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YSP Podcast Transcript: Episode 251. Why are pet bans still being enforced?

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Amanda Farmer: Hello and welcome. I'm Amanda Farmer, and I have with me today, Reena van Aalst, from Strata Central. How are you, Reena?

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

Amanda Farmer: I'm doing well. I am very much into the swing of 2021. It doesn't take long. I had a little bit of quiet time, took some time away in January and wow, I feel like I never left. February.

Reena Van Aalst: I think, actually for me, strata managers that I've spoken to, Amanda, including in our own company, that we've never had so many emails come through the break. So normally, after Christmas there's a lull for a few weeks, even if it's even 2 weeks, but this year, I was actually getting emails from people during the break, even about really small things. It wasn't even things that normally you'd write to your manager about during their closure. But it even included like, "Oh, I hung up my levy notice," and even little things. And it showed me, I think the fact that COVID's had an impact on people in terms of them not going away on holidays or holidays being local, so therefore not being mentally away as such.

And I spoke to a number of other managers about the same thing to ask them what their experiences were, and one of my colleagues in another company said that he had 400 emails when he got back, from just owners, not internal, because sometimes part of our email load's also internal emails, but none of that. So I think the strata management industry has really been on a bit of a treadmill through COVID, and I think it's still going to be continuing in this year, I would say, definitely.

Amanda Farmer: Yes. I wonder if it's the being at home effect for owners, where we're living at home of course, we're holidaying at home, we're working at home. So there isn't this boundary anymore. You forget that your strata manager's on break, that their office is closed because you're just living life as normal. You're in your home office, you're sending your emails.

Reena Van Aalst: Exactly.

Amanda Farmer: So forcing ourselves, whether we're strata managers, or service providers, or are owners doing other things, forcing ourselves to have that break and have that differentiator. "This is when I'm on, and this is what I'm off." Otherwise, I'll tell you what, it's happened to me before, you will burn out, and nobody wants to be in that situation.

Reena Van Aalst: Yes, exactly. Well, I think also Amanda, because people, even though they're now doing the half and half, where they're actually working some days in the week in the office, and some days at home, which I think is ideal. But still, I think when you're at home, your home mindset does set in, and therefore I think the things that you not normally see and think about when you're in the office are still prevalent when you're at home.

Amanda Farmer: Yes, for sure. We're going to see that. We need to get better at that, or we're going to see, or continue to see, because I know it's already happening, the fallout when it comes to our health, our mental health, our wellbeing, for sure. Okay. Well, starting with that challenge, have you got a strata challenge for me this week, Reena, to share?

Reena Van Aalst: So my challenge this week, Amanda, revolves around a scheme where the building manager was undertaking some visual inspections of the balcony balustrades, and they had an abseiler as well involved in all of that. And they found on one of the apartments that there was a spar that had been installed on the balcony. And we obviously know that this has obviously been done by someone. Not that I know because that owner actually is well-known to the strata committee and during the tenure of the building manager, they would have seen someone trying to install a spa on the 23rd floor of a building.

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Reena Van Aalst: So anyway, we wrote to him and said that basically we know that he didn't install it, but we need to ensure that we are able to test it, to make sure that the load is not too strenuous on the building, because we don't know whether or not... there's also water and there's pumps and all that sort of thing. And basically, he said to me, "Well, I didn't do it. And you should know that I don't have any responsibility in that you can't make me do anything, including having a by-law."

Now, they already have a by-law that was passed many years ago that says that any unauthorised works to common property or fittings becomes the responsibility of the lot owner or occupier. Now, I then wrote to him on that basis, and then that was also rejected by the owner once we wrote that. So our view is that it is enforceable, that by-law, Amanda, and the fact that even though he wasn't responsible for the changes to the common property, the owners corporation does have some real concerns about the spa and the weight and the water and pumps, et cetera. So is this by-law enforceable or do we need to take further action?

