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YSP Podcast Transcript: Episode 322. Supply Chain Woes | 'Cruel' Strata Levies | Purchaser Education

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Intro: Welcome to Your Strata Property. The podcast for property owners looking for reliable, accurate, and bite-sized information from an experienced and authoritative source.

Amanda Farmer: Hello and welcome. I'm Amanda Farmer and I have with me today, Reena Van Aalst. How are you doing, Reena?

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

Amanda Farmer: I'm great. Let's dive straight into our wins and our challenges for this week. Hit me with your challenge, Reena.

Reena Van Aalst: Well, I think this is a challenge that many strata managers can probably sympathise with, and it's a fact that we can't get any companies at the moment, any tradesmen or contractors to give us quotes. Unfortunately, with COVID, which is playing a big role at the moment, in terms of people being sick. We've also had the rain, which is obviously causing a backlog of work. And when you're trying to explain to people that when you ask for a quote, we put a reminder, say about two weeks and then you follow up again and then you don't get a response. And then you ring up and people don't realise that at the moment. We really can't do any more than keep chasing up people for quotes.

And unfortunately, I'd spoke to someone yesterday in relation to a waterproofing issue, which is really sort of the crux of what I'm coming to shortly Amanda, is that, he said to me, "I'll try and get out there and give you a quote, but I can't even give you a date when I can start the work." Because what happens is that people have a schedule of works that have been given to them and it's been approved. And they do it obviously based on that sort of schedule and timetable and avoid it rains, it just means they can't do that work. The next job on their list is then delay and then there's a cascading effect. So in one particular building, we were so desperate because the owner, the ceiling had actually had some water penetration. We had a roofing company come out and they fixed it, but then there was still further penetration and they said, "oh no, there's another issue. And it relates to the waterproofing on the roof area."

So that was confirmed by another contractor, just to make sure that it wasn't just the roof company saying that because they had just completed the work and maybe they were trying to sort of justify why that solution wasn't keeping the water ingress out. So then we actually end up paying a company. He said, "we got a quote to get a quote." So we paid \$700 for this contractor to meet with a strata committee member to go out there, to do a proper testing. We pay for this quote, the quote doesn't come we're chasing, chasing and chasing.

And the next minute we get an email to say, "oh no, now because of the Design Practitioners Act, I can't do waterproofing without a scope." So it's just been one of those things I think that strata managers at the moment in terms of email volume, the rain, COVID, supply chain issues. It's just all becoming a real nightmare.

Amanda Farmer: It is the perfect storm of events, isn't it? And I'm interested to hear you add to that. The requirements under our New South Wales Design and Building Practitioners Act, it's something that I've seen a couple of clients come a cropper with at the moment, having contractors come in and quote, and then be told, oops, no, actually I don't have the necessary qualification to be able to sign off on this work. We have to get someone else in, an engineer over the top to issue the final certificate. That's delaying everything. You're definitely not alone in this challenge, this frustration. And as a lawyer, I'm being asked by my clients, by strata managers. "Well, Amanda, if we can't meet our legal obligation to repair and maintain the common property, if we can't meet it right now, or we're delayed in meeting that, what does that mean?"

"Are we protected from some future liability because we're trying our best and we're taking all necessary available steps, open to us to try and meet that obligation? It's not our fault." And the short answer to that is, well, no, you're not protected. And as our law currently stands if the common property is in need of repair and an owner is suffering some loss or damage because of that failure

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to repair, then they can still claim that loss and damage from the owners corporation. And depending on the circumstances of the case, the owners corporation may have to meet that loss even if, it has been trying its hardest to get contractors out, to get the work done.

It will be, I say interesting from a lawyer's perspective, not so interesting perhaps from the building's perspective and the strata managers who are caught in the middle, interesting to watch if these cases end up before the tribunal, how they play out. But certainly, all I can tell my clients and to those who are listening, suffering the same frustration at the moment is just keep doing the best you can to communicate with contractors, try and get them to site. Always, always be updating your committees, your owners, especially the owner who might be suffering from water penetration, for example, or their agent, and let them know that you are doing the best you can in a really difficult situation.

