasons:
Parties are to attend prepared to proceed with the hearing. Issues raised will also be dealt with at the hearing.

The matter remains listed on the above date and your attendance at the hearing is required.

NOTE: Any party seeking an adjournment should refer to NCAT Consumer and Commercial Division Guideline on 'Adjournments', which can be viewed at www.ncat.nsw.gov.au

T Simon
Tribunal Member
23/05/18

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ccdsydney@ncat.nsw.gov.au
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www.ncat.nsw.gov.au

Subject: Re: NSW Civil & Administrative Tribunal - SC vs Owners Corporation SP

From:

To: ccdsydney@ncat.nsw.gov.au

Date: Friday, 25 May 2018, 4:56:48 pm AEST

Dear Member Simon,

I don't know what you hoped to achieve at yesterday's tribunal as it wasn't the truth, and it wasn't justice. From the onset, you had it in for me. You bullied and intimidated me from the get-go. Every time I spoke you would roll your eyes, turn in your chair and dismiss everything I said with your body language and comments. After the hearing, I went home and almost cried. You gave me one of the most horrible experiences I have ever experienced in my life. Throughout the proceedings I felt like getting up and walking out. I felt like I was wasting my time. In the end I gave up, stopped referring to my case, and did not see the point in questioning the defendant.

I was told by Dept. Fair Trading to take my matter to NCAT, if I was not happy with their findings, and that is all I did. I am not a lawyer for which I feel I must apologise, and I took on the fight for all residents.

The Garbage area cost ALL residents. You asked me at the hearing how I knew that we were charged additional costs, it's because my wife spoke with the cleaners and they told her. I Checked in the annual budget yesterday at home, and there were additional charges noted.

Regarding the brokerage, Netstrata charged us 48% brokerage fee, did not disclose the amount in $ or %. The industry standard is 20% commission. You stated that when the secretary requested the breakdown of brokerage and didn't receive it, it was his problem, not mine. However the fact that Netstrata refused to provide this information is costing all owners significantly more than what we could, and should be paying. If we were provided with the breakdown, we could either request to do it ourselves, or have Netstrata organise at the standard 20% commission.

After I pulled my myself together, I took my time and investigated some of Netstrata's claims. I must bring your attention to their claim (P122 their submission) that the fountain was working until early 2017. This is simply not true. I have attached photos as proof.

It is for these reasons, and potentially many more that:

a) I emailed NCAT if I need to print every photo I have or is it OK to bring them in the day on a USB as I was originally told by the gentleman at reception on L14.

b) I asked for an extension to be able to pick up issues noted in the defendant's case, such as that noted above.

I will continue the fight, as justice must prevail.

WP_20160623_004.jpg 2.4MB

WP_20161019_001.jpg 657.6kB

WP_20161217_18_26_46_Pro.jpg 6.1MB

NCAT
NSW Civil &
Administrative Tribunal
Consumer and Commercial Division

NOTICE OF ORDER

File No: SC
Quote in all enquiries
eNumber:

Application to the Tribunal concerning
Australia -

Applicant:
Respondent: Owners Corporation SP

On 24-May-2018 the following orders were made:

1. The application is dismissed.
2. The respondent is to provide to the applicant and the Tribunal, either in person or by post, submissions and documents in relation to costs by 11 June 2018.
4. The applicant is to provide to the respondent and the Tribunal, either in person or by post, submissions and documents in reply on costs by 25 June 2018.
5. Costs will be determined on the papers. If either party seeks to be heard in person, they should advise the Registry prior to 25 June 2018, setting out the reasons why and the Registry would advise of the outcome in due course.

Reasons for decision:

1. The applicant was seeking the following orders:

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 the strata manager should be excluded from any compensation.
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
e) Compensation for additional cleaning services as a result of failing to secure the garbage area, refund of lighting costs and compensation for failing to implement the wheel clamping by-law and other breaches
f) A nominal amount of $100 for paper, and ink which has been used to compile this case.

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2. It was confirmed at the hearing that in effect the applicant was seeking the appointment of a compulsory strata managing agent, in accordance with section 237 of the Strata Schemes Management Act 2015 and on the basis that the strata scheme was not functioning satisfactorily.

3. The applicant appeared in person. Mr Michael Thompson and Mr Tyson Major from the managing agent Netstrata appeared for the Owners Corporation. All lot owners were notified of the hearing and there were no submissions made by any of the other lot owners. The applicant relied on a folder of documents which he provided on 27 April 2018 and the respondent relied on a folder of documents provided to the Tribunal on 22 May 2018. The applicant was seeking an adjournment of the matter on the basis that he had not had an opportunity to consider the respondent's documents because he had only received them two days earlier. He had previously asked for an adjournment on the same basis and the request was declined and he was on notice that the hearing would be proceeding. When asked why he had not looked at the documents since being advised that the hearing was proceeding, he advised that he had been packing for an overseas holiday was seeking an adjournment until after he returned from his holidays. The Tribunal advised the applicant that he could withdraw the claim and recommence a fresh application once he was ready and had returned from holidays. He declined that offer.

4. The request for the adjournment was denied on a number of grounds. The application was made on 9 November 2017. A formal hearing in the matter had been adjourned previously and it was the applicant who had not complied with the directions to provide documents. The applicants delay has resulted in the respondent not being able to comply with the directions. The applicant was required to provide his documents by 4 April 2018. He had not sought an extension of time and had provided his documents, without leave, three weeks late.

5. The applicant was given half an hour at the hearing to read and consider the documents, many of which he would have seen previously. He advised he had not read all the documents and was offered more time which he declined.

6. The applicant has been a former member of the executive committee. He alleges that over the course of two and a half years from 28 July 2015 until the present, the Owners Corporation has failed in a number of duties and has breached various sections under the Strata Schemes Management Act. He has made numerous allegations against the Strata Managing agent and the Strata Committee. For reasons of proportionality, the Tribunal does not propose to deal with each complaint individually in these reasons, it shall deal with the complaints more generally.

The Owners Corporation has failed to maintain and repair

7. The applicant alleges that the Owner Corporation had failed to maintain and repair the common property of the strata scheme, in particular the following:

a) Failure to provide any proposals to expand the garbage area
b) Significant delay in providing an architectural scope of the courtyard
c) Significant delay in installing child window safety locks
d) Failure to repair cracked concrete
e) Significant delay in providing Demlakian report to address waterproofing of courtyard
f) Significant delay to repair down pipe. Only after the owner ceased paying his strata fee did anything happen
g) Failure to provide sufficient notice to owners of change of entry codes
h) Failure to repair fountain

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i) Failure to repair front step
j) Significant delay in placing a simple lock on the garbage room to prevent homeless people rummaging through rubbish
k) Failure to repair the hot water system leading to its failure
l) Failure to adjust lighting schedule
m) Failure to provide initial levy notices
n) Failure to hold Mr Thompson accountable for not providing on site reports and regular site inspections.
o) Failure to install soft close mechanism on side door
p) Delay in installation of wheel clamping signs
q) Delay in repairing Intercom
r) Significant delay in repairing leak in unit 40

8. The respondent has addressed each of these items in their documents and provided explanations for delays. In particular, in relation to the courtyard works including the front step and the fountain, they explained that those items were not being repaired because they are part of a major renovation works for which special levies are being raised to complete. The applicant complained that in one instance wheel clamps had remained on a vehicle which had allegedly parked illegally for a period of two and a half weeks. However, it was the applicant himself who, without the authorisation of the Owners Corporation, had clamped the vehicle. He agreed that he himself would have been unable to unclamp the vehicle, but had not done so because by that point he had learnt he was not authorised to clamp the vehicle in the first place. It is trite for the applicant to complain that the Owners Corporation have breached their duties when he was the initial cause of the breach. He clamped the vehicle without authorisation. The applicant also included emails from two lot owners Mr M and Mr S as evidence of failure to repair. Neither of those lot owners appeared at the hearing. While there is some correspondence which would indicate there were some delay in repairs for these owners, however the documents of the respondent addresses that and the Tribunal is satisfied that the repairs were ultimately undertaken.

9. The Tribunal is satisfied while works are not always repaired immediately, the respondent has in its documents, generally attended to maintenance and repairs within a reasonable time and explained delays.

Strata Committee has failed in its duties

10. The applicant also alleges that the Strata Committee has failed in its duties. In particular the following:
a) Failure to carry out their duties
b) Failure to hold Mr Thompson accountable for the theft of wheel clomps
c) Failure to enforce wheel clamping by-laws
d) Failure to hold regular meetings as stated
e) failure to take action against unauthorised minor works
e) Failure to take unit 44 to Tribunal for continuously parking illegally

11. The applicant alleges that Mr Thompson was dishonest about the whereabouts of the wheel clamps and he stole them. Mr Thompson denies stealing the wheel clamps and there is no evidence that he stole the wheel clamps. The applicant also made a complaint to Fair Trading about the managing agent. No breaches were found. The Tribunal is not satisfied that the Strata Committee has failed in its duties. In relation to the alleged illegal parking by the tenants of unit 44, it appears from the applicants own evidence that the managing agent advised him that a notice to comply with by-laws had been issued. The Tribunal, having considered the response of the respondent to the complaints and the documents of the applicant, is not satisfied that the Strata Committee has failed in its obligations.