Amanda Farmer: Well, I would need to see the by-law to be able to give you that level of detailed guidance. And I do suggest that if this is going to be challenged, as it sounds like it is, the owner has put their cards on the table, the building does get some specific legal advice. I'm glad the by-law is there because in my view, and I was just addressing this question with a barrister the other day actually, in my view, yes, the owner of the lot, from time to time, whoever that is does inherit, does take on the mistakes, the breaches, the non-compliance of the previous owner. And if there is unauthorised work that has been done, then yes, that owner can be directed by the owners corporation to rectify any damage to the common property, and the owners corporation can seek orders from our tribunal in New South Wales if the owner doesn't agree to do that.

But the legislation isn't as black and white as I have just said it there. It takes a little bit of digging and a little bit of a little bit of legal argument to get there. So I'm glad that you have a by-law in place, which sets out that position, because I think that's going to be helpful to you if you do have to argue the point. We do see this. I know, Reena, you see it a lot. People buying in, not understanding what they're inheriting, perhaps not doing a search of the books and records. Obviously, this owner's bought in and seen that there's a spa. Did they think that this was something that is part of every lot in the building that the developer put in? I don't know. Maybe.

If they had searched the books and records and knew what they were looking for, and I appreciate so many owners just do not know what they don't know, they should have been looking for a by-law or some form of approval for this work, which is obviously an addition. The same applies when there's a brand new bathroom in your beautiful apartment that you're looking to purchase. You want to have a look and see if there's been approval for that work, and have you, under that by-law, taken on responsibility for the future repair and maintenance? Because if there isn't a by-law, there making that clear, well, the owners corporation may one day come looking for that commitment, and nobody wants to be in that situation.

Reena Van Aalst: Exactly. I think also Amanda, a lot of people actually now, when they're buying, they rely on the vendors search as well, they don't want to pay extra money for a new search. And I'm always baffled and surprised by that because the amount of money that people are spending on a property and the amount of money that's going to be spent on a strata search. I can't even see the logic, and I try really hard. I'm thinking, okay, I know people want to save money and all those sorts of things. But like you said now, this could be costing quite a lot of money for that owner, if that spa is found to be structurally affecting the weight of the balcony. So it's more than just having a by-law passed. It may need to be removed. I don't know. None of us know that's what we want to get an engineer to be able to inspect it and give us some advice in the first instance on the effect on the structure of the building.

Amanda Farmer: Yes. That's definitely sensible. You've mentioned there, Reena, the vendor searches. So these are the reports that vendors put together when they're selling the property and say, "Oh, you don't have to do a strata search, I've done it for you."

Reena Van Aalst: Exactly.

Amanda Farmer: "Here's the PDF." Or you can log into the agent's portal and get a copy of the PDF. Look, I just see those as marketing materials from a vendor.

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Reena Van Aalst: Exactly.

Amanda Farmer: The same way that you might have photographs or sketch plans of diagrams of the property marked marketing material. That is not an objective independent... Look, I shouldn't say that. It might be, it might've been done by a reputable person and may include everything that needs to be included, but it's within the vendor's control to have things included in that report, and not have things included in that report.

Reena Van Aalst: Exactly.

Amanda Farmer: Yes. So definitely doing your own search of the records, preferably by someone who knows what they're doing is your number one step when you're looking at purchasing a strata apartment.

Reena Van Aalst: Definitely, Amanda.

Amanda Farmer: All right. Well, thank you for sharing that challenge, Reena. Let us know how that one pans out. My challenge for this week. Sadly, I think... I say sadly, because this really should have been put to bed sometime ago, relates to the old and probably by now, annoying issue of pets in strata. I have brought this back to the podcast after a lot of discussion about it last year when we had our court of appeal in New South Wales tell us that by-laws that impose blanket bans on pets are invalid. Notwithstanding that decision, I am still seeing many, many owners who are would-be pet owners in strata, or currently have pets and are looking to get approval, still being told by their committees, by their owners corporations in general meeting, by their strata managers, that there is a ban in place and the ban is being upheld.