Reena Van Aalst: Well, on that point, Amanda, I think also what the other issue is that it's really hard to give an update when you don't have any news. And this is what one of the agents asked me about, "you haven't given us an update" and it's like, "well, I haven't got one to give you" all I can say. Because when you do tell people that you've been trying to get quotes and you're following up, then people get... One guy said to me, "I want answers and solutions, I don't want to hear what's going on." I'm thinking, well, I just refused to answer that email anyway, I think it's quite rude. But the issue is that you can't get blood out of a stone. I mean, it is what it is. And I said to him, "you can get someone go ahead and recommend another contract. If you know someone that can do it more quickly and you know, go ahead."

I mean, unfortunately, you can only do what you can do. And I've been interested to see because, they do want to take the owners corporation to NCAT, this particular building.

Amanda Farmer: Right.

Reena Van Aalst: The particular owner and agent. So I said, "well, unfortunately, you do what you have to do, but I mean, it's not going to change what we are doing." And I've been interested to see, as you said, how the tribunal's are going to treat these types of cases, there must be getting a lot of them, I would say now.

Amanda Farmer: Well, it's a really interesting aspect of our strata law, I have to say because if you were in a free-standing home, not strata titled and you had a leaking roof and you couldn't get a contractor out to fix that. And I appreciate that the same is happening for free-standing homes, as it is for strata properties, it's hard to find people, it's expensive. They don't turn up, you don't get quotes. If you're in a free-standing home and the water's coming in and your furniture's getting damaged and your carpet's soggy and your paint's peeling, well, you've got to wear that. Maybe you can claim on your insurance depending on the cause, but you've got to wear that. When you live in strata, the owner who suffers this consequential damage, we call it where the common property is in need of repair and it hasn't yet been repaired.

The owner can claim that against the owners corporation, claim their losses from the owners corporation. And the owners corporation essentially, the way our New South Wales law is stands in the position of an insurer to cover those losses. And that's kind of mind-bending that owners and occupiers in strata properties have that level of protection. Query the policy around that, query whether that's right, whether that should indeed be the case. But it's certainly how our law has been interpreted and applied in the courts and in the tribunals that the owners corporation has to meet those losses. Even if it's doing everything it can to find a fix and to carry out a fix.

Reena Van Aalst: Yes. What I suppose in the wave now of cases following this upsurge in COVID as well, in terms of the rain, in terms of supply chain issues, how the tribunal does treat all those different factors when it comes to making decisions.

Amanda Farmer: Well, let us know how you go. And those out there who are listening, maybe involved already before the tribunal, in some of these cases, I always like to hear from you. It's a good way to share that knowledge of what's happening on the ground. And I'd be happy to bring that discussion to a future podcast episode so, don't hesitate to reach out. My challenge for this week is quite a public one. And it's certainly not my challenge. I'm not involved in this case in any way, whether as a representative or as

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commentator in the media, not this one. I wanted to have a chat about the elderly Earlwood couple that many of us would have read about in a Sydney Morning Herald article. And perhaps in some of the social media posts that have followed from that article. It was an article written on the 10th of July by Caitlin Fitzsimmons titled, "after 50 years in Earlwood, a cruel strata bill threatens an elderly couple with homelessness." There's a link to the article in the show notes.

Amanda Farmer: But the short summary is that a Sydney couple are apparently being forced from their home of 50 years and facing personal bankruptcy because their owners corporation voted to upgrade the windows at the building. And this couple could not afford to pay their share of that bill. The levy was struck, it wasn't paid. And after what I understand to be a number of years, the couple was ultimately sued by the owners corporation to recover the unpaid levy and with legal costs and interest mounting up. They haven't been able to pay that debt. And then now before the federal court facing bankruptcy. Lots of opinion has arisen out of this article. Reena, you've come across this one. What do you think?