Decommissioning of the fountain

12. The applicant alleges that the strata managing agent decommissioned a fountain without authorisation of the Owners Corporation. The applicant provided the minutes in which the Owners Corporation have resolved to undertake renovation works to the courtyard and which will include removal of the fountain all together. On that basis they have not repaired the fountain as it will be demolished as part of the works. That is a reasonable approach and the applicant's complaint in relation to that matter is dismissed.

Accountability of Strata Managing Agent

13. The applicant also makes a series of allegation about the strata manager and accountability. He alleges that Mr Thompson has failed to provide evidence that a splitter was installed, however those invoices have been provided with the respondent documents. He also alleges that the strata manager has failed to disclose commissions and training services. A statement in regard to those items has been provided with the documents. The applicant also alleges that the strata managing agent has failed to allow inspection of documents. However the applicant admits that the strata manger nominated two times for the applicant to inspect the documents at his offices and he did not attend. The Tribunal finds no breach of the Act in relation to these or any of the other allegations relating to accountability.

Conclusion

Having considered all the evidence, the Tribunal does not find the breaches by the Owners Corporation, the Strata Managing Agent or the Strata Committee. While at times there may be some delay in repairs, the evidence does not demonstrate that the scheme is not functioning satisfactorily. The Tribunal dismisses the applicants claim in its entirety. The respondent is seeking costs and directions are also made in relation to submissions for the cost application

T Simon
Tribunal Member
28/05/18

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NCAT
NSW Civil &
Administrative Tribunal
Consumer and Commercial Division

NOTICE OF ORDER

File No: SC
Quote in all enquiries
eNumber:

Application to the Tribunal concerning
Australia -

Applicant:
Respondent: Owners Corporation SP

On 24-May-2018 the following orders were made:

1. The application is dismissed.
2. The respondent is to provide to the applicant and the Tribunal, either in person or by post, submissions and documents in relation to costs by 11 June 2018.
4. The applicant is to provide to the respondent and the Tribunal, either in person or by post, submissions and documents in reply on costs by 25 June 2018.
5. Costs will be determined on the papers. If either party seeks to be heard in person, they should advise the Registry prior to 25 June 2018, setting out the reasons why and the Registry would advise of the outcome in due course.

Reasons for decision:

1. The applicant was seeking the following orders:

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4. The request for the adjournment was denied on a number of grounds. The application was made on 9 November 2017. A formal hearing in the matter had been adjourned previously and it was the applicant who had not complied with the directions to provide documents. The applicants delay has resulted in the respondent not being able to comply with the directions. The applicant was required to provide his documents by 4 April 2018. He had not sought an extension of time and had provided his documents, without leave, three weeks late.

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NCAT
NSW Civil &
Administrative Tribunal
Consumer and Commercial Division

File No: SC
Quote in all enquiries
eNumber:

Application to the Tribunal concerning
Australia -

On 24-May-2018 the Tribunal made orders in relation to costs being determined on the papers.

The respondent was to file and serve their submissions and documents on costs on or before 11-Jun-2018 and
The applicant was to file and serve their submissions and documents in reply on costs on or before 25-Jun-2018.

As the submission dates have now passed the decision on costs will be determined on the papers and parties will be advised of the outcome in due course.

N Taua
Team Leader
16/07/18

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NCAT
NSW Civil & Administrative Tribunal
Consumer and Commercial Division

NOTICE OF ORDER

File No: SC
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Application to the Tribunal concerning Australia -

Enclosed is a copy of the reserved decision on costs in this matter.

1 A hearing on costs is dispensed with pursuant to s 50(1)(c) of the Civil and Administrative Tribunal Act 2013.
2 The application for costs is dismissed.

T Simon
Tribunal Member
10/08/18

For further information about your rights and obligations in relation to this order please read NCAT's Rights and Obligations Guideline available on the NCAT website at www.ncat.nsw.gov.au

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Civil and Administrative Tribunal
New South Wales

Case Name:	v Owners Corporation SP
Medium Neutral Citation:	[2018] NSWCAT
Hearing Date(s):	On the papers
Date of Orders:	10 August 2018
Date of Decision:	10 August 2018
Jurisdiction:	Consumer and Commercial Division
Before:	T Simon, Senior Member
Decision:	1 A hearing on costs is dispensed with pursuant to s 50(1)(c) of the Civil and Administrative Tribunal Act 2013. 2 The application for costs is dismissed.
Catchwords:	COSTS
Legislation Cited:	Civil and Administrative Tribunal Act (NSW) 2013 Civil and Administrative Tribunal Rules 2014 Civil Procedure Act 2005 (NSW)
Cases Cited:	Megerditchian v Kurmond Homes Pty Ltd [2014] NSWCATAP 68
Category:	Principal judgment
Parties:	(applicant) Owners Corporation SP (respondent)
Representation:	
File Number(s):	HB
Publication Restriction:	Nil

REASONS FOR THE DECISION

Background to the matter

1 On 24 May 2018 the Tribunal made dismissing the application.

2 When final orders were made, directions were also made for the parties to provide submissions and documents in relation to costs. Only the Owners Corporation, who were the respondents in the substantive proceedings, provided submissions on costs.

Dispensing with the Hearing

3 Section 50 of the NCAT Act relevantly provides:

> **50 When hearings are required**
>
> (1) A hearing is required for proceedings in the Tribunal except:
> ...
> (c) if the Tribunal makes an order under this section dispensing with a hearing, or
> ...
> (2) The Tribunal may make an order dispensing with a hearing if it is satisfied that the issues for determination can be adequately determined in the absence of the parties by considering any written submissions or any other documents or material lodged with or provided to the Tribunal.
>
> (3) The Tribunal may not make an order dispensing with a hearing unless the Tribunal has first:
>
> (a) afforded the parties an opportunity to make submissions about the proposed order, and
> (b) taken any such submissions into account.
>
> (4) The Tribunal may determine proceedings in which a hearing is not required based on the written submissions or any other documents or material that have been lodged with or provided to the Tribunal in accordance with the requirements of this Act, enabling legislation and the procedural rules.
> ...

4 Directions were made allowing the parties to make submissions in relation to whether costs should be allowed and whether a there were any objections to the costs application being decided on the papers. The parties have had an opportunity to make submissions about the proposed order. The Tribunal is

satisfied that the issue of costs can be adequately determined in the absence of the parties by considering the parties' written submissions. The parties would be put to unnecessary expense if a hearing on costs were held.

5 Section 60 of the *Civil and Administrative Tribunal Act* (NSW) 2013 requires parties to pay their own costs unless the Tribunal is satisfied that special circumstances warrant an award of costs Act) requires parties to pay their own costs unless the Tribunal is satisfied that special circumstances warrant an award of costs. However, rule 38 (2) of the *Civil and Administrative Tribunal Rules*, dispenses with the threshold test of "special circumstances" imposed by section 60 (2) of the *Civil and Administrative Tribunal Act* 2013 and does not apply where the amount claimed or in dispute in the proceedings is in excess of $30,000.

6 This was not an application in excess of $30,000 and, the Tribunal could only award costs in "special circumstances" as set out in section 60(3) of the NCAT Act.

7 In *Megerditchian v Kurmond Homes Pty Ltd* [2014] NSWCATAP 68 the Appeal Panel found at para 11 that "special circumstances " are "circumstances that that are out of the ordinary" but the circumstances do not have to be "extraordinary or exceptional".

Consideration

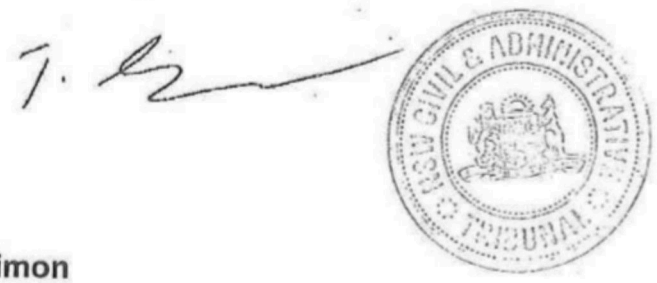
8 The Owners Corporation makes an application for costs of the strata managing agent totalling an amount of $9,012.06.

9 They make submissions that on three separate occasions the applicant was given the opportunity to withdraw the application. The Tribunal does not find that because the applicant was told to withdraw his claim that does not amount to special circumstances.

10 The Owners Corporation also make submissions that their costs are fair and reasonable and that legal counsel would have charged $12,750 to represent in the matter. They make submissions that have saved the costs by allowing on the strata managing agent to appear. These submissions do not go to special circumstances, rather it is about the assessment of costs.

11 The final submission that the Owners Corporation makes is that the documents submitted by the applicant totalled more than 660 pages and the response was in excess of 200 Pages. While it is acknowledged that a lot of material was filed by the applicant, it was mostly material which the Owners Corporation would have already been familiar with. On that basis the Tribunal does not find this to be a special circumstance which would warrant the awarding of costs.

12 Having considered the submissions and documents of all the parties, the Tribunal is not satisfied that there are special circumstances which warrant the making of a costs order. The orders are made accordingly.



