



BRUCE MILLER & KAREN GREEN
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File No: SC 21/36316
SC 21/17310
SC 21/47498
Quote in all enquiries
eNumber: 510984KS70

**Application to the Tribunal concerning 3 Ross Street WOLLONGONG NSW 2500 Australia
- SP18736**

Applicant: THE OWNERS - STRATA PLAN NO. 18736 (referred to in these orders as OC)
Respondents: BRUCE MILLER and KAREN GREEN (referred to as Applicants or lot owners in the orders below)

On 25-Mar-2022 the following orders were made in SC21/17310 - Miller & Green v The Owners Corporation SP18736, SC21/36316 - The Owners Corporation SP18736 v Miller & Green, and SC21/47498 - Miller & Green v The Owners Corporation SP18736:

1. The applicant's name THE OWNERS CORPORATION - STRATA PLAN NO. 18736, is amended to THE OWNERS - STRATA PLAN NO. 18736.
2. By consent, the question of costs is reserved.
3. By consent, both parties may file and serve a cost application with written submissions and any supporting documents (or make reference existing evidence) by 29-Apr-2022
4. By consent, if a cost applications is received, the other party may file and serve written submissions in response by 06-May-2022
5. The Tribunal makes an order dispensing with a hearing as it is satisfied that the issue for determination (costs) 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.

By consent, the Tribunal makes the following orders pursuant to sections 106, 232 and 241 of the Strata Schemes Management Act 2015 (Act):

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

- (a) If the party 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
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WORKS

6. THAT the owners corporation (OC) must comply with s 106 of the Act by carrying out and completing in a proper and workmanlike manner using good, new and suitable materials the rectification of the following 16 defect items listed in the 2021 report of the building consultant IBCG ("Integrated") by performing the Remedial works stated therein called "the Works":
- a. External façade cladding to be replaced;
 - b. Level 1 walkway/patio deck to be replaced;
 - c. External stair structures and steps to be replaced and compliance defects rectified;
 - d. External facades previously painted to be remediated and repainted;
 - e. External lighting to be upgraded and replaced;
 - f. Ground level walkway/patio concrete slab to be replaced and footings modified/repaired;
 - g. Laundry to be remediated;
 - h. Building subfloor services to be remediated;
 - i. Noticeboard to be installed;
 - j. Annual fire safety statement to be obtained;
 - k. Water penetration in roof to be remediated;
 - l. External balustrades to be upgraded and remediated;
 - m. Asbestos in external eaves and soffits to be removed and eaves remediated;
 - n. Boundary fences to be replaced;
 - o. Pest control to be undertaken through the building;
 - p. Mail box to be replaced.

PREPARATION FOR THE WORKS

7. THAT the OC must within 28 days of the date of this order engage an experienced project manager (of at least 10 years' experience) in respect of the Works ordered to be performed in the preceding order to:
- a. engage an experienced building consultant or engineer (of at least 10 years' experience) to:
 - i. prepare specifications for the Works;
 - ii. issue a tender package request for tenders to experienced building contractors in respect of the specifications; and
 - iii. prepare for the OC a tender analysis recommendation within 4 weeks of this Tribunal making these orders;
 - b. before or during the Works allow the said building consultant or engineer to vary the Works only in so far as is necessary to achieve a similar outcome to the Works.

CONTRACT ADMINISTRATION

8. For the purpose of the preceding order, the OC must then:
- a. decide which tender to accept within 14 days of receipt of the tender being received;
 - b. promptly engage the above project manager to carry out all steps till completion of the Works including:
 - i. issue and execute a building contract (called "the Contract");
 - ii. superintend (ie direct) the Works;
 - iii. supervision (ie oversee) of the Works, including engage an engineer if considered necessary; and
 - iv. administer the Contract till completion;

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c. obtain a final occupation certificate or if such is not applicable to the Works a letter of practical completion from the contractor carrying out the individual item of Works in question.

COMPLETION

9. THAT the OC must have the Works completed:

a. by the date proposed by the project manager based on factors of the urgency of completing the individual item of works, practicability and the recommendations in the 2021 Integrated report;

b. in any event, by no later than:

i. except in the case of (ii), 12 months from the date of these orders; and

ii. within 24 months for the painting in item 4 of the 2021 report.

"Completion" is defined to be the date the OC receives (as the case may be) the first occupation certificate or if such is not applicable to the Works, a letter of practical completion from the contractor carrying out the individual item of work items in question.