Reena Van Aalst: Yes, only by chance, Amanda. I know that you've said a lot of people have read it because I mean, I haven't read it until one of our owners was sending it to me because they're about to raise a special levy or get a loan for a bad thing, it's about \$700,000 for a fire upgrade. And a lot of people actually try and speak in relation to their own personal circumstances using other people's stories. And in this case, this particular committee member sent the link to this article and I thought, oh, let me just read this. And I read it, the first thing, obviously the sensationalist media, cruel, I mean, I think cruelty is more about inflicting pain. I don't think issuing a levy to upgrade windows is cruel as such. But anyway, putting that aside, I was quite surprised because at the end, the last paragraph, I think from memory that they bought the apartment for \$22,000 in 1970 something now thinking, well, what's it worth today?

If you bought an apartment like with young people today would be having to borrow a million dollars plus for any particular apartment. So if you were able to buy and even, I mean, at that time, I think it was the ratio was five times average, weekly earnings when people bought their properties back then in the '70s. So I don't know. I just think to myself, you can't have your cake and eat it too. You want to live in an apartment, there's a statutory requirement that we just mentioned about repairing and maintaining common property. And therefore, I think, I'm sure this couple probably could get a reverse mortgage. I'm not sure why they haven't thought about that, but there are financing situations available for older people that find themselves in this situation.

But unfortunately, as a strata manager, when the owners corporation does have such a requirement to do this, to say that it's cruel. And I suppose in a sense, we don't know the whole story because you're only being given one side of the story. I'm sure that if you spoke to the strata committee members or the strata manager of that building, there could be another side to the story, but that's my take on it at the moment, Amanda.

Amanda Farmer: Look, if you're so inclined to read comments and posts that appear under these kinds of articles, it is quite fascinating to see the divide in opinion. And I characterise it as this, those who don't understand how strata works and what those legal obligations are and that it is a form of collective living. And there are collective obligations, duties, it is a democratic process. When decisions are made to attend to items around the building, it's not about what you might want or what you might personally be able to afford. People who understand that are taking a similar view to what you've expressed there, Reena. But people who don't understand that and are saying, "well, how dare these people have to be forced into this situation when they should be able to decide what happens in their home." Those people are quite incensed and quite upset about this happening.

There is certainly more, I think it's safe to say, to this story than what we're reading. And I do think a key point that perhaps has sparked some of the discussion is that if I read the article correctly, this wasn't necessarily a case of repair of the windows, it was a case of upgrade. It was a change from timber windows to aluminium. So we've certainly had cases before the tribunal on that question, whether window replacement in that form is repair or whether it's upgrade. But I think the article may have been hinting at the fact that this didn't really need to be done.

And this was something that other owners had decided would be preferred, and didn't take into account the needs of this particular couple. Who knows whether that's the case or not, I'm reading between the lines there a little bit. And certainly, if you are proposing an upgrade and improvement, that's going to be expensive. I do encourage all owners to make sure that they consult with others in

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their community and make sure that the best option available is taken. Yes, there are other vehicles through which money can be raised, maybe a strata loan, maybe payment plans and staged payments. There's a little bit of a mention of that in the article.

I did receive a few messages in my inbox when this article came out and a special shout-out to Dennis. Dennis, you know who you are, who gave me some material, which I did pass on to the journalist about these elderly people, being able to access some finance through a particular scheme for people in their type of position. And I have since heard from the journalist that they were aware of that through some financial counselling that the couple had eventually received. It sounded a little bit like too little too late, but the couple set up a GoFundMe page. Did you catch that Reena, within the last couple of weeks?

Reena Van Aalst: No

Amanda Farmer: Oh, so they set up a GoFundMe page and I think actually through donations, they have raised the required amount to avoid their bankruptcy.

Reena Van Aalst: Okay.

Amanda Farmer: I'm looking at the page now they've raised \$62,000 through donations.

Reena Van Aalst: Yes. I mean, I suppose in a sense, I'm not sort of being unsympathetic, but the issue Amanda is for older buildings when you take out windows and you try and put new ones in, you've obviously got the damage that occurs, which I think a lot of people don't understand. A lot of remedial work has to be undertaken in addition, just to the installation. So that, there's a bigger cost than probably what they were even told at the time. It was going to cost them when they were undertaking this project. So that's 62,000? Oh, so this might become a new thing, Amanda, GoFundMe pages when you can't pay your levies.