T Simon

Senior Member

Civil and Administrative Tribunal of New South Wales

10 August 2018

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This is as much a complaint as it is an appeal. My experience with NCAT has been extremely disappointing, and not one employee that I have dealt with has had any idea of what they are doing.

I am addressing some questions which I hope NCAT can answer me. I have highlighted and numbered each question in red to make it easy for NCAT to answer and me to know what the answer relates to. It will also make it easier for me to understand what led to this.

Considering my experience with NCAT to date, I don't have much faith in NCAT's review process. I have been in touch with a Current Affair as mentioned in my submission, to the disgust and anger of the Member who presided at the hearing. It was agreed that we would wait to hear NCAT's response before we proceed with the story.

Q1. Could NCAT please provide me with other avenues of complaint as it is obvious there are management issues at both NCAT and the Dept Fair Trading? These could include the Minister who overseas NCAT, an ombudsman, or other.

So, I would like to take your through my experience dealing with NCAT and the Department of Fair Trading, along with Netstrata and others. To say the least, it has been traumatic and distressing. After I read the Orders from the Hearing, I found it difficult to sleep. I had to take time off from work. I saw a doctor, and was prescribed sleeping pills to help me sleep. As an alternative, I drink myself to sleep. Hardly justice.

I have attached additional emails showing the dysfunctionality of the committee, along with last financial year's cleaning fees for the Plan.

Circa 20th November, I submitted an application form I completed at home, only to find out it was an old form and I needed to complete the new form. I did this with the help of a male staff member who was happy with my application form and consequently lodged it. In the application it was noted that the Respondent was the Strata manager, Mr Thompson. Along with my submission I provided a USB containing all the photos taken of issues around the building as noted in my submission, along with recordings of meetings and encounters with staff of Netstrata. The NCAT employee told me to keep the USB and bring it on the day. On the 10th April I sent an email to NCAT asking about showing the pictures on the USB at the hearing however I did not receive a reply from NCAT.

A Notice of Directions Hearing was set for the 20th December 2017.

On the 21st November 2017 NCAT requested a copy of the strata roll.

On the 23rd November I emailed the strata roll to NCAT and mentioned due to the difficulty in obtaining the strata roll, it would be easier if the strata manager provided these. When I tried to obtain the Strat Roll I was told by the Licensee Mr Bell, and Mr Thompson, and a third gentleman, that I am not entitled to the strata roll as I was not on the executive committee and due to privacy reasons, I could not be provided a copy of the roll. I have a recording of this which was provided initially to NCAT on the USB, and at the Hearing.

Q2. Is this correct not as I am not on the executive committee and due to privacy reasons, I am not privy to a copy of the strata roll?

On the 20th December 2017 at the Directions Hearing, an order was made for the hearing to be adjourned with a date to be fixed by the Registrar.

The respondent was changed to the Owners corporation SP and Network Strata Services Pty Ltd.

The Respondent did not attend as they were too busy.

Q3. Why was this not corrected by the staff member who initially helped me with my application form? Do they receive adequate training, or have the correct education for the job?

On the 3rd of January 2018 I received a Notice of Hearing that the date for the hearing was the 14th March 2018.

At the Hearing dated 14th March 2018 an Order was made to have the Hearing adjourned as I did not receive the Respondents reply to my submission, and the Respondent claimed they only received a copy of my summary I prepared. It seems odd that the Respondent claimed they only received my summary considering it was throughout the whole body of 800 approximate pages and was provided complete.

The Respondent claimed that they couriered their submission to me yet their office could not produce any evidence during the course of the hearing that I actually did receive it.

I was willing to proceed on the day as I just wanted to put an end to the matter however the Member chose to adjourn the meeting for the benefit of both parties. I also did not wish to take more time off work for this matter.

Member Eftimiou was very patient, understanding and FAIR in her dealings.

Present at the hearing for the Respondent from the Owners Corporation was; , and for the Applicant Mr , and Mr . They did ask if I would like them to come to the hearing however I declined their offer as I did not see the point in them taking time off work or away from their duties. I took the onus on myself to bring the matter to fruition.

The Respondent was changed one more time, to the Owners corporation SP , dropping Network Strata Services Pty Ltd, with a date for the Hearing to be fixed by the Registrar.

Q4. Why did the previous staff members not know who the Respondent should be, one of whom is a Member?

On the 29th March I emailed NCAT that I would be out of the country from 25th May 2018 to 12th June 2018 and to take this into consideration when setting a date for the Hearing.

On the 3rd of April 2018 I emailed NCAT that I require more time as I will not be able to complete my submission by the due date of 4th April 2018 in accordance with NCATs requirements. I also state that I hope to have it finished by the 9th April 2018. It was my understanding that if I advise NCAT prior to the submission date that I would be granted an extension.

As previously mentioned, on the 10th April 2018 I emailed NCAT asking about showing pictures on my laptop at the hearing however I did not receive a response from NCAT.

Q5. Why did NCAT not respond?

On the 16th April 2018 I received a Notice of Hearing that the Hearing date is 24th May 2018.

I still had not completed my submission or provided anything to NCAT, yet a date was now set, 1 day prior to my leaving the country.

I subsequently emailed NCAT that I have nearly finished compiling my submission and hope to finish in the next week or so.

I also phoned NCAT on the day and was advised that the date needed to be set due to procedure and should either the Respondent or I require more time we can simply request an extension. At this point, there was still sufficient time for me should the Respondent submit their response in a timely manner. Considering they already had my previous summary from the 14th March 2018 Hearing, they would already have had most of their responses completed.

On the 27th April 2018 I provided a copy of my submission to NCAT and the Respondent.

On the 22nd May 2018 I received the Respondents submission at approximately 5pm. I promptly email NCAT and request an adjournment as the hearing was in less that two days and it did not give me sufficient time to review their response. I was also packing for my overseas trip which was in a couple days which NCAT was aware of.

On the 24th May I receive a response from NCAT that my request for an adjournment was denied. There were NO REASONS WHY noted on the response.

Q6. Considering NCAT states that:

6. If a party requires an extension of time to comply with these directions, an application should be made in writing to the Registrar no later than the day prior to the date of submission of documents to the Tribunal, to which I did.

7. A failure by a party to provide documents in accordance with the tribunal orders may result in the party not being able to rely on the documents at the hearing, unless leave is granted to do so.

Q7. Does NCAT believe that denial of an extension was in the best interest of the Hearing, or FAIR considering the circumstances?

Section 7 could be taken in two ways, the first that due to the circumstances and as there was not sufficient time, one could not effectively rely on the documents, or that they would be not be admissible at the Hearing and therefore not able to rely upon.

On the 24th May 2018 I attended the Hearing to which Member Simon was presiding. The Member was rude, dismissive of everything I said, sighing, rolling her eyes, and turning uncomfortably in her chair every time I spoke. She made me feel very uneasy. She was a BULLY! She was NOT FAIR. And she was certainly NOT PROFESSIONAL.

Several times I felt like walking out of the proceeding. In the end I stopped bringing up any issues as I did not see any point. And at the HEARING, I actually stated to the member "I really don't feel there is any point". And I stopped going through any other issues. I didn't want to go through any more pain. It almost felt like she was enjoying tormenting me. It was one of the worst days of MY life!

To put this Appeal/Complaint to paper has been a laborious task. Each time I go to start, I have anxiety and sometimes I don't write anything at all. And I have never had anxiety before. I thank you for that, along with everything else.

Q8. Is the Members conduct and treatment of me conducive to upholding the highest standards of integrity, truthfulness, and honesty as stated in NCAT's Code of conduct?

On the 25 May 2018 I emailed NCAT c/o Member Simon, regarding her conduct and other issues as noted below.

Q9. Could NCAT advise me what are Member Simon's qualifications, experience, and what other complaints has she received?

I will now respond to Member Simon's Orders dated 28th May 2018. As I have wasted a significant amount of my time on this matter only to have it thrown in my face by the Member I will only be focusing on what was discussed at the hearing. Many issues were not raised as a result of the Member's BULLYING.

Q10. Will NCAT investigate these matters further and respond accordingly?

Furthermore, the time and effort the Member took in compiling her orders, half of which were a mishmash of my submission, is appalling. A 10 year old could have been more subjective and honest.

Point 3.

The Member states that I previously asked for an adjournment on the same basis.

Q11. Could NCAT please provide me with evidence as to how, when and on what basis did I request this previous adjournment?

At the hearing, the Member makes mention that she advised me that I could withdraw the claim and recommence a fresh application once I was ready and returned from holidays. As noted above, I just want this matter to finish. I had already taken enough leave from work. I didn't want to take any more. However, I don't take kindly to being mistreated. I have put in more than 100 hours collating emails and meeting notices, minutes of meeting notices and summarising 800 pages, indexing and numbering all of it. I have received photos, emails, and brokerage our strata plan was charged but never disclosed until recently. Once again, I just want this matter over.

Point 4.

As mentioned above, I had not received the Respondents Reply, however the Respondent claimed they only received a summary. The Member seemed to be ill-informed.

Q12. What does the Member mean when she stated 'without leave?

Point 5.