LEVIES or STRATA LOAN

10. THAT if there are insufficient moneys to the credit of the OC, the OC must:

a. hold an extraordinary general meeting within 21 days from the date of the execution of the Contract;

b. promptly resolve to either:

i. raise a special levy to be paid within 28 days of the resolution (or, in the alternative, borrow sufficient moneys to complete the Works); or

ii. raise finances via a strata finance loan;

c. if levies are raised and not paid on time:

i. engage a lawyer to promptly pursue debt recovery proceedings against the defaulting lot owner in a court of competent jurisdiction; and

ii. if judgment is obtained in the court proceedings, promptly pursue enforcement of the judgment, such as garnishee proceedings, bankruptcy and other means.

FIRE SAFETY

11. THAT in respect of the essential fire safety requirements of the strata scheme, the OC must:

a. carry out and complete in a proper and workmanlike manner using good new and suitable materials the Works listed in the quote of Complete Plumbing & Fire Pty Ltd (CPF) of May 2021; and

b. commence those works within six months from the date of these orders.

ASBSETOS

12. THAT in respect of the asbestos in the strata scheme, the OC must:

a. promptly engage a qualified consultant to inspect the condition of the asbestos in the strata scheme and complete a report:

i. listing a scope of works (SOW) as to what remediation steps are needed to achieve compliance of the asbestos with the relevant Australian Standards, the WorkCover Code of Practice and any other applicable legal requirements;

ii. in completing the SOW determine and state if replacement of the asbestos is more economical than remediation;

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(i) and (ii) are called "the Works"); and

- iii. advising within what time period of the report date the Works should be completed;
- b. serve the report on all lot owners; and
- c. carry out the Works.

MOULD

13. THAT in respect of the mould and fungi in the strata scheme referred to in the reports of Mouldlab of 21 March 2018 and Pure Protect of 23 March 2018, the OC must have a contractor:

- a. apply an external bio degradable Moss and Mould ant-microbial to the affected awning/walls and eaves to kill the contamination;
- b. conduct high pressure pulsate cleaning to remove mould/dirt etc from the affected areas; and
- c. conduct stain removal to the underside of the eaves where possible.

REMOVAL OF LOT 6 BALCONY (SC 21/36316)

14. THAT the Applicants/ lot owners shall engage the same building consultant or engineer (that the OC engages to carry out the Works) to demolish and remove the lot 6 balcony and restore that part of the east wall (including window and supporting wall structure) in conjunction with building consultant or engineer carrying out the cladding Works.

15. THAT the Applicants/ lot owners pay for that part of the work that relates to:

- a. the demolition and removal of the balcony;
- b. restoration of that part of the east wall (including window)

16. THAT the Applicants/lot owners provide a copy of the signed contract, evidencing engagement of a contractor to complete the demolition, removal and restoration works relating to the sunroom;

COMPULSORY STRATA MANAGING AGENT

17. THAT should the OC fail to comply with orders 2, 3, 4, 5 and 6 above within the time frames provided in those orders, then the Applicants have leave (pursuant to cl.8 of Sch 4 of the NCAT Act) to apply to the tribunal (with a supporting affidavit) to have the following orders made:

- a. THAT Illawarra Strata Management Pty Limited (called "the Compulsory Strata Managing Agent" or "CSMA") being a managing agent licensed under the Property Stock and Agents Act 2002 (NSW) is hereby appointed as the strata managing agent of the owners corporation ("OC") of Strata Plan 18736 for a period of two (2) years commencing from the date of these orders.
- b. THAT the CSMA is to exercise all the functions of the OC and is to have all the functions of the chairperson, secretary, treasurer and strata committee of the OC.
- c. THAT the CSMA is appointed on the terms, conditions and remuneration set out in the letter from the CSMA dated 18 August 2020, being Annexure "A1".
- d. THAT the OC must make available for collection by the CSMA appointed by the Tribunal all books/records and moneys of the OC at the end of 28 days from the date of these orders.
- e. THAT during the period of appointment of the CSMA, the CSMA must carry out the common property works referred to below (called "the Works") and all ancillary items in respect thereof.
- f. THAT the OC pay the costs of the Applicant;

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NOTATION

Orders numbered 2 to 5 sought herein are a repeat of the same or similar orders sought in the Strata Application in SC 21/17310. This to avoid any doubt about them also applying to order number 1 hereof.

L Wilson, Senior Member

25/03/22

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