I have a couple of owners briefing me at the moment in my legal practice, where we're going to mediation with owners corporations. We're having to kick off tribunal proceedings to get a decision from the tribunal to make very clear that the ban is invalid. And I've also been approached recently and have seen on some online forums, tenants who are experiencing difficulties. And in New South Wales, landlords do have the right to say, "No pets in my property." That makes sense. That's their property, their lot property. They can decide what happens in it and what doesn't. But what's happening is the landlords are saying, "Look, I don't have a problem with you having a pet, but the building has a ban, and that's not something that I, as an investor owner are prepared to interfere with." And if the landlord won't take it on, then a tenant actually has no standing under the strata legislation to take that on. You have to be an owner if you're going to make an application to invalidate a by-law. So tenants are in a really tricky position. What are you seeing from your side, Reena on this issue now?

Reena Van Aalst: Amanda, we're actually seeing the same thing that you're talking about, that many buildings that still have blanket bans on pets are still in enforcing them. I suppose one of the challenges I think that we have is that the by-law still applies in its current form. So buildings where they have a pet ban, if someone applies to have a pet, we're saying, "Well, you can't enforce the ban," and some committees just don't want to accept that. So we're not going around, telling everyone now, that even though the building's got a blanket ban, like it's sort of opening up the floodgates for everyone start applying for pets. But those that do apply to the strata committee, we are advising them that you really can't say no. But a lot of committees still have the mindset, "Well, let them go to the tribunal." So they want to put the person to expense and effort to try and challenge the by-laws, rather than just be a bit more accommodating, and knowing that in the end that's what's going to happen anyway.

Amanda Farmer: Yes. And thank you because that's a very good summary of exactly how these things will pan out. The only thing that I want to add there is that I think the applicant who's had to go through that process to get the decision from the tribunal to say, "Yes, I'm bound by precedent. The court of appeal has said exactly this ban is invalid. So of course, your ban in the same terms is also invalid," that applicant has a very good chance of getting a cost order.

Reena Van Aalst: Mm-hmm (affirmative).

Amanda Farmer: So if that applicant has engaged a lawyer to run that argument for them and has had to take it all the way through to a defended hearing, then you can expect some very clear submissions to the effect that there are special circumstances, and we do need to show that in our tribunal to get a cost order.

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Amanda Farmer: The case never should have had to be brought, never should have been defended, and a cost order may well be made against the owners corporation.

So strata managers, and I'm seeing strata managers, very well-experienced, strata managers that I respect and have worked with over many years, I'm seeing the emails that they're sending to tenants and to owners saying, "Sorry, there's a pet ban in place. We can't accept your application." I really hope that there are other emails going, as you are Reena, to committees saying, "Guys, even though this ban is here, not a good idea to be addressing it at this stage."

Reena Van Aalst: Exactly.

Amanda Farmer: And indeed, buildings should be, as I said months ago, reviewing their by-laws and proposing a different type of application procedure for residents wanting to keep pets.

Reena Van Aalst: Yes, one of our schemes just had general meeting to change their pet by-law, because they had a ban on pets, and then it's been changed with obviously, some terms and conditions amended to make sure that the owners corporation does allow residents to have pets. On the other hand, some rules and issues are still maintained in terms of location when you bring them, like not having them in the gym and pool areas, et cetera. So therefore, you can impose conditions that make it workable for both the applicant and for the owners corporation in terms of maintaining that sort of balance.

Amanda Farmer: Yes, absolutely. I agree. And indeed, we have this issue on the agenda for the review of our New South Wales legislation. I am hearing that a number of buildings are simply sitting back and waiting for our legislation to be changed, to include a provision that the keeping of animals cannot be banned any longer, and are waiting until that happens. I can't see that happening quickly, I'm sorry to say.

Reena Van Aalst: No.