The Member stated that I would have seen many of the documents previously. When would I have seen these documents? As mentioned before, I have never until the 22 May 2018 received any Reply documents from the Respondent.

I received the Respondents Reply at 5pm after work. This was two nights before I was to go overseas for 3 weeks, away from all this stress, not having packed a thing. Working up to the point of departure and still packing and waiting for a reply about my first request for an adjournment, I can tell you I did not have much time to read anything, let alone 231 pages of the Respondents submission, but also to formulate my reply. My submission alone was approximately 800 pages, and I had to familiarise myself with that also.

Q13. Does NCAT believe the denial for an adjournment was FAIR?

Part 6.

The Member does not wish to deal with each complaint individually as the Member would not be able to achieve her pre-determined outcome. The allegations are true and even happened at the Hearing administered by Member Simon. These are noted below.

Part 7.

Addressing each point separately:

a) Failure to provide any proposals to expand the garbage area.

I requested an architect to provide ideas on the expansion of the garbage room on page 29 of my submission. The Owners corporation claimed that he had already arranged two, and to date one has not been presented.

The Respondent on page 3 of their submission claimed the garbage area is part of the refurbishment/architectural scope. I have been through the architectural scope of works in my submission from page 322 – 332 and all I could see was the courtyard and front entrance. It has been almost 2.5 years since this was requested.

Q14. Could NCAT provide me with the page details of the expansion of garbage area as claimed by the Respondent?

Q15. Are these the actions of a functioning committee?

b) Significant delay in providing an Architectural scope of the courtyard

It was requested on the 4th November 2015, on page 221 of my submission, for an architectural scope of the courtyard and it took almost 2 years after it was requested before it was presented to the Owners corporation on page 352 of my submission.

Several times the Owners corporation requested to engage the services of an architect, on pages 29, 31, 32, 35, 36 of my submission.

Q16. Is that the working of a functioning committee?

c) Significant delay in installing child window safety locks.

It was requested at a meeting dated 2 March 2016 by the Respondent that locks be installed in all required units, and mine took almost 1.5 years to be installed on our premises, from page 41 of my submission.

Contrary to the Respondents claim, no other attempts have been made to install locks in our unit other than those noted in my submission.

d) Failure to repair cracked concrete.

On the 4th of November 2015 it was requested that a cracked concrete support beam be repaired, as noted on page 221 of my submission. It has almost been 3 years since it was requested to have it repaired, and still no action.

The Respondent did not provide a response in their submission.

e) Significant delay in providing Demlakian report.

The report, from page 49 of my submission, was requested to be put out to tender, and it was provided to the Owners corporation almost 1 year for approval. This delay put a stop to the front step repair, garbage expansion, the fountain, and architectural scope and tied in with the courtyard. All items that were requested some time ago.

The Respondent did not dispute any dates within their submission, only providing a previous report from another strata manager. All that was required was to ask the engineers to update it.

Q17. is this delay acceptable to NCAT?

f) Significant delay to repair downpipe.

Mr requested for his downpipe to be repaired, and it took almost 6 months for it to be completed. Only after the owner ceased paying his strata fees did the downpipe get fixed, from page 85 in my submission.

At the Hearing the Respondent stated the delay was due to anchor points however it took almost 6 months to complete. The owner felt he wasn't getting any service so he stopped paying his strata fees. The leak was reported on the 29th March 2016, and the quote is dated 14th June 2016 which is two months after the issue was first raised, and then completed on 26th September 2016.

g) Failure to provide notice to the residents of change of codes to the entry of the building.

As you will see, from page 126 of my submission, no Notice was provided of the change of entry codes to the building. This was only done after the event leaving some residents unable to gain access. Some notice should have been given.

The Respondent claims on page 116 of their submission, that the technician proceeded prior to advising if works stated in email could be completed. However, on page 117 of the Respondent's submission it was requested to uniform the codes, which is what was apparently done according to the technician's office, on the same page.

h) Failure to repair fountain

On the 16th February 2016 I request for the fountain to be repaired, page 140 of my submission. No repairs are undertaken.

On the 9th June 2016 Mr requests for the fountain to be repaired, page 143 of my submission. Once again, no repairs are undertaken.

On the 3rd August 2016 Mr complains that the fountain still hasn't been repaired, only to be told it was being decommissioned, page 145 of my submission. The Owners corporation wasn't notified of this decision.

Q18. Is this a functioning committee?

On the 2nd of May it was requested to have it repaired, and to date the fountain has not worked and it has been nearly 2.5 years since it was originally requested.

The Respondent in their submission page 122 claimed that the fountain was working to early 2017. However the photos provided to NCAT on a USB and brought to the Hearing, and emailed to NCAT after the Hearing on the 25th May 2018 prove otherwise.

It must also be noted that this was brought to the attention of the Dept of Fair Trading and the Respondent's claim, on page 57 of my submission, that it was a recommendation of the contractor that the fountain be switched off whilst the repairs are occurring.

Firstly, there is nothing in the minutes stating this, and secondly, there was no mention of the repair of the fountain at the meeting. A recording of the meeting was supplied to NCAT initially, and was on my laptop at the hearing. This is a blatant lie, which the Member stated were part of my remarkable allegations and accusations at the Hearing.

In addition, at the Hearing the Respondent stated the fountain was maintained and kept going and it was determined to stop trying to fix it, which goes against the supposed recommendation of the contractor. He then stated that they sought direction from the committee and they decided to keep on repairing it. These are blatant lies. There is only one entry for repairs to the fountain in the Yr '2017, on page 341 of my submission. I provided photos to NCAT on a USB and brought to the Hearing which prove otherwise. I also have a recording of the meeting which was presented to NCAT initially and on my laptop at the Hearing.

Q19. So if they were repairing the fountain, why don't my photos reflect that, and where are the remaining fountain repair expenses in our strata plan expenses?

Q20. If the contractor recommended the decommissioning of the fountain, why did the Owners corporation supposedly continuously repair the fountain?

i) Failure to repair front steps

On the 4th November 2015 it was requested to repair the front step. It was almost 2.0 years before any scope of works to repair the front step was presented for approval to the Owners corporation, pages 220 and 352 of my submission. It was almost 1.5 years before it became part of the courtyard scope of works, as noted on page 318 of my submission, as no action had been taken. Also noted in the Respondent's submission on page 125.

The Respondent stated on page 126 of their submission, that approval on 4th November 2015 was not granted for the front step repair, yet no supporting evidence was provided. They also claimed of an attached quote for 23rd March 2016. There is no supporting evidence yet again. The quote attached on page 127 of their submission, was from 1st March 2017. The original request was in 4th November 2015.

Q21. Where is the quote from 2015 and 2016?

Q22. Are these the actions of a functioning committee?

j) Significant delay in placing a lock on the garbage area.

It took almost 2.5 years to have a lock placed on the garbage room. In the mean time garbage was strew across the floor inside and out.

At the Hearing the Respondent stated that it was agreed and rectified at a meeting but what about before then?

At the Hearing the Respondent claimed the photo is outside the garbage room which was the issue. He claimed that once the bins are put outside, people then rummaged through the bins. I have photos inside the bin room which show otherwise. He also claims the delay was also due to the difficulty in putting on the lock. Very complex apparently.

The issue may have been resolved, however, for almost 2.5 years residents had to rummage through garbage on the floor on a weekly basis. As a result, the Plan's cleaning bill has increased significantly.

The Strata plan's cleaning fees over the years:

In Yr '15 our cleaning fees were $9,919.17, for the Y '16 $12,805.94 (on page 239 of my submission), for the Y '17, $12,008.80, on 335 of my submission, and for the Y'18 our fees were $16,119.63. In 3 years, our cleaning bill has increased by 63%. The cleaners told my wife the problems and that they need to charge us extra.

Q23. Are these the actions of a functioning committee?

k) Failure to repair the hot water system leading to its failure.

In the expenses for the strata plan page 242 of my submission, there is a call out fee for Central hot water failure dated 26th July 2016 and reported 22nd July 2016, however not for the report of the water leak dated 1st July 2016 which is the one in question.

The Respondent has an invoice, page 197 of their submission, for the issue reported of the hot water failure on the 22nd July 2016, however not for the reported water leak on the 1st July 2016. Consequently, the hot water system failed.

l) Failure to adjust lighting schedule.

The lights have not been reprogrammed to work appropriately for almost 1.5 years since it was reported to the Owners corporation at a meeting. The foyer lights work 24 hours a day which is a waste of owners' money, and lights at entrances where they are required don't work at all. For people's safety and convenience these lights should be on.

The Respondent has provided an invoice, page 203 of their submission, stating a light audit was carried out, yet there has been no change to the lighting situation since it was reported. In the expenses of the strata plan, page 336 of my submission, the expense is noted as rewired cabling to light contactor (20.3.2017). It does not state Light Audit which is what was requested. More Lies from the Respondent.

At the Hearing the Respondent direct the Member to pages 201 – 203 of their submission showing the work order and invoice and the Member laughs. It is on the recording I had to purchase from NCAT. Thank You!

Q24. Does NCAT feel that the resident's safety is not a concern of the Owners corporation and nor are the fact that some lights are on 24/7.

Q25. Does the Member leave all her lights on at home during the day and night?

m) Failure to provide initial levy notices.

