

OWNERS BEWARE: CONSEQUENCES FOR NON-COMPLIANCE WITH COURT- ORDERED STRATA RENEWAL PLANS

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We have [written previously about the first-of-its-kind decision](#) delivered by the NSW Land & Environment Court (Court) making an order to give effect to a strata renewal plan (SRP) for the collective sale of a strata scheme under the strata renewal provisions of the *Strata Schemes Development Act 2015* (NSW) (Act).

Most recently, the matter has landed back before the Court as a result of one lot owner's non-compliance with the Court's orders. In *Application by the Owners – Strata Plan No 61299 (No 2)*, the Court has considered its first application to make ancillary orders to give effect to a SRP pursuant to the Act, with the decision demonstrating the consequences that can arise from non-compliance.

What Has Happened?

Under the Act, the Court has power to make any orders required to give effect to a SRP. This includes where an owner of a lot has not complied with previous Court orders.

Following the *Application by the Owners – Strata Plan No 61299*, all but one lot owner had acted in accordance with the orders given by the Court. The one lot owner (Harris) failed to execute a contract for sale for the respective lot (Lot) in accordance with the SRP and therefore had failed to comply with earlier orders of the Court. The Owners Corporation (OC) applied to the Court to seek ancillary orders from the Court to appoint a trustee of the Lot in order to ensure the effectiveness of the SRP.

In addition to expressly providing for the making of ancillary orders to give effect to a SRP, the Act also specifically provides for:

- the appointment of a trustee of property in order to facilitate the sale of a lot,
- the vesting of the property in the appointed trustee; and
- the requirement that the certificate of title be provided to the appointed trustee.

What Did the Court Decide?

The Court considered the extensive steps undertaken by the solicitor for the OC to alert Harris about the earlier proceedings in which the SRP was ordered as effective by the Court, the consequent obligations of Harris to execute the contract for sale, and the consequences if the application for ancillary orders was successful.

The OC also provided evidence as to the service of notice on the mortgagee of the property (HSBC) and the requirements to effect a discharge of that mortgage. The Court also considered the qualifications and expertise of the proposed trustee to execute the contract for sale and ensure that the discharge of mortgage form be lodged.

In light of these factors, the Court made orders:

to appoint a trustee for the sale of the Lot;

to vest the Lot in the trustee;

requiring the trustee to deliver a discharge of mortgage to HSBC for execution; and

requiring the trustee to perform the obligations as owner of the Lot to give effect to the SRP, which included the completion of the sale and distribution of the proceeds of sale.

Costs

The Act does not provide for the payment of costs of an application for an ancillary order, nor for the payment of a trustee appointed under the Act. The Court does however have a general discretion to make a costs order subject to the rules of a court under the *Civil Procedure Act (NSW) 2005* (CP Act).

The Court considered that the proceedings formed part of the Court's class 3 jurisdiction, and that the Court could exercise that discretion, after taking into account relevant matters.

The Court applied the wide costs discretion in the context of the Act, in that Harris had not complied with the Court's orders, and had therefore caused unnecessary expense to be incurred by the other lot owners in relation to the appointment of the trustee and application for the ancillary order. On this basis, the Court ordered that in addition to the usual adjustments on completion of the sale of a property, the OC's costs of the application, and the trustee's commission and costs incurred up to completion of the sale, be deducted from the proceeds of sale.

Key Lessons

In this case, the Court considered favourably the detailed evidence provided by the OC as to the efforts made to inform Harris of both the earlier application and decision to effect the SRP, as well as the consequences for Harris if the application for ancillary orders were successful.

This case is demonstrative that developers and purchasers who successfully pursue strata renewal proposals through to the formation of strata renewal plans can rely on the legislation and Court processes to support and uphold the intention of the strata renewal legislation.

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