Amanda Farmer: The submission period for this review ends in early March this year. We're then going to go through a round of draft legislation, that's going to be considered and debated. All things move slowly when it comes to lawmaking. So I think we're going to see a few applications run through the tribunal, reinforcing this position, unfortunately for those applicants, and before the legislation is changed.

I'm actually aware of at least one case where a resident with a dog in the apartment did obtain from the tribunal and urgent interim order, allowing them to continue to keep their animal in the face of a by-law that banned animals. That's an interim order. It's in place for 3 months and it's in place until the tribunal determines the substantive application, so until the tribunal makes its final determination. And the tribunal has made that interim order because they see-

Reena Van Aalst: Exactly.

Amanda Farmer: that the application has strong prospects of success, and they know that they're very likely to declare that this by-law is invalid. So those are the kinds of applications we're seeing be made, and I think we're going to see more of those until our legislation is amended.

Reena Van Aalst: I think Amanda, for buildings that do have by-laws that do permit animals, there are issues in terms of some owners actually making sure that their pet doesn't urinate on the common property and things like that. And obviously, sometimes people leave their dogs at home and they go to work. So I think as you've mentioned previously, that their by-laws should be revisited with specific terms and conditions because sometimes, in one particular building where there's a hundred and something apartments, and they so many people who have pets, a lot of people haven't actually applied for them, so we're now trying to get a pet register going there, and seeing who's applied and who hasn't applied. So I think in a sense, that we do need to balance the needs of the owners as well as the needs of the owners corporation at the same time.

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Amanda Farmer: Yes, absolutely. That's an important exercise to make sure that attention is given to the impacts of pet ownership and make sure that you have systems in place to deal with those if that arises. Anybody who is new to this discussion, I will put links in our show notes for this episode to our previous podcast episodes and Facebook live chats, where we're discussing this issue. There were quite a few detailed chats last year in the lead up to the Cooper case, and also the fallout from that case. You can get yourselves educated there on what's happening with pets in strata in New South Wales in particular. And as we like to do, we will continue to keep you updated. Watch this space. Reena, heading over to your win for this week.

Reena Van Aalst: Yes. So I had my first AGM quite early on, Amanda, in the first week we got back. Actually, the next day after we got back. So I'd like just to share some of the wins of that meeting, whereby it was actually an AGM for a company title building, and it was delayed because of COVID and the inability to actually hold the meeting in a room, that the directors didn't want to have it on Zoom. There's a number of elderly people in the building. And I think for many of us who have had quite a number of Zoom meetings, especially AGMs, it can become quite difficult, trying to navigate the large number of people and having important... I think as managers, we've found overall that even though they're a great tool at times, your concentration levels are having to be tested because you're trying to look at a screen, you don't know who the people are sometimes, sometimes people don't have the video on. So the delay caused us to have it early in January.

Anyways, there's a few of the shareholders that haven't been happy with certain things that the board's been doing. And unfortunately, they asked me to include some items on the agenda and I said, "Well, I'm sorry, but the agenda's already been issued. However, I am happy to raise them as points of discussion at the AGM." And so, one of the shareholders asked me to read a letter, another one asked me to read her email, and we did that. And we actually went through all the shareholders present, point by point, all the items. So we listed their grievance and then we addressed it in the minutes. So I think that made everyone feel better, especially the people that were complaining, and I think also the other shareholders, because I think it gave them a view that the board wasn't trying to dissuade people communicating or having ideas or having grievances, but it's more about how those grievances are handled.

And I think sometimes we find as managers, the email war back and forth, you try and respond as per the committee's instructions, and then you get another response, and then it's back to the committee, and back and forth, and back and forth. And I think when you do it in a public forum, like an AGM or a general meeting, I think it's better that way. So I think then everyone gets to hear both sides of the story, and therefore, it means that, I think people sometimes do feel a bit better when everyone's been involved in the decision-making process, as opposed just to the board or a strata committee. So for those people that perhaps... Not that it's always a forum necessarily, to air every grievance, but if there are issues that are affecting, I think owners, and you think that a committee is not listening to you, then you might want to submit them to general meeting to be discussed, not as part of a formal scenario perhaps, but even in an informal fashion.