You will see from page 353 in my submission, not only I but also other residents had issues with receiving their notices. Also, on page 238 of my submission, there are a significant number of owners who were also in arrears because they potentially did not get their initial notices, or the way they wanted.

On page 57 of my submission, Mr Bell, the Licensee of Netstrata, apparently stated that our scheme resolved that notices were to be delivered electronically.

Q26. Where and when was it resolved that notices for the strata scheme would be delivered electronically, and where is it noted in any of the minutes for our scheme?

All the respondent has provided on page 138 of their submission are copies of my invoices, no correspondence at all in their defence.

n) Failure to provide on site reports and regular site inspections.

None have been provided, and there are no reports on their website.

The secretary made reference to this and a number of important matters regarding no communication or ongoing management or repair from Netstrata, being the managing agent. He also stated that the committee are useless, and asked them if they are blind to the ongoing issues. He also writes that he has tried to rectify the issues but unfortunately had to resign as he has tried to improve the strata situation to no avail.

At the Hearing I brought it to the attention of the Member that the committee were emailed issues regarding the state of the building, and the managing agent. There was no response, other than take it up with them.

Q27. are these the actions of a functioning committee?

Q28. Did the Member take note of any of these emails in her prejudice or decision? She was brought to this section of my submission?

o) Failure to install soft close mechanism on side door.

A new soft close mechanism for the side door has never been installed as requested. It still slams when closes.

The Respondent has carried out work which was not to instruction, on page 165 of their submission, and wasted owners' money yet again.

p) Delay in installing wheel clamping signs

It took nearly half a year to have the signs installed and I had to pester constantly to have it done in that time frame.

The Respondent did not reply.

q) Delay in repairing intercom in U40

The issue here is that the Owners corporation claimed that the two-week delay was due to parts, on page 529 of my submission. However, the tenant stated that he spoke with the receptionist and the workman, and they were only notified one day prior to it being fixed. The Respondent had been lying, pages 528 and 531 of my submission.

The invoice on page 169 of the Respondents submission, is dated 17th May 2018 which corresponds to the resident's email. Also, the invoice is simply for reprogramming of the system, as it seemed to be across the scheme. No parts were needed for the repair as stated by the Owners corporation.

The Member stated that it doesn't seem like someone (Respondent) who isn't responding yet the Owners corporation only made the call to repair the intercom 3 weeks later after they were notified, and misled the resident that the delay was due to looking for parts.

Q29. Does the Member believe this is appropriate behaviour by a strata manager?

Q30. How are owners and residents meant to believe in the Owners corporation?

r) Significant delay in repairing leak in U40

The initial repairs to U40 roof were just as expensive as the second time round so why wasn't the more effective method undertaken? Once again, we are paying for decisions of a Dysfunctional committee. The management of the issue resulted in mould which can be lethal.

Q31. Does NCAT believe instructing these sorts of repairs are in the benefit of residents and the scheme?

The Respondent claimed on page 177 of their submission, that they were notified by the owner in October 2016. Yet the owner, on page 536 of my submission, stated that back on 6th April 2016 he emailed (which he attached). The Respondent did not provide a copy of the owner's email in their submission, or any other evidence to support their claim of when they were initially notified of the leak.

Part 8.

The Member noted the wheel clamping of vehicles however at the Hearing she seemed to focus on me wheel clamping a vehicle, in accordance with our by-laws page 661 in my submission, as opposed to the fact that the Owners corporation did not remove the wheel clamp.

Q32. Were my actions being questioned or the Respondents?

On the 13th July 2016, page 647 of my submission, Mr Thompson asked the committee members if any of them could remove a wheel clamp as he had meetings. Nobody else could so the vehicle was left wheel clamped for weeks after the Owners corporation agreed to remove it.

At the Hearing, the Member was more concerned that I wheel clamped a vehicle after I resigned from the committee, not that the Respondent left the car clamped for weeks?

The Respondent stated that he has told the committee that it is illegal to wheel clamp which I'm sure there is no evidence. Yet on page 464 of my submission the Secretary states to Mr Thompson that we have a by-law for wheel camping and if he is aware, to which Mr Thompson responds 'yes'.

Q33. Could NCAT please comment on the reasoning behind the Members behaviour?

Q34. Does a functioning Owners corporation leave a wheel clamp on for weeks?

Residents continuously park illegally in the visitor's parking, sometimes as many as 4 per day, yet the Owners corporation has taken no action. I provided photos to NCAT on a USB and at the Hearing on my lap top.

Q35. Is the Owners corporation meeting its obligations?

The respondent did not reply in their submission

Part 8. And Part 9.

The Member did not note the numerous items requested that Owners corporation that have not been attended to as mentioned above, and below.

Q36. Does the Member or NCAT believe it is acceptable to have items completed 1.5, 2 or 2.5 years later for no reason?

Q37. What does the Member believe is a reasonable time frame as she does not note it in her Orders?

Part 10.

The Strata Committee has failed in their duties:

a) Failure to carry out their duties

as noted above, and below

b) Failure to hold Mr Thompson accountable for the theft of wheel clamps

The wheel clamps were in the care of Mr Thompson, and they have never been accounted for? Why?

c) Failure to enforce wheel clamping by-laws;

- Numerous cars park daily in the visitor's parking, week on week.
- The Owners corporation has failed to take action against residents' parking illegally in the visitor's parking. I provided photos to NCAT on a USB and at the Hearing on my lap top.

d) Failure to hold regular meetings

As noted on page 439 of my submission.

Failure to take action against unauthorised minor works

The Member disagreed with me that plans should have been provided however I thought the Owners corporation is bound by, the Act, which states:

Strata Schemes Management Act 2015 No 50 [NSW]
Part 6 Property management
110 Minor renovations by owners
(1) The owner of a lot in a strata scheme may carry out work for the purposes of minor renovations to common property in connection with the owner's lot with the approval of the owner's corporation given by resolution at a general meeting. A special resolution authorising the work is not required.
(2) The approval may be subject to reasonable conditions imposed by the owners corporation and cannot be unreasonably withheld by the owner's corporation.
(3) Minor renovations include but are 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 regulations for the purposes of this subsection.
(4) Before obtaining the approval of the owner's corporation, an owner of a lot must give written notice of proposed minor renovations to the owner's 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 qualifications to carry out the work,
(d) arrangements to manage any resulting rubbish or debris.

On Page 459 of my submission Mr Thompson agreed with the Secretary that prevention is better than cure and states 'Lot 11 was replacing their kitchen and not modifying common property'. This seems like a renovation to me.

Q38. Shouldn't plans have been provided to the Owners corporation?

e) Failure to take U44 to Tribunal for continuously parking illegally

The Owners corporation has failed to take action against residents parking illegally in the visitors parking. I provided photos to NCAT on a USB and at the Hearing on my lap top.

On page 207 of the Respondent's submission, they have written that no resolution was passed by the strata committee nor the owners corporation to initiate Tribunal action against U44, yet on page 556 of my submission the Respondent has actually stated he was taking them to the Tribunal. He later advised against it as there was no point.

The respondent did not provide evidence of the notice to comply which they claim to have issued, on page 581 of my submission.

Part 11.

The Member noted the removal of Owners corporation property, being wheel clamps. These were applied according to the Strata Plan By-Laws which is on page 665 of my submission. Mr Thompson, the managing agent, agreed to abide to these By-Laws on page 657 of my submission.

At the October 2017 AGM Mr asked Mr Thompson where are our wheel clamps? And Mr Thompson denied any knowledge of their removal or their whereabouts. Later that night, when asked again, he denied any knowledge of their removal, and even suggested someone may have cut them off.

Yet when the Police finally question Mr Thompson, page 623 of my submission, he admitted to having removed one, the BMW which happened to be wheel clamped for weeks already, but not the other, a Corolla. These two vehicles wheel became clamped at the same time. And they both had their clamps removed the day after the owner of the Corolla had her wheel clamped. She obviously phoned the strata manager as per the notice left on her wind screen, and he agreed to have it removed.

The owner of the Corolla stated, on page 624 of my submission, they believe a locksmith removed the wheel clamps however they never saw or spoke to the locksmith. Mr Thompson organised their removal.

I do not believe that the Owners corporation has been reimbursed for the loss of the wheel clamps whilst they were under Mr Thompson's care.

Q39. What alternate illegal parking curbing measures has the Owners corporation enforced?

Q40. The Member mentions U44, however there have been hundreds of breaches over the years since the wheel clamps disappeared?

Point 12.

In regards to the fountain, the Member seemed to dismiss the period from when the breakdown of the fountain was first brought to the attention to the Owners corporation on the 16th February 2016, page 140 of my submission, to when any architectural plans of the courtyard which contain the fountain, were even presented let alone decided upon. The plans were presented at the AGM on the 20th September 2017. That is 244 days since it was first reported. Let alone to date which is 2.5 years, and still no works have started.

If you look at the Strata plan expenditure for previous years there are no repeated repairs as stated by the Respondent at the Hearing.

There is a payment of $640 for Investigate Fountain Pump issues and rectify, in the expenses of the Strata plan, on page 341 of my submission yet the fountain still doesn't work.

