



Court clears way to dump property manager

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A ground-breaking High Court ruling opened the door for disgruntled apartment owners to rid themselves of unwanted body corporate secretary Strata Title Administration (Strata).

In a case which challenged the autocratic style of Strata owner Michael Chapman-Smith - described by Justice Barry Paterson as a matter of the tail wagging the dog - apartment owners have not got it all their own way.

The case was one of several highlighting inadequacies in the 31-year-old Unit Titles Act, which high-density apartment owners and the Auckland Regional Council want updated to accommodate the realities of mushrooming apartment living.

In the latest action against Strata and Mr Chapman-Smith, body corporate members from a 94-apartment West Auckland development, Tuscany Towers, made significant headway in establishing the right procedure to remove Strata as their body corporate secretary.

In a long-running dispute and uneasy relationship that began in September-October 2000, a majority of dissatisfied Tuscany Towers proprietors asked Strata to vacate its position as body corporate secretary, which it refused to do.

Proprietors appointed another firm, Body Corporate Specialists, as a replacement secretary. But Strata resisted various steps to remove it, refused to accept it had been removed as secretary, continued to consider itself secretary under the body corporate rules, and the differences between the parties could not be resolved.

Strata also refused to change the body corporate rules, which were drafted by Mr Chapman-Smith, and whose date of registration - 1997 or 1998 - was also at odds.

Last November five proprietors in Tuscany Towers, and the development's body corporate, took action against Strata and Ede Investments, owner of a future development unit, asking the High Court to clarify the position (*NBR*, November 7, 2003).

The complex case revolved around an argument over whether Strata was legally voted out as body corporate secretary.

The proprietors alleged Strata set itself up so it was "entrenched" and that it ran roughshod over the wishes of many of the registered proprietors.

A year ago Strata threatened owners with debt collection charges, an additional surcharge of 10% interest and legal costs if owners did not pay a supposedly overdue levy.

As Justice Paterson concluded, most, if not all, of the proprietors had become disenchanted with Mr Chapman-Smith and Strata.

Justice Paterson said Strata and Ede Investments had effectively frustrated any attempt by the proprietors to remove Strata.

The judge said he was of the view the proprietors of Tuscany Towers had the right under the Unit Titles Act to manage their own affairs by appointing their own representatives.

He said the representatives of 94 apartment holders had their rights and views overridden by a secretary [Strata] and a developer [Ede] who had only an interest in two further apartments.

"The tail wagged the dog," Justice Paterson said.

He said there was substance to the owners' views that Mr Chapman-Smith at times adopted a "very autocratic view

toward the proprietors."

"He appears to have overlooked that Strata was there as the servant of the proprietors. His purpose seems to have been to protect the position of Strata."

Justice Paterson said many of the owners' complaints arose from the manner in which Mr Chapman-Smith chaired meetings, his refusal to co-operate and negotiate with an informal owners' committee and Strata's action in trying to enforce levies which were not approved by the annual meeting.

According to the judge, Strata had caused the proprietors considerable inconvenience, anxiety and cost.

He ruled Strata was legally the body corporate secretary and if it did not choose to resign, a newly constituted committee, once two further appointments were made, could terminate Strata's appointment.

"It appears inevitable this will happen," he said.

Strata would have collected levies it was not entitled to collect but would have spent some on legitimate body corporate expenses.

The judge ordered that the rules of the body corporate registered in June 1998 were validly registered; Rule 10A, which provided for a particular committee structure, was invalid; rules adopted in November 2002 were not adopted in accordance with the Unit Titles Act; Strata could continue as secretary but had had no right to collect certain levies.

Leave was reserved to either the owners, the body corporate or Strata to have a final accounting between the body corporate and Strata resolved by the court if the parties were unable to agree.

Leave was also reserved for the parties to determine Ede's obligation for levies if that became necessary.

Expressing the view the parties could resolve issues with common sense and reserving the question of costs Justice Paterson said his provisional view was that the owners were entitled to costs against Strata and Ede.

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