Amanda Farmer: Yes. I think when you have a grievance, as you call it, Reena, feeling that you've been heard, that you've had a space to raise that and that you've been heard, absolutely goes a long way. And we've talked about this previously on the podcast about these agenda items for general discussion or general business. While we always encourage items to be discussed, to be put in the form of motions and to appear on the agenda, inevitably, especially in buildings where you may only have one general meeting a year, or perhaps lots of investor owners who are only getting together once a year, there's going to be general discussion.

And while you might not be able to make formal binding decisions, in the form of a resolution, it's exactly the right space for owners to be asking questions, whether it's of the committee or of a board of directors, as you have in company title, about what's going on, why there might be a particular structure that's been put in place on the common property, or what's happened with this project that we were going to do, and to be able to have an answer face-to-face, if you're lucky enough to be doing that, and what could be a larger problem down the track, if you have the back and forth of the letter writing and the emails, is nipped in the bud and everybody can move on happily.

Reena Van Aalst: Yes. So I think in this case, there was a particular shareholder that has had this grievance for some time, going back years now.

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Reena Van Aalst: And even though she's still not happy with the outcome of her grievance, at least I could say to her, "Well, the shareholders discussed it. They were there, so it wasn't just the board making the decision. And they also don't agree with A, B and C. However, they agree with E and F." At least that then makes her feel that it has been heard by all owners, not just the board, and therefore we hopefully can try and put that to bed.

Amanda Farmer: Yes. And that is something I remind clients of often when they tell me, "Amanda, the committee won't do this, the committee won't do that." And I say, "Have you tried putting a motion forward at a general meeting and asking the owners for their decision?" Because the decision of the owners corporation under our strata law prevails over the decision of the committee.

So if the committee tells you, "No, you can't do something," whatever it is, whether it's a minor renovation that they've been delegated the authority to decide, or maybe it is the keeping of an animal that they have the authority to decide, the committee says no, you can absolutely take that to the owners in general meeting, if you feel that you will have majority support from owners. And perhaps the committee, just for whatever reason, there's a personality clash, or you think the committee is against you, go to the owners and ask them before going to the tribunal. Let me say that, because often, the tribunal will pick that up and say, "Well, hang on, you haven't actually asked the owners corporation in general meeting for that approval. So why are you coming here?" So an important step to remember to take.

Reena Van Aalst: Yes, it's a really good point, Amanda, I think to remind people that yes, you need to go through the progressive steps from the committee to a general meeting and then to the tribunal, rather than just stepping right over that. And most times the owners can be sympathetic and sometimes, in this case, not that they weren't sympathetic, but they just said, "Well, hang on. This has been discussed. We don't agree with giving you compensation for A, B and C. But however D and F is fine," which is what the board had said anyway. So it wasn't really anything different, but at least it gave her the feeling that we had exhausted all avenues. And therefore, I think as we know at the company title, the means of trying to obtain an outcome aren't cheap because it's not governed under NCAT. It's the local court in some instances, and then the Supreme Court, because it's governed under the Corporations Act.

Amanda Farmer: That's it.

Reena Van Aalst: So it can be quite costly to go to those other avenues if you haven't really exhausted all the other ones beforehand.

Amanda Farmer: Well, thank you for sharing that win, Reena, from one of your very first AGMs of the year. There's lots in that one. The win that I'd like to share this week comes from a rather large building that is about to undergo a multi-million dollar rectification works program. So there was quite a bit of damage to this building, to the roof in a storm that happened in Sydney sometime ago. And it has taken a while for the insurer to sort everything out and to receive tenders and to appoint a contractor, to do this rectification work on the common property. The building includes some penthouse apartments, quite large with large terrace areas. And those apartments are going to be directly impacted by the work that's going on, on the roof.