Q41. What did the Owners corporation pay for and receive, for its $640?

Q42. On what basis did the Owners corporation not repair the fountain initially? and:

Q43. Why did the member not take the period of notice to the Owners corporation the 244 days in dismissing the matter?

Point 13.

The Member stated that the Respondent has provided invoices in their documents for the installation of a splitter, however in the Respondents submission, from pages 2011 – 2013 no invoices are for the installation of a splitter.

On page 242 of my submission there are charges for 'Replace amplifier and Retest system' dated 11th April 2016 which corresponds to the TV repair, and Supplied and installed a standard outlet plate in Unit 2. Neither of these state 'Installing a splitter'.

Q44. Could NCAT please provide me details of where the Member is referring to and the invoice?

The Member stated that the Respondent has disclosed the commissions and training services of Netstrata, on page 216 of their submission, which states NOTHING.

If you care to look at page 176 of my submission you will see an invoice to OUR strata plan with total BROKERAGE of $6,600. Over THREE years that is almost $20,000.

The invoice was emailed to me by a concerned owner B . He offered to come to the hearing however I declined as with the others.

At the Hearing the Member was quite infuriated that I did not opt to drive in my car in peak hour traffic to the Strata managers office to obtain a copy of the brokerage. Yet it was not appropriate to request that it to be provided electronically, just like they claimed the Owners corporation agreed to in their statement to the Dept of fair Trading, on page 57 of my submission.

At the Hearing I ask for evidence that the brokerage the secretary requested was provided to the Owners corporation and the Member stated that he is not here and obviously he isn't concerned about it, yet I have emails as mentioned that he is concerned just unable to do anything because the committee is DYSFUNCTIONAL. The Member also stated that it is about me, not him and my question is irrelevant.

I asked if the Respondent had proof that it was provided, and the Member blew up.

If the committee does not know that we are being charged exuberant brokerage fees, to any normal person this would be of concern, but not for the Member apparently.

Q45. Does NCAT share the Members view on this?

The Member stated that according to section 60 Disclosure of the Respondent in their submission, "that there are NONE". And the Respondent replied "CORRECT". The Member then said that "I wouldn't have seen anything", and the Respondent replied "NO". The Respondent did however disclose that they SIS is a subsidiary of Netstrata. More LIES from the Respondent, and this time STRAIGHT at the Member. Yet the Member stated that I have made some pretty remarkable accusations and claims.

Q46. Did the Member even bother to see that the Respondent charged the Owners corporation $6,600 in brokerage on page 176 of my submission.

Once again, over the three years this would equal almost $20,000 without the knowledge of the Owners corporation.

Q47. Are these the actions of a competent functioning owners corporation?

Q48. In the first year, other than the wheel clamp signs being installed, could NCAT tell me what other items requested at the MEETING dated 4th November 2015 were actually completed.

Q49. And is that the sign of a functional committee?

THE HEARING

Other issues to note:

The Member stated that I had sufficient time to go through the Respondent's submission however I may have had a few sleepless nights. Considering it is the Member's job to familiarise herself with both submissions, it is obvious she did not.

The Member asks me 'What are the orders I am seeking and on what legal basis? The Member knows why we are here. There is no need to belittle and bully people.

The Member stated that I must prove the Owners corporation had breached the act, which was explained previously. And later the Member asked me to prove that it is a dysfunctional committee, in law?

Q50. How is one to do that?

The Member stated that she's looked through the documents and they are nothing remarkable. And nothing that I wouldn't have seen before. The Member mentioned this later again. At that Hearing

was the first time I had the opportunity to review their submission, and the first that I had ever received from them. Therefore, no, there were many I hadn't seen before.

Q51. What does the Member know about what documents I have or haven't seen?

At the Hearing the Member stated that I had two days' notice that the meeting isn't adjourned, yet I only received an email from NCAT on Wednesday, 23 May 2018, 2:45:30 pm AEST, ccdsydney@ncat.nsw.gov.au <ccdsydney@ncat.nsw.gov.au> wrote:

Dear
RE: File Number SC
Please find attached correspondence relating to the above-mentioned matter.
It is important that you review this material immediately.
stating that the Hearing is proceeding.

Someone really has to question the ability of the Member to fulfil her duty as a Member.

Q52. Considering, I work full time and was packing for my overseas holiday, does it seem fair to hold the proceedings?

The Member asked whether I wished to withdraw my application and later make a new application, I refused. Once again, I took time off work, it was time consuming and stressful putting my submission together. I just want someone to hear me and do the right thing.

The Member seemed to believe that as there were no other applicants or people present with me that nobody else had any issues with the Owners corporation.

Q53. Do people have to be there for my submission to have any relevance?

I showed the Member a Private email from product review, and that they had also taken The Respondent to the Dept Fair Trading and he lied. She dismissed it of course.

I mentioned that private car park storage was an issue and nothing had been done, yet I'm sure it is a breach of the by-laws.

Q54. So has Netstrata reimbursed the Owners corporation for having misplaced our property?

Earlier the Member stated that only evidence that will be admitted is that which has been admitted in paper to date. However, the Respondent stated that the Owners were so happy with the Strata managers performance that at the AGM held on 16th October 2016, 15 voted in favour for renewing their contract, and 1 against. The Member asked if the Respondent could show her evidence he could not. Yet the Member allowed and HARPS on the issue for a significant amount of time. She repeated the number even though she hasn't been shown any evidence. And when I replied that only 2 people attended the last AGM, the Member asked me why I am repeating myself. The Member then went on to repeat it again. I was too frightened to repeat "and only 2 attended the last AGM". People were fed up with everything and just gave up. There is no point attending as nothing gets done.

The Member was only interested in the Respondents statement

Q55. is this FAIR by the Member?

Q56. Is it BIAS by the Member?

Q57. Is this professional behaviour by the Member? And why is the fact that at the last AGM only 2 people attended not a sign of a dysfunctional committee?

Q58. Did the member spend even 5 minutes looking through my submission?

Based on the facts above, I would like to know what action, if any, will be taken against the Member? I would appreciate for this matter to be treated with respect unlike I have been thus far. I await on your timely response.

strata

Tel: 1300 NETSTRATA
Fax: 1300 644 402

P.O. Box 265
HURSTVILLE BC 1481

Income and Expenditure

Financial Period
01/08/2017 - 31/07/2018

Strata Plan

29/08/17	381139	CLEAN GREEN STRATA MAINTENANCE	Cleaning August 2017	$854.22	$854.22
27/09/17	387026	CLEAN GREEN STRATA MAINTENANCE	High Pressure Cleaning Of Common Areas 21/9/17	$1,760.00	$2,614.22
05/10/17	388488	CLEAN GREEN STRATA MAINTENANCE	Cleaning September 2017	$1,072.31	$3,686.53
27/10/17	392777	CLEAN GREEN STRATA MAINTENANCE	Cleaning October 2017	$1,072.31	$4,758.84
21/11/17	398781	CLEAN GREEN STRATA MAINTENANCE	Cleaning Common Area Carpets 16/11/17	$1,295.00	$6,053.84
29/11/17	400201	CLEAN GREEN STRATA MAINTENANCE	Cleaning 21/11/17	$1,072.31	$7,126.15
11/12/17	403037	CLEAN GREEN STRATA MAINTENANCE	Cleaning December 2017	$1,072.31	$8,198.46
30/01/18	411511	CLEAN GREEN STRATA MAINTENANCE	Cleaning January 2018	$1,072.31	$9,270.77
30/01/18	411511	CLEAN GREEN STRATA MAINTENANCE	Cleaning & Disinfect Bin Room 12/12/17, 19/12/17	$195.00	$9,465.77
30/01/18	411511	CLEAN GREEN STRATA MAINTENANCE	High Pressure Cleaning Out Water Feature 23/12/17	$600.00	$10,065.77
28/02/18	419017	CLEAN GREEN STRATA MAINTENANCE	Cleaning February 2018	$1,072.31	$11,138.08
28/02/18	419017	CLEAN GREEN STRATA MAINTENANCE	Cleaning Bins February 2018	$165.00	$11,303.08
04/04/18	426178	CLEAN GREEN STRATA MAINTENANCE	Cleaning 21/3/18	$1,072.31	$12,375.39
03/05/18	434079	CLEAN GREEN STRATA MAINTENANCE	Cleaning April 2018	$1,072.31	$13,447.70
29/05/18	439302	CLEAN GREEN STRATA MAINTENANCE	Cleaning May 2018	$1,072.31	$14,520.01
29/06/18	445824	CLEAN GREEN STRATA MAINTENANCE	Cleaning June 2018	$1,127.31	$15,647.32
31/07/18	453001	CLEAN GREEN STRATA MAINTENANCE	Cleaning July 2018	$1,072.31	$16,719.63
			Total Cleaning - General	**$16,719.63**	

Debt Collection Fees

01/11/17	394280	NETSTRATA	Levy Notice on 15/10/2017*	$74.87	$74.87
01/02/18	412152	NETSTRATA	Levy Notice on 15/01/2018*	$126.98	$201.85
01/05/18	432539	NETSTRATA	Levy Notice on 15/04/2018*	$40.90	$242.75
			Total Debt Collection Fees	**$242.75**	

DEFT Process Fees

31/08/17		DEFT Process Fee	$12.36	$12.36
29/09/17		DEFT Process Fee	$24.27	$36.63
31/10/17		DEFT Process Fee	$15.09	$51.72
30/11/17		DEFT Process Fee	$11.59	$63.31
29/12/17		DEFT Process Fee	$25.18	$88.49
31/01/18		DEFT Process Fee	$6.50	$94.99
28/02/18		DEFT Process Fee	$5.41	$100.40
29/03/18		DEFT Process Fee	$17.45	$117.85
30/04/18		DEFT Process Fee	$8.23	$126.08
31/05/18		DEFT Process Fee	$6.18	$132.26
29/06/18		DEFT Process Fee	$17.41	$149.67

Subject: FW: NetStrata

From:
To:
Date: Thursday, 10 August 2017, 8:22:06 am AEST

From:
Sent: Wednesday, 22 February 2017 11:05 AM
To:
Cc:
Subject: Re: NetStrata

I know , all I am saying is you could have been added at last meeting and I would 100% second any additional members but NS is right on the payment technicality which is a hurdle. Also as I said just you and me is not going to do the trick we at least need 4-5 committee members who are engaged in the best interest of the plan and who can take a stand and make decisions when required.

