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YSP Podcast Transcript: Episode 110. 110. Why strata owners shouldn't fear a compulsory sale

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Amanda Farmer: Hello and welcome. I'm Amanda Farmer, and I have with me today the lovely Reena Van Aalst. Hi, Reena.

Reena Van Aalst: Hi, Amanda. How are you?

Amanda Farmer: I'm doing very well. I am getting back into the swing of things after a little holiday last week. Did you take any time off, Reena?

Reena Van Aalst: Yes, I actually had two days off in a row, Amanda, 'cause ANZAC Day is in between our wedding anniversary and my birthday, so I ended up sort of thinking, you know what, I'm taking birthday leave as well.

Amanda Farmer: Good on you. Birthday leave. I like that. And did you go away, or just did a bit of a staycation?

Reena Van Aalst: No, a staycation 'cause we're going away at the end of August for six weeks, so I thought I might as well just save my time for that.

Amanda Farmer: Yes, good on you. I know that feeling. We'll be heading off, I think, around September. It seems like a long way away, but you gotta start planning that stuff now. Especially when you're running your own business.

Reena Van Aalst: Exactly, yes.

Amanda Farmer: Schedule it early.

Reena Van Aalst: Creeps up very quickly.

Amanda Farmer: It does. Now, let's jump into our wins and challenges for the week. Reena, what has your challenge been this week?

Reena Van Aalst: Well, I took on a scheme last year, and they had obtained two quotes because there was a lot of water penetration coming from the roof into one of the lots, and the lots had just been recently renovated. Reena, we just can't afford again to have any more water coming in, so we've decided to get two quotes to fix this to make sure it's on the agenda.

So I put it on the agenda and then the owner, other community members said, "How do we know which one to go with?" And I said, well it's really hard because one was double the other and as laypeople, you really don't know whether the methodology that's been proposed is going to do the fix. And sometimes the cheapest may actually be the right one, but sometimes it's not.

So, we're not getting an engineer. And unfortunately, he said either one could work but this is only sort of band-aid fix. And that was fine. So on that basis, the community said, okay, well we'll try and go with the cheaper one because obviously, the fixes are very similar and not sort of long-term. So they asked me to accept the quotation. And so I emailed the company ... obviously, I didn't have anyone in my database of contractors. So, I said oh can I have your insurances and your license number because the license number was not in the quote which is I thought was a bit strange. But anyway. So they sent me the license number and the insurances.

When I did the search on the license, I found out that the license was actually in the name of the individual and not the company. And then I did a search on the company license which had not been included but was referenced in that particular license check.



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And it said that company license has been suspended because they hadn't paid a CTTT fine from 2000 I think 15 or something. I can't remember what year it was. Then I emailed the strata community, I'm sorry. Here's the results of my checking, this person the license has been cancelled. And the funny thing too, Amanda, was they actually wanted a deposit of like I think 20% before they even did work. And I'm thinking, thank god I did all these checks because had we not known if something goes wrong in the future then that license doesn't apply to the company. It's an individual license and yet our contract's with the company so I feel very, very grateful.

And I say thank you, Reena, for doing all these checking for us because we could have gone with someone that wasn't correctly licensed and had obviously some trouble with the CTTT because they hadn't paid a fine that had been imposed on them some time ago.

Amanda Farmer: Yes, and they're in lay the answer to perhaps why they were so cheap compared to your other quote.

Reena Van Aalst: Yes, exactly. But I think the other, the community then did some research on the other quote. I think it was very, it was double I think there was something not right with that either. So, I really didn't get either of those quotes.

Amanda Farmer: Yes, it's rough isn't it? That Owners Corporation is subject to these and that you really have to know how to do your due diligence. Being aware that if you are contracting with the company, then the license number needs to match that company and it is quite common in my experience, that the director of the company might have a separate license in their personal name. But you should be contracting with the license holder. So that if that's ever a problem, you can pursue that person and they are a licensed contractor.

Reena Van Aalst: That's correct, definitely. So yes, I think it's a thing for lot owners, Amanda is to be aware of, especially if you're not using some sort of company to check all this information because not a lot of people use Amanda trade monitors that you've have on your podcast.

Amanda Farmer: Yes. Ebix.

Reena Van Aalst: And normally they will validate and check all the licenses. But if it's quotes that someone's just given you, yes sometimes community members just go out and get their own quotes which is all fine, but you've got to check them in the same way.

Amanda Farmer: Yes. Good reminder. Well, my challenge for this week Reena relates to the collective sale process under Part 10 of our Strata Schemes Development Act in New South Wales. Now, this is the process where 75% of lot owners can approve the sale of their entire strata building. It's something that came in with our new law in November 2016. And we are seeing the first few of these sales start to play out. We've actually got a couple of reported cases from the Land and Environment Court at the moment that deal only with some interim issues to do with those approval proceedings, approving a collective sale. We don't have a finalised decision yet, but all the lawyers are watching those very closely.