Amanda Farmer: Yes, interesting. The other aspect to this story, of course, is the mention that this couple did receive some form of legal advice early in the piece. It doesn't sound like that advice came from an experienced strata lawyer. And perhaps there were options available to this couple, through the tribunal process, through challenging resolutions of the owners corporation that could have been followed to avoid this situation. And it's not completely clear why that didn't happen, but I do think another key takeaway from this is to make sure if you are in a position where you could be facing significant financial burden, that you're getting advice quickly from the right place.

Reena Van Aalst: I think also, Amanda, when people go through financial hardship if you look at say the banks, I mean, people, they say, "let us know if you're having difficulty paying your mortgage." There's ways of approaching these things. And I think that ultimately, if you have an asset, some people have been forced to sell an asset to go into something that's smaller or cheaper or whatever if, they feel they can't live in strata. I mean, that's another choice people have to make. I mean, is strata living for you or you better off just living somewhere where you can decide, whether you want to change the windows if they are leaking or the roofs falling in. You don't want... If you're getting damage, you can, if you stay in your house, you can decide all these things. So there is something to say about collective living and making a choice to be part of that and expecting all the services that come with collective living, as you said earlier. So.

Amanda Farmer: Yes. The good and the bad, definitely.

Reena Van Aalst: Yes.

Amanda Farmer: Onto your win for this week, Reena.

Reena Van Aalst: Well, this is probably the first time I've ever had to do this, but in one of our strata schemes, we've had an application lodged by an owner for a very sort of minor issue in terms of NCAT. It's about the planting of trees and the height of the trees that have been delivered. But I won't go into the subject, safe to say that because I was unwell. And so was the lawyer, the lawyer actually got COVID twice. We were unable to comply with the submission dates that had been set by the tribunal back in

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April. So I wrote to the tribunal and asked for an extension of two weeks to put the submissions in. And I listed all the reasons why, and including also the committee member, that's also going to be making a statement is a way at the moment as well. So it makes it harder when someone's overseas, in different time zones, etc.

And the tribunal wrote back to me and said, "oh no, you need the consent of the applicant." I thought, oh, I didn't realise that, first time for me. I never really had to ask for it. Because I think the lawyer hadn't yet been formally appointed at that time. So I had to write to the tribunal. Anyway, and so I wrote to him, I said, asking for consent as per the NCAT advice. And anyway, he said, "no, even though I feel sorry for people being sick", and it wasn't as if it was something that was like water coming into your apartment or some sort of significant event. So I wrote back to the tribunal and I just said, "as you can see, the applicant won't give consent. And I respectfully request that the tribunal give us the extension." And I said, "this doesn't affect the person's amenity or ability to live in their apartment. So extending it by two weeks, won't make a difference."

And the tribunal granted that. So I was really happy because I was drafting my email the night before ready for them to say no and having, and I stayed up all night doing a statement and then next minute in the morning he said, "oh no, it's fine through the two-week extension." And I thought, oh, thank God for that. But-

Amanda Farmer: Relief.

Reena Van Aalst: Yes. So it's the first time I've ever had to obviously I think it's with strata managers was, we don't really deal directly with NCAT on this level. It was interesting for me to understand that the applicant has to give consent and I've never, I've seen lawyers write all the time and asked for extensions and the other sides have always said, "yes", I've never really seen anyone say no before, but there was actually quite a good thing for me to understand and learn. I think as a strata manager, how the tribunal works and that you do need the other person's consent.

Amanda Farmer: Yes. The tribunal is looking for the most efficient way to deal with your request. And if you've done the hard work of writing to the other side first and asking if they consent and if they do consent, you can each make a joint approach to the tribunal and let them know, Hey, we've sorted that out. We both agree, there should be another two weeks. And then the tribunal doesn't have to really turn its mind to the question. So that's why they do ask that you try and sort it out between yourselves first and in my experience, yes, I'm often telling frustrated clients that the tribunal does take that approach of allowing procedural fairness and giving you the opportunity, especially if you've been unwell, for example, to put your case together properly.

