



NCAT
NSW Civil &
Administrative Tribunal
Consumer and Commercial Division

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NOTICE OF ORDER

18 JAN 2016

The Secretary, Owners Corporation SP 13385
C/-O'Neill Strata Management Pty Ltd
PO BOX 887
BONDI JUNCTION NSW 2022

File No: SCS 15/57496
Quote in all enquiries

Application to the Tribunal concerning 37 Paul Street BONDI JUNCTION NSW 2022 Australia - SP13385

On 13-JAN-2016, the following orders were made:

1. An order is made pursuant to the provisions of the Strata Schemes Management Act 1996 (the Management Act) that the respondent shall remove the new windows and doors installed by him on lot 6 and shall replace them with windows and doors of the same material and design as those that were removed by him without the consent of the Owners Corporation.
2. All work to be completed within 30 days of the date of these orders.

Please see attached Reasons for Decision.

Jeffery Smith
Adjudicator
14/01/16

*cc
- Scan
- Send to JSK 26/02/17*



Strata and Community Schemes Adjudication

Application number: SCS 15/57496

Case Title: Owners Corporation SP 13385 v Chanisheva

Strata Scheme: SP 13385

Premises: 37 Paul Street, Bondi Junction NSW 2022

Decision Date: 13 January 2016

Parties: Applicant: The Owners Corporation SP 13385
Respondent: Barno Chanisheva, owner of lot 6

Adjudicator: Mr Jeffery Smith

Decision:

- 1 An order is made pursuant to the provisions of the *Strata Schemes Management Act 1996* (the Management Act) that the respondent shall remove the new windows and doors installed by him on lot 6 and shall replace them with windows and doors of the same material and design as those that were removed by him without the consent of the Owners Corporation.
- 2 All work to be completed within 30 days of the date of these orders.

Legislation cited: *Strata Schemes Management Act 1996*

Category: Adjudication

REASONS FOR DECISION

APPLICATION

- 1 This application for adjudication was filed on 16 October 2015. The application was accepted by the Registrar in accordance with the *Strata Schemes Management Act 1996* (the Management Act) s 125 and interested parties were invited to file written submissions by 13 November 2015 and any submissions in reply by 20 November 2015.
- 2 The applicant sought orders in relation to balcony windows and doors installed by the respondent on lot 6 without the consent of the Owners Corporation.
- 3 Comprehensive written submissions were filed by the applicant on 13 November 2015. There were no submissions filed by the respondent.
- 4 The application was referred to me today for adjudication.

APPLICANT'S SUBMISSIONS

- 5 The applicant's submissions were to the following relevant effect.
- 6 The respondent became the owner of lot 6 on 14 January 2011. In October 2014 the respondent applied in writing for the approval of the Owners Corporation for proposed renovations to lot 6.
- 7 On 27 October 2014 the Owners Corporation advised the respondent in writing of its approval of the proposed renovations (subject to certain conditions).
- 8 In November 2014 the Owners Corporation became aware that the respondent had removed the windows and doors on the balcony of lot 6. Those windows and doors have subsequently been replaced by the respondent but the replacement windows and doors are not the same as

the original. The applicant's concern is that the doors open outwards, the frames are of different appearance and the door handles are different.

- 9 The applicant relied on by law 5 (which prohibits damage to the common property without the consent of the Owners Corporation) and by law 17 (which prohibits an owner maintaining anything within the lot that is not in keeping with the rest of the building).
- 10 The applicant further relied on the Management Act s 62 which places the obligation for repair and maintenance of the common property on the Owners Corporation and on s 65A which imposes the requirement of a special resolution of the Owners Corporation for any improvement or enhancement of the common property.
- 11 The applicant's concern was that the respondent had not sought or obtained the consent of the Owners Corporation or a special resolution of the Owners Corporation for the window and door replacement and that the style and design of the windows and doors installed by the respondent were not in keeping with the appearance of the building.
- 12 It was noted that pursuant to the applicant's obligation to repair and maintain the common property, the Owners Corporation had recently replaced the balcony doors to lot 37 with matching doors.
- 13 A copy of the strata plan and correspondence between the parties was provided by the applicant.

Note

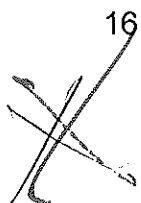
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DECISION

- 14 The strata plan shows the windows and doors in question as a heavy unbroken line. The *Strata Schemes (Freehold Development) Act 1973* s 5 defines what is "lot property" and what is "common property" by reference to the floor plan.

15 Although in this case a vinculum across the heavy line depicted on the strata plan demonstrates that the balcony is to be regarded as part of the lot property, I am satisfied that a correct interpretation of the strata plan is that the heavy line depicting the windows and doors, the subject of this application, demonstrates that they are part of the common property.

16



Hence, the lot owner may not take any action to change or damage these features of the common property without the consent of the Owners Corporation. Action to improve or enhance the common property requires a special resolution of the Owners Corporation in general meeting.

17 It is clear that the work for which consent of the Owners Corporation was given in October 2014 did not include removal and replacement of the balcony windows and doors.

18 I am therefore satisfied that the applicant is entitled to an order for removal of the windows and doors installed by the respondent and for the reinstatement of the common property by replacement with windows and doors of the same design and materials as the original.

19 The parties' attention is drawn to the provisions of the Management Act s 202 which imposes a civil penalty for contravention of the orders of an Adjudicator.



Jeffery Smith

Strata Schemes Adjudicator

13 January 2016

Registrar, Civil and Administrative Tribunal of NSW