But what I want to talk about today is this. I had an owner of a commercial lot contact me. And he's in a building that I know quite well and actually does a bit of work for in a bustling part of Sydney. And he'd been contacted by a real estate agent who I was told was also contacting many other owners in the building. And this agent had said, we are wanting to purchase your lot. We are going to try to get at least 75% of all lots in the building. And we want to enter into an option agreement with you where we pay you a small option fee now and if we manage to get options on 75% of the lots, then we're going to exercise our option. We're going to purchase all of those and then we're going to proceed with a redevelopment of this scheme. And they're going to use if they need to, Part 10 of the Development Act to make sure that they can do that without unanimous approval.

And the interesting thing that this agent had told this lot owner was that if you don't sell to me now, and you hold out, and you become what we call a dissenting owner in this Part 10 collective sale process, you'll never get as much as what we're offering you today. And this made this particular owner really nervous, they rang me. They say, "Amanda, what's going on? This agent's telling



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me if I don't sell now under these terms, then I'm not even going to get market value for my property. The court's going to sell it. The law says I must sell. I won't get as much as I deserve. Do I need to jump at this opportunity now? Is this agent right?" And I thought, oh I wonder how many agents around town are trying that one on and maybe acting for developers or developers themselves who are using this threat of Part 10 collective sale to have owners sell up immediately, more quickly and try to acquire as many lots as they can.

I'm not sure if you've heard about this happening, Reena?

Reena Van Aalst: No, I haven't heard of those sort of tactics being used, Amanda. I mean it doesn't surprise me but maybe REO would be interested to know of some of these types of agents because REO is doing a lot of work trying to improve the image of agents with changes to their act and everything. So I think that these type of actions and shenanigans by, I would say probably a minority of people. But unfortunately, people tell you that and it's a whole new area of the law in the act. I think it does cause a lot of anxiety and confusion for people.

Amanda Farmer: Yes, and what I want to be clear about for any owners who are concerned about this or perhaps have had similar approaches, the Part 10 process under the Development Act, if you happen to be an owner who doesn't agree to the collective sale or re-development of a building and you're in that 25% opposition and the building has to go through the process of getting the sale approved at the Land and Environment Court.

The fact is that you must be properly compensated for the sale of your lot. And the legislation is quite thorough and quite particular about making sure that you get the value at the highest invest use of your property and its evaluation term. And that you also get compensation. So that legislation, that our legislation's been modelled on is the Just Terms Compensation Act, which is the same legislation that the State Government uses when they are compulsorily acquiring property. And they offer market value plus compensation, and it generally works out that you are getting what you are entitled to, what you deserve for your specific circumstances when you are being forced to sell your property. So it is just wrong that these agents are saying that you're going to lose out. You're not going to get market value, you're not going to get what you're entitled to if you end up in a part 10 collective sale process.

Reena Van Aalst: Very interesting. The thing that I've been asked, Amanda, I'm not sure if you've come across this at all is that in my particular schemes there are some townhouses. Some people have actually added an extra floor. And basically, the UE hasn't changed. So even though their market value is higher, if they were to sell privately. But through the UE process, it won't be because their UE would reflect the UE of other townhouses. So it doesn't have the additional floor. So how does that work?

Amanda Farmer: Well the legislation has this 2 step process. And it's a little bit complicated. I'm working with a building at the moment working through it and have given them some guidance on it. Essentially the way it works is that the properties are valued by a qualified valuer. And it's worked out based on your property, so if you've got that extra floor, then that's going to be part of the market value. What the value should be and then there's a lump sum figure that's worked out for the entire building. So all your lots of common property, that figure, you're right Reena, is then distributed on a Unit Entitlement basis. But you must not get less than what they call your compensation value, which is that first amount that the valuer worked out. So whatever your distribution is on a Unit Entitlement basis, it can't be less than, the term used in the act is compensation value. And the compensation value is basically that market value at the highest invest use.

And any valuer who's listening who are familiar with this process, you're the experts in this. If I've got any of that wrong, please don't hesitate to reach out. It's important to get it right. But that's my understanding of how the Act has a safety net there for exactly what you're saying, Reena, when there is an issue with unit entitlements and they may not accurately reflect the market value.

Reena Van Aalst: Yes, value. Yes.

Amanda Farmer: Wonderful. Okay. Your win for this week, Reena?