And it is common, I think for the tribunal to grant such extensions at least once. And I'm often preparing my client who may feel very prepared and may feel a bit frustrated at the extra delay. I often say, look, just be aware that it's very likely that your opponent will get this extension. Sometimes we, as lawyers are instructed to oppose an extension of time or request for an extension of time, even though we may have told our clients look, it's a good idea to consent, they're going to get it anyway. So I suppose you don't know whether it was the lawyer who was standing firm there or their client.

Reena Van Aalst: Oh no. This person, no, he doesn't have a lawyer. So he's just doing it by himself, which is another issue, which I won't go into because part of my submission was that the application just can't be understood. Just doesn't make any sense, unfortunately. But-

Amanda Farmer: Yes, the hardest.

Reena Van Aalst: The harder, Amanda, when you're trying. But I think also too, usually by the time you've ended up in NCAT, you've waited for so long. I keep telling people what's another two weeks when you've waited these months or years in some cases. So

Amanda Farmer: Can be, I noticed just last week I got a mediation date. I'm pretty sure we filed for mediation in early June and we've got a September date. So mediations are still taking three months. I was seeing that a couple of years ago when we were at the height of the pandemic and the lockdowns. But still, there doesn't seem to have been any increase in the speed at which these applications are going through. To wait three months for a mediation, you're then adding that to your ultimate tribunal time in some cases, if

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mediation's not successful. So, real difficulty there to be overcome.

Reena Van Aalst: Yes. I think Amanda, which I probably didn't mention in my challenge initially also is staff shortages that, I mean, everyone knows now the unemployment rate's three and a half percent. And in terms of getting staff and I'm sure the tribunal would be having same issues that all of us are having, and then people are getting sick. I mean, just about every week, someone's sick in every office. And so when you cover that with everything else that's going on, I'm sure it hasn't changed. You're right, mediation is still three months in the making before you get a date, so.

Amanda Farmer: Good to be aware of and still happening by phone in New South Wales.

Reena Van Aalst: Yes, that's right.

Amanda Farmer: I find that interesting.

Reena Van Aalst: Yes.

Amanda Farmer: Even the tribunal still operating by phone and AV Link. I don't think I've had my bottom on a seat in the tribunal for a couple of years now.

Reena Van Aalst: Yes.

Amanda Farmer: Our colleagues in other states, I know find that a little bit strange. I find that a little bit strange. I understand now, as we probably head into another peak of the virus that's probably a sensible position to retain, but I'm not sure what plans, what intention there is to get us back into the tribunal in person. Be interesting to know if anyone does know.

Reena Van Aalst: Yes. I'm sure there was no intention even before this new wave of the pandemic.

Amanda Farmer: Yes, exactly.

Reena Van Aalst: You get to change it as far as I'm aware.

Amanda Farmer: Well, over to my win for this week, I will be somewhere in person in a couple of weeks time, I will be on stage delivering a session for the Australian Institute of Conveyancers, the New South Wales Division. I have been invited for the third year in a row to deliver some strata training to our conveyancers, which I'm always very happy to do. Because it is that point where somebody purchases a strata property that they're often getting their first taste of strata, strata knowledge, their conveyancer is their first point of access to that information. And to that knowledge, and it is incredibly important that our conveyancers, our property lawyers who are acting on sales and purchases of strata properties are up to speed on the ins and outs of our complex world. And in preparation for that session, I put a call out on our social channels on our Facebook page, Your Strata Property, and also our Instagram, inviting you listeners, followers to let me know what you wish you would have known or would have been told when you first bought into strata.

Now I'm bringing this to the podcast as a win because I have received so much gold from those of you who responded to that question that I am going to incorporate into my session with the conveyancers that I know will be helpful. And I just wanted to highlight a couple of insights, Christal posted on the Facebook page, "as a strata manager, I feel pre-purchase inspection should be mandatory. So many clients purchase into a plan without carrying out an inspection of the books and records, and then complain about not being aware of critical things that pertain to their complex." Anthony, who I know is also a strata manager said, "education is key in this space. So often I hear from people saying, what is unit entitlement? How are my fees calculated? Why can't I just renovate my own apartment?"