So our best option now is to get rid of the current SM and committee (if they just ignore)

On 22 February 2017 at 10:58, > wrote:
Once he's gone I'll be happy to pay the fees. Don't worry about that.

But it may be worth suggesting that we be added because we care and we live there.

From:
Sent: Wednesday, 22 February 2017 10:55 AM
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Cc:
Subject: Re: NetStrata

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On 22 February 2017 at 10:31, > wrote:
Ahh I did have his email. The 3 of you are in cc now.
Will be through any moment now.

Kind Regards,

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Sent: Wednesday, 22 February 2017 10:28 AM
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Subject: RE: NetStrata

From:
Sent: Wednesday, 22 February 2017 10:24 AM
To:
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I want to send this in the next 10 mins as I have back to back meetings till 3pm

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Have u got his email address

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Thats perfect

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I personally have been affected by them on more than one occasion and I fear it will not be the last. I'm not the only one and it's also clear to me that this company has no real grasp on the strata management concept. There is proof and if anyone tells you any differently, they're wrong.

I encourage you to please take a look at the summary and send me any feedback which you may have.
The more of us that can band together, the better chance we have of seeing some results in our favour as owners and the more chance we have of appropriate action being taken.
This benefits all of us.

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From:

To:

Date: Thursday, 10 August 2017, 8:27:57 am AEST

From:
Sent: Wednesday, 22 February 2017 5:08 PM
To:
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I'm giving them until the end of the week, and the forms are going. I will inform them on the day.

From:
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Ok. If there's no response, I'll see if they can be compelled to do so legally.

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image1.JPG
68.4kB

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Subject: Re: NetStrata

once we get rid of NS, we will have similar issues in the future unless the committee is represented by people who know the plan well and the issues and mainly are resident who care.

even future strata managers need to be selected with preference given to views of residents and managers who will work with them and not game the system with members who have no clue and have never resided in the building.

On 22 February 2017 at 10:38, > wrote:

, just thinking about it 'No Lock In Contract' necessarily doesn't mean much as with most of our past manager we had contracts by the service was much better and we still go rid of they when required. This is the first time we had no lock in contract by has been the hardest to get rid of him.

On 22 February 2017 at 10:31,
wrote:
Ahh I did have his email. The 3 of you are in cc now.
Will be through any moment now.

Kind Regards,

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From:
Sent: Wednesday, 22 February 2017 10:28 AM
To:
Cc:
Subject: RE: NetStrata

From:
Sent: Wednesday, 22 February 2017 10:24 AM
To:
Subject: RE: NetStrata

Please forward. It'll be quicker.
I want to send this in the next 10 mins as I have back to back meetings till 3pm

Kind Regards,

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From:
Sent: Wednesday, 22 February 2017 10:20 AM
To:

Subject: RE: NetStrata

I would recommend cc in us and . He will rip into the strata committee

Have u got his email address

From:
Sent: Wednesday, 22 February 2017 10:05 AM
To:
Cc:
Subject: Re: NetStrata

Thats perfect

On 22 February 2017 at 10:02,
wrote:
Hi guys,

This is what I drafted. Do you think it's too much/not enough?

Dear Committee Members,

I'd like to bring to your immediate attention the contents of the attached document.
As most of you do not actually reside at , you'd have no idea of the constant struggle we have with NetStrata.

I personally have been affected by them on more than one occasion and I fear it will not be the last. I'm not the only one and it's also clear to me that this company has no real grasp on the strata management concept. There is proof and if anyone tells you any differently, they're wrong.

I encourage you to please take a look at the summary and send me any feedback which you may have.
The more of us that can band together, the better chance we have of seeing some results in our favour as owners and the more chance we have of appropriate action being taken.
This benefits all of us.

Kind Regards,

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NCAT
NSW Civil &
Administrative Tribunal

Principal Registry
Level 9, 86 – 90 Goulburn Street
Sydney NSW 2000
Email: ncatenquiries@ncat.nsw.gov.au
Phone: 1300 006 228
Website: www.ncat.nsw.gov.au

SC
AP
C

Dear Mr

I refer to your NCAT complaint form of 6 September 2018 about the alleged conduct of Senior Member Simon during a hearing on 24 May 2018 and your concerns about NCAT's procedures.

The majority of your correspondence asks questions about the alleged actions of the Owners Corporation, such as "*Are these the signs of a functioning committee?*" and "*Is the Owners corporation meeting its objectives?*" and appears to seek the opinion and advice of NCAT. NCAT does not provide advice to parties and it is not the role of the complaints process to revisit every dispute nor revisit the evidence given at the hearing on 24 May 2018.

Your complaint which you also referred to as an appeal, about the Senior Member was referred to the Deputy President and Division Head of the Consumer and Commercial Division to review. After your appeal was dismissed on 26 September 2018, the Deputy President asked for a review of the sound recording of the hearing to be undertaken. The sound recording has been reviewed and the Deputy President has asked me to respond to you in my capacity as the Principal Registrar and Executive Director of NCAT. I will respond to this issue and some of the other issues you raise below.

Complaint about Senior Member Simon

You say the Senior Member was not fair. That is not a matter which can be investigated through the complaints process. That may be an issue you could raise if you lodge a further appeal to the NCAT Internal Appeal Panel. I will refer to the Appeal Panel below.

You also say Senior Member Simon was rude and dismissive of you and refused you an adjournment. The sound recording shows the Senior Member gave you time to present your case and asked you questions about your evidence. I am sorry if you felt the questioning was dismissive of your evidence. However, the onus was on you to prove your case and the Tribunal must make certain enquiries of the parties, including questioning the evidence given, to ensure all the relevant evidence is given to the Tribunal.

You sought an adjournment as you had not read the respondent's documents. Senior Member Simon gave you two options, either withdraw the application and commence again later, or accept a short adjournment of the hearing to read the documents and then recommence the hearing. You chose to read the documents and then continue with the hearing.

You also ask about Senior Member Simon's qualifications. I refer you to Division 1 of Part 2 of the *Civil and Administrative Tribunal Act 2013*, in particular, section 13 "*Qualification of members*". I enclose a copy of this Division for your information.

Acceptance of application form

You say the Registry did not have adequate training as they allowed you to lodge your application against Netstrata. The Registry cannot advise who to name as a party. The Tribunal later amended the name of the respondent to the Owners Corporation Strata Plan 49028.

Listing of hearing on 24 May 2018 and request to extend time to comply with directions

You say you informed the Registry that you would be out of the country from 25 May to 12 June 2018. The Registry took this into account and listed your application on 24 May 2018.

On 14 March 2018, NCAT made directions for you to lodge your documents by 4 April 2018. NCAT did not grant you leave to extend the time for lodging your documents. I note you lodged your documents on 27 April 2018 and Senior Member Simon referred to them during the hearing on 24 May 2018.

Your email of 10 April 2018

I note your email of 10 April 2018 asking how to present your photographs at hearing. It does not appear this email was actioned and I apologise for this lapse in file management. I understand you lodged your photographs with your other documents on 27 April 2018.

Further options

NCAT's decision of 24 May 2018 is final and the decision and the evidence cannot be revisited through the complaints process. Your internal appeal application was dismissed as you did not pay the fee. If you wish to lodge a further appeal, you will be required to pay the applicable fee. You can request either to pay the concessional fee or a waiver of the fee. Information about fees is on NCAT's website at www.ncat.nsw.gov.au.

Should you lodge a further appeal, you will need to ask the Appeal Panel to extend the time to commence the appeal. Extension of time are not automatically granted. The time may be extended by the Appeal Panel after considering the reasons for the delay and the reply to the application, if any, from the respondent.

You may wish to seek advice before appealing. To assist you with this, I attach NCAT's "*Getting Help*" fact sheet which provides a number of organisations that give information and, in some cases, advice to parties.