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Reena Van Aalst: Well, I've got a scheme that's ... had it filed and issued last year and it's an older scheme. I think it's about 70 years old, beautiful building. But unfortunately, the amount of work that has to be done to comply with the Fire Regulations is quite onerous. It's City of Sydney which is also quite a very diligent council when it comes to enforcing their fire orders and timetables.

And the ceilings obviously were not fire rated and we were lucky enough to have a fire engineered solution where we use an intumescent paint system which is applied to the underside of the ceiling, Amanda, which means it will save on cost. I mean hugely economical to apply the paint than to actually have to remove all the ceilings.

People had to still move out nevertheless. But when the ceiling's been removed and a new one replaces, it would take much longer so at least with the paint, it would mean that residents would still have to relocate but it would be for a much shorter period. So, yes everyone was quite happy because I'm talking about hundreds and thousands of dollars difference in the cost.

Amanda Farmer: Yes, excellent. Isn't that clever that they have that intumescent, I love that word. Intumescent paint system to be able to fire rate ceilings, I think that's great. And this is what I love about strata. I love about the space we're working in that people are incredibly innovative and coming up with these different ways of doing things, whether it's a legal solution or a fire safety solution. I love hearing about these new progressions in technology.

Reena Van Aalst: Yes, definitely.

Amanda Farmer: Excellent. Now, my win for this week. This is something I've been wanting to touch on for a little while now. And it's a little bit similar to what I've just spoken about with my challenge. But I have been helping a couple of buildings who are in the way let's say. In the way of the new WestConnex project that's happening here in Sydney, where we're expanding out one of our arterial freeways. These buildings are in the way of that and so the New South Wales government has sent them a notice saying we want to acquire part of your common property for the purpose of our new road. And we are going to buy that property and we're going to give you some compensation as well.

So there is a very strict process for that, and as I've mentioned earlier it is under the Just Terms Compensation Act here in New South Wales. There's a process of valuations, the government gets a valuation, the building is or the landowner, whether that's a strata building or a free-standing house. They're entitled to get their valuation, they're entitled to get legal advice and that's where I have been involved with these buildings to let them know what their rights are. And what additional compensation they might be able to claim so sometimes we're looking at.

Generally the buildings I've been involved in looking at commercial buildings and factory units. So part of their common property is going to be taken up by this road and they're entitled to be properly compensated for that acquisition. And I'm not sure Reena if you have come across any of these with the buildings that you manage.

Reena Van Aalst: No, but I was going to ask you. Does the government pay for the legal advice and costs that the owners corporation had to incur to get that advice? Because obviously, if they had wanted to acquire the common property, they would have needed to spend that money.

Amanda Farmer: Yes, absolutely. They pay reasonable legal expenses, so the owners corporation comes to me and says Amanda we've got this letter what does it mean. And I send them a letter explaining what that means. Then absolutely, they're entitled. And the couple of buildings I've been involved with the government has been quite appropriate in reimbursing 100% of the legal fees that have been expended so that's been a good result for those buildings. And one building in particular, it was just a slice of sort of the front apron if you like of the building they really weren't using. And they ended up getting a cool 35 grand for that. So they were quite happy with that result.

Obviously, it depends on what is exactly been taking up and whether it's being used by the building. But a few strata schemes no doubt out there had been involved in that acquisition process, so something that I thought I'd raise. And any questions from specific listeners about that, feel free to reach out to myself and Reena.

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Reena Van Aalst: That's great, Amanda. First time I've heard of schemes being partially acquired for their common property for this purpose. I've seen houses down at Concord and Strathfield. The whole house has gone but I haven't come across obvious parts of buildings, or parts of common property anyway. So, that's interesting.

Amanda Farmer: Yes. And an important thing to remember with that process is that it does have strict time frames. So there is a particular type of notice which is called a PAN, a proposed acquisition notice. And once that is issued, you've got 90 days to negotiate a purchase price with the government. And if you haven't reached agreement in that 90 days, then they will set the price. And that's where you kind of hear these horror stories of people missing out on getting market value and compensation for their property because they haven't met that 90-day deadline, they haven't negotiated a result. And if you want to challenge that after that 90 days, you then have to go to the Land and Environment Court. So, but in my experience the government gives plenty of time before that notice is issued for you to go and get your valuation, to talk to your lawyer and to come up with a figure that you think is reasonable and compensates you appropriately.

Reena Van Aalst: That's great news.

Amanda Farmer: All right. Well, I think that's it for me this week, Reena. How about you?

Reena Van Aalst: Yes. All good. Looking forward to the weekend.

Amanda Farmer: Yes, enjoy and keep planning for that big trip you've got coming up. I'm excited to hear more about it.

Reena Van Aalst: Yes, definitely Amanda.

Amanda Farmer: See you next time.

Reena Van Aalst: Bye.

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