And I raise this as a win because I've been working with the building for some months to finalise a written agreement between one of the lot owners and the owners corporation, making very clear to the lot owner, precisely what work the owners corporation's contractor is doing, what obligation the owners corporation has to protect the lot owner's property, to keep it clean, to keep it tidy, to make sure the contractors are doing their work properly. And in turn what obligation the lot owner has to provide access to the contractors, who do need to use the lot owner's terrace to access the roof, and also to store some construction items on the terrace.

Amanda Farmer: Now, we do have, in our New South Wales legislation, an obligation on lot owners to provide access to the owners corporation or its contractors, if that access is needed for the owners corporation to repair parts of the common property. And it's also in our legislation that the owners corporation is responsible for any damage that may happen to lot property during that process.

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Amanda Farmer: In this case, the lot owner, who was represented by a lawyer, had felt that that wasn't enough protection for her to be comfortable and had instead proposed this written agreement, which we called an access deed, to be formalised between the owners corporation and the lot owner. And I think through the cooperative work of everybody involved, the committee, the lot owner, the strata manager, the lawyers, we were able to put together a document that both parties were reasonably happy with, or least unhappy with, felt that their rights were sufficiently protected. And it hasn't held up the project in any way and that is now going ahead, fingers crossed, with everybody as comfortable as they can be.

Reena Van Aalst: Yes. That's a very wonderful outcome, Amanda. So I think that in these types of situations where I think owners have had some bad experiences in the past, that level of comfort and protection, that's probably more than what the legislation requires. And I think at least if you do have the means by being able to engage a lawyer, it's probably a good idea if you feel that way. And as long as everyone can be as comfortable as they can be in terms of providing access, as well as looking after the lot property, as well as the noise issues, I think, and dust.

Especially, I've had another building where we had to do a bathroom repair works because the waterproofing and failed, and the contractor didn't even put any coverings on the furniture, and so the tenant had left and came back, and there was just dust everywhere. And I'm thinking, end of the day, sometimes contractors, they really don't think about the person's apartment as being their home. And the amount of noise, we have issues. Noise can't be helped, but in terms of trying to protect people's furniture and their belongings, I think contractors need to be a bit more mindful that they can't just prance around in their boots with mud and do work without covering people's furniture and their contents.

Amanda Farmer: Yes. And I have to say, some contractors are certainly better than others at that. And that is one party that I didn't list earlier. The contractor in this particular case, as well as the project manager, each bent over backwards to meet the concerns, to address the concerns of the lot owner, to meet with her regularly, to make sure that she completely understood what was going on and how she was going to be impacted. Now, this lot owner is elderly. This has been her home for many, many, many years. She also works from home. As you've pointed out there, Reena, she did indeed have a bad experience some years ago when some work was done that impacted her property under a different committee, and she didn't feel that her concerns were properly addressed at that time.

Amanda Farmer: So she was bringing that past experience, as many owners do, and everybody who was involved in those negotiations really pulled out all the stops to make sure that she could be kept as comfortable as possible and be assured that her rights would be protected both by the contractor. And then ultimately by the owners corporation, who are the ones responsible when it comes to the common property and any damage that may happen to the lot property. So pleased to bring that one to the table this week.

Reena Van Aalst: That's great, Amanda. It's a really good outcome

Amanda Farmer: Thank you. All right. Goodness. A jam-packed episode. Lots in there to get your teeth into it. Remember that you can always get the transcript for these episodes over at yourstrataproperty.com.au/podcasts. That's where you'll find all of our podcasts, our show notes, and a link to access the transcript. I know so many of you access those transcripts to be able to read over your morning coffee, rather than listen to, or share with your strata manager or your fellow committee members. So continue to enjoy. Enjoy the rest of your week, Reena Van Aalst, and I'll look forward to chatting with you again soon.

Reena Van Aalst: You too, Amanda. Enjoy your week also.

Amanda Farmer: Bye-bye.

Reena Van Aalst: Bye.

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