Yours sincerely



Cathy Szczygielski
Principal Registrar & Executive Director
NSW Civil & Administrative Tribunal
5/11/2018

Member Code of Conduct

This Code of Conduct is issued by the President of the NSW Civil and Administrative Tribunal pursuant to section 20 of the *Civil and Administrative Tribunal Act 2013* (the NCAT Act) and applies to all Members of the Tribunal, including occasional Members.

Purpose

This Code seeks to provide guidance to Members in the performance of their statutory functions as Members of the Tribunal and to assist Members in identifying and resolving ethical issues as they may arise.

A further purpose of this Code is to provide Tribunal users with information by reference to which to assess Members' conduct.

Upholding the Objects of the NCAT Act

The objects of the NCAT Act include:

- ensuring that the Tribunal is accessible and responsive to the needs of all of its users;
- enabling the Tribunal to resolve the real issues in proceedings justly, quickly, cheaply and with as little formality as possible;
- ensuring that the decisions of the Tribunal are timely, fair, consistent and of a high quality;
- ensuring that the Tribunal is accountable and its processes are transparent and open;
- promoting public confidence in Tribunal decision-making and the conduct of Tribunal Members.

Members are to perform their duties and conduct themselves consistently with these objects.

General Responsibilities

Tribunal Members have the following general responsibilities both in their activities as a Member and in their personal activities:

- to uphold the law, including being aware of and complying with legislation dealing with privacy, discrimination and corruption;

- to uphold the highest standards of integrity, truthfulness, and honesty.

Tribunal Values

In performing their duties, Members should at all times strive to give effect to the following values (which are derived from "A Guide to Standards of Conduct for Tribunal Members" (Revised August 2009) of the Administrative Review Council).

Respect for the Law

Members should while acting as a Tribunal Member and while performing functions associated with membership demonstrate respect for the law in all its aspects.

In particular, Members should:

- at all times while performing Tribunal duties comply with the law in relation to the conduct of hearings, the determination of matters and interactions with other Members, Tribunal staff and Tribunal users;
- ensure that all decisions and determinations are legally well founded.

Fairness

Fairness requires a Tribunal Member to make unbiased, impartial decisions and to give all parties the opportunity to put forward their positions.

More specifically, Members are to:

- apply the law equally and act in an impartial manner in the performance of their decision making functions so that their actions do not give rise to a legitimate apprehension of bias or amount to actual bias;
- advise the parties of any matter or circumstance which might give rise to bias or conflict of interest or a perception of bias or conflict of interest and determine whether in the circumstances it is appropriate to continue to conduct or determine the proceedings;
- refrain, other than during a hearing or in exceptional circumstances, from any communication (either oral or in writing) or association during the course of proceedings with a party, legal representative or witness in the absence of the other party or parties or their representatives.
- abide by the principles of procedural fairness, in particular, by ensuring that parties have a reasonable opportunity to present their case and to answer the case against them;
- be aware of and address appropriately barriers such as language, cultural background, lack of literacy or disability which are likely to impede parties in presenting their case;

In addition, Members should:

- if engaged in another profession, occupation or business, take care to ensure that those activities do not conflict with or undermine the discharge of their responsibilities as a Member;
- refrain from engaging in partisan political activity which is directly related to the work of the Tribunal or which may impinge upon the perception of impartiality of the Member or the Tribunal.

Independence

Tribunal Members are to perform their duties independently, free from external influence and free from the fear of adverse consequences.

Members should not allow themselves to be put in a position where their independence may be compromised or be perceived to be compromised.

Where part time Members have a professional practice in addition to being Members of the Tribunal, they:

- cannot appear before the Tribunal as a representative of a party or other person;
- cannot advise individuals or bodies concerning Tribunal proceedings or potential proceedings involving those individuals or bodies; and
- cannot act for or against or provide services to individuals or bodies who are litigants before them in the Tribunal.

Respect for Persons

Members are to conduct proceedings in a manner that is patient, courteous and respectful of all parties, witnesses, representatives, staff and others with whom the Members has to deal.

In particular, Members are to:

- demonstrate patience, courtesy and respect in their own conduct and demeanour;
- communicate in a clear, plain manner so as to be understood by the parties;
- control the proceedings in such a way as to create an environment in which participants can and are encouraged to treat other participants courteously and respectfully;
- be aware of and responsive to cultural and other sensitivities in relation to forms of address, conduct and dress.

Diligence and Efficiency

Members are to be diligent and timely in the performance of their duties. They should take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary to the performance of their duties.

In particular, Members should:

- conduct proceedings and make decisions with due rigour, diligence and intellectual honesty;
- perform their duties in the Tribunal so as to resolve matters in a timely and appropriate manner with a view to ensuring that the Tribunal's proceedings are efficient, effective and inexpensive;
- provide oral reasons for decision where appropriate and deliver reserved decisions within the NCAT Divisional standards, except where the complexity or difficulty of the matter requires otherwise;
- undertake and participate in professional development and training programs aimed at enhancing knowledge and skills relevant to their duties;
- keep informed of developments in substantive and procedural matters within the jurisdiction of the Tribunal relevant to their duties;
- support and encourage where possible the professional development of colleagues;
- become proficient in the use of, and use where appropriate, technology including the Tribunal's computerised case management system, digital provision of documents, the Tribunal's intranet, digital sound recording facilities, and other technological developments implemented by the Tribunal.

In order to promote the efficient conduct of proceedings, Members should:

- clearly identify the issues and orders in dispute;
- facilitate the resolution or narrowing of issues in dispute, where appropriate;
- adjourn proceedings only when necessary in the interests of justice and fairness;
- ensure that any interlocutory orders and applications do not unnecessarily delay the final determination of proceedings;
- ensure that evidence is confined by reference to the issues in dispute and is given as concisely as reasonably possible.

Integrity

Members, in carrying out their duties as Members, are to act honestly and truthfully.

In particular, Members must:

- not knowingly take advantage of or benefit from information, not publicly available, obtained in the course of performing their Tribunal functions;

- not use their position as a Member improperly to gain or seek to gain any advantage or benefit for themselves or any other person;
- be scrupulous in the use of Tribunal resources;
- not disclose any confidential information otherwise than as permitted by law;
- refrain from conduct which would bring the Tribunal into disrepute.

Accountability and Transparency

Members are accountable for their decisions and actions taken as Members and have a responsibility to be open and frank about their decisions, action and inaction in relation to their duties.

In particular, Members are to:

- participate in performance evaluations conducted by the Tribunal;
- co-operate fully in complaint investigations carried out by the Tribunal.

Responsibility of the Tribunal Head and Heads of Divisions

It is the responsibility of the President together with the Heads of each of the Divisions to assist Members to comply with the Code of Conduct and to perform their responsibilities as Tribunal Members through the provision of appropriate training, leadership and support.

Particular Issues

Gifts, Benefits and Hospitality

Where gifts or benefits are offered, or social invitations extended, by parties or representatives in Tribunal proceedings, to Members in their capacity as such, these should, as a general rule, be declined.

If a gift is proffered to a Member, in his or her capacity as a Member, in circumstances where it cannot be or it is inappropriate for it to be declined, it should be handed to the Principal Registrar for inclusion in the Tribunal's gift register and appropriate disposition, such as for a charitable purpose or for public display in the Tribunal's premises.

Corrupt Conduct

If a Member becomes aware of an instance of behaviour that could be corrupt conduct, maladministration, or criminal conduct, relating to the Tribunal, the Member should report it promptly to the Principal Registrar or the President, and also, if appropriate, to the Independent Commission Against Corruption.

Post Service Conduct

After ceasing to be a Member of the Tribunal it is expected that a former Member:

- would continue to behave in a way that upholds the integrity and good reputation of the Tribunal;
- would not appear before the Tribunal as a representative where to do so would contravene the Barristers' Rules, the Solicitors' Rules or any other similar applicable professional rules;
- would not use or take advantage of confidential information obtained in the course of his or her duties as a Member.

Complaints

Complaints in relation to Members will be dealt with as outlined in the Tribunal's Complaints protocol.

Compliance with the Code

If a Member does not comply with the Code, the President may direct the Member to take specified action to rectify his or her conduct or determine that further work not be allocated to the Member until the breach is rectified. In cases of serious breach the President may refer a matter to the Attorney General or recommend that the Member not be reappointed at the expiration of their term. Whether such action will be taken will depend on factors such as the seriousness of the conduct in question, whether there is a pattern of such conduct, the intent of the Member concerned and the effect upon the Tribunal or others of the conduct.

The Code of Conduct does not stand alone but forms part of the accountability framework within which both the Tribunal and the Members operate. It is complementary to the Tribunal's procedures and policies, including the Member professional development framework and the Tribunal's complaints process. The Code may be reviewed from time to time to ensure its relevance.

The Hon Justice Robertson Wright
President

20 April 2018

Ref:

From:

To: icac@icac.nsw.gov.au

Date: Wednesday, 10 July 2019, 7:04 pm AEST

Hi Alex,

I tried to email you the recordings from the hearings however they are to big. I feel that you should hear these to hear the tone of the member and her conduct. I can drop them on a USB to your office if necessary.

Please note that mine is not an isolated incident. attached is link to other disgruntled customers.

I look forward to hearing from you.

Regards,

NCAT sydney google review - Google Search