So what I'm hearing here from the strata managers is that you are often left to pick up the pieces when a purchaser is not properly

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educated, not aware of exactly what they're buying into. And if our conveyancers, if I can encourage our conveyancers to do a little bit more in that space or arm their clients with some more information at that point of purchase, then hopefully it's going to make your lives a little bit easier.

Reena Van Aalst: That's really interesting, Amanda. I think that so many people don't really know what they're actually buying into when they do buy into strata. And there was recently on The 7.30 Report, basically people buying off the plan and all the defects that they've been experiencing and not being able to live in their apartment. So perhaps for those people that are buying off the plan, that could be another thing that you could add to your list of things that people should be told about. Because that's even one step removed, from even doing a search of the books and records. Because there probably aren't any at that time, in terms of when you're buying off a plan, do you know what you're actually buying into and the whole situation of defects.

Amanda Farmer: Yes. Advising on off the plan contract definitely requires special skill and expertise, that's for sure. I just wanted to highlight Sue's post as well. In response to this question that I asked about what you wish you would have known or wish you would've been told before you bought into strata. Sue has a long list. Her list includes, the ages of the owners, the percentage of owner-occupiers versus tenants. The years that each committee member has spent on the committee, the priorities for upkeeping maintenance, whether the sinking fund items such as lift replacement and balustrade replacements have been costed by a quantity surveyor, whether by-law breach notices are given out fairly. Long list there that Sue has clearly put together after perhaps spending some time in strata and experiencing the challenges that so many do experience.

Reena Van Aalst: Yes. Well, that's very interesting, Amanda, because when you look at an apartment, online initially, or you do an inspection, a lot of people don't really ask those questions, but it's funny. I actually had a tenant in my building that came to inspect one of the apartments that was up the lease, even asking other residents, what's it like to live here? Is it a community-based residency here? And things like that. And I was told by one of the owners that, that person had asked that question. Well, that's a really good question to ask because, a lot of people when they come in, they don't really ask that question. That's the thing, perhaps your commentator could have asked when they went in and did the inspection. If they saw any residents, they could have just perhaps asked some of those questions that none of us ever think to do. But anyway, there you go. You just reminded me of that event that happened in my own building.

Amanda Farmer: Yes. I have made that suggestion myself. I think it may have been when I was a guest on another podcast on one of Veronica Morgan's podcasts. I think perhaps her First Home Buyer Podcast that she has now together with The Elephant In The Room Property Podcast. And I was asked a question, "what do you advise people buying into strata? What do they do to best prepare? Make sure they don't buy a dud." And I said something similar going to the inspection and trying to pick out who are the stickybeaks here who actually live in the apartment next door. And having a chat to them about the community and being able to hear firsthand from somebody who hopefully is disinterested in the sale or purchase of that property, who can give you a fair view. Yes, the books and records are one thing, but being able to chat to someone who lives and breathes the community and is able to give you an honest opinion, could be very helpful. Well, well that is our episode for today. We have covered a wide range there. Lots packed in, busy week ahead, Reena?

Reena Van Aalst: Yes. For every strata manager, it's just unrelenting at the moment.

Amanda Farmer: Yes. Well, we're here for you, strata managers. We're thinking of you, you're certainly not alone. And we thank you. Can I say that from an owner's perspective? We thank you for the hard work that you're doing. You are recognised certainly, and this too shall pass. Can I say that? I hope it will.

Reena Van Aalst: Yes. We'll see how long it takes before it passes here. Everything does come to an end, eventually.

Amanda Farmer: All right. I'll send you off to your busy week. Thank you, Reena Van Aalst.

Reena Van Aalst: Thanks, Amanda. Bye.

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Amanda Farmer: Bye.

Outro: Thank you for listening to Your Strata Property. The podcast which consistently delivers to property owners, reliable and accurate information about their strata property. You can access all the information below this episode via the show notes at www.yourstrataproperty.com.au. You can also ask questions in the comment section, which Amanda will answer in her upcoming episodes. How can Amanda help you today?