Recent developments in the appointment of strata managers and their validity

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There are recent judicial developments concerning the validity in the appointment of strata managers arising from the case of *Walker Corporation Pty Ltd v The Owners – Strata Plan No 61618* [2023] NSWCA 125.

In the Walker case, the NSW Court of Appeal clearly establishes the Court's preference to uphold the lot owners' rights to choose their own strata managers for their own strata scheme.

Case Background

In the Finger Wharf Development at Woolloomooloo, the Wharf was subdivided into 8 stratum lots. Seven of these were subsequently subdivided by way of a strata plan thereby forming the seven respective independent strata schemes.

The Strata Management Statement (**SMS**) created the Building Management Committee (**BMC**) that regulates the relationship between 7 strata schemes and the remaining 8th stratum lot. Under clause 8.11 of the SMS, it states:

Obligations of Owners Corporations

8.11 Members which are Owners Corporations must, after the expiry of the initial period for their Strata Schemes, appoint and retain under section 28 of the [Strata Schemes Management Act 1996 (NSW)] the same Strata Manager the Committee appoints under this clause.

The current equivalent of section 28 of the *Strata Schemes Management Act 1996 (NSW)* is that of section 52(1) of the *Strata Schemes Management Act 2015 (NSW)*.

This clause is also entrenched in the by-laws for the relevant strata schemes thereby requiring the strata schemes to appoint the same strata manager as that is appointed by the BMC.

In late May and early June 2022, three of the Owners Corporations passed resolutions terminating the appointment of their strata managers and appointed new independent strata managers (independent from the BMC).

The applicant, Walker Corporation Pty Ltd, owns various lots in 2 of the 7 strata schemes and brought proceedings in the Supreme Court against the 3 Owners Corporations in relation to the termination resolutions.

Long story short, the applicant was unsuccessful and appealed.

The Court of Appeal Decision

The applicant was also unsuccessful on appeal. Notably, the case made a mention of the following:

1. an owners corporation must not delegate any of its functions to a person “unless the delegation is specifically authorised by this Act”;
2. an owners corporation “may delegate the functions only if authorised to do so by a resolution at a general meeting…”
3. the provisions … evince an intention that it is the owners corporation which has primary responsibility for the management of a strata scheme, with obligations to exercise its functions and powers, including the power of delegation, for the benefit of lot owners…
4. Clause 8.11 of the SMS is inconsistent with the Strata Schemes Management Act and consequently contrary to section 105(5) of the Strata Schemes Development Act 2015;
5. Section 105(5) states:
    a. a strata management statement has no effect to the extent that it is inconsistent with—
    b. a condition imposed on a planning approval relating to the site of the building to which the statement relates, or
    c. an order under Part 12 of the Strata Schemes Management Act 2015, or
    d. another Act or law.

Conclusion

Although financially backed by the 3 separate owners corporations, it goes to show **yet again** that whilst a Strata Management Statement and/or a registered by-law may appear to be “black and white” on certain issues, they can be incorrect at law. In this case, ultra vires. From this case, it should now be relatively clear that the individual strata schemes should be able to generally choose its own strata managers even if there is an overarching management statement and/or by-law stating to the contrary. This would be the case especially if there is some ongoing dispute that requires a different strata manager between the different schemes.

More Information

Please contact our Property/ Strata law team at Matthews Folbigg Lawyers. If you would like advice or assistance, please contact Eadz Tang on (02) 9806 7428 or Eadzt@matthewfolbigg.com.au.