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YSP Podcast Transcript: 381. Stories to solutions: how to learn from reported strata cases

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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 to this week's podcast episode. I'm your host, strata lawyer, Amanda Farmer, and it's wonderful to be here with you each week, helping to demystify the legal complexities of apartment living.

A couple of weeks ago, I published episode number 379, in which I unpacked a recent New South Wales District Court case. The episode was titled "The emails you wish you'd never sent".

I summarized for you the case of Read and Gitman. A case where a New South Wales strata manager was ordered by the court to pay \$35,000 in damages to a committee member found to have been defamed by three emails that the strata manager sent.

In that episode, I led you through the key findings in the case and explained why the form of an email might matter just as much as its content.

Now that episode was incredibly popular. I heard from so many of you how much you enjoyed the episode, how much you took from it, what you learned. There are many comments under the episode over on our website. More than the usual that we get on our podcast episodes.

I've heard from committee members, I've heard from owners, the strata managers have been a little bit quiet, at least publicly, but I do hope that if you are a strata manager, you have listened to that episode and you've thought about the case as an example of what not to do when communicating with owners. There's also been some discussion about the case over in our members Q&A forum.

Now we always have a thread in our forum dedicated to discussing the weekly podcast episodes and in the course of the discussion on the Reed and Gitman case one of our members posted this; "Hi, Amanda. I especially enjoyed this episode. Do you have any previous podcast episodes where you do a similar deep dive into court or tribunal cases?"

Well, in answer to that post, indeed I do. And what I've done for you today is to pull out just three past podcast episodes that I want to draw your attention to where I've spoken about important tribunal cases covering a range of different strata issues. Reading cases, reading summaries of cases, understanding how our courts and our tribunal are applying our strata law to real-life examples is an excellent way to learn.

Lawyers are taught to do this at law school. It's something that I do almost every day. Looking up cases, understanding how they may apply to situations that you're currently facing. Understanding what it is that you might need to prove to be successful in your own case before the tribunal. There's just so much to be gained by looking at decisions of our courts and tribunals. So I'm going to point out to you today three past podcast episodes that you might want to go back and revisit if you find that style of learning helpful, as I do.

For our members, I've actually gone a few steps further, as I usually do for our members, and I've produced a spreadsheet of all podcast episodes where I've discussed tribunal cases or important court decisions.

This spreadsheet includes a short description of what the case covers. There's a link there, both to the relevant episode and the case itself. This spreadsheet is this week's member resource. It will have hit members' inboxes on Wednesday this week. That's our member resource delivery day. For the paying members inside our online community, we have a new member resource each week. Sometimes this is a by-law template, sometimes it's the video recording of one of my online meetings with another member where we're solving a specific strata problem. This week, it is this spreadsheet of strata cases that you can explore via the podcast episodes. Now that is a sheet that I am going to commit to keeping up-to-date for our members.

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So wherever I talk about a case by way of example, or by way of giving an update on how our strata law is being applied, how it's being interpreted in practice by our courts or our tribunal. Whether I do this on a podcast or in a Friday live session I'm going to update that spreadsheet so it becomes a ready reference for our members. You can always revisit that sheet if you're facing a particular problem in your community to see if there is a case on point that you can read through to get an understanding of how you might best tackle it.

Now if you're not a member and you think that this spreadsheet sounds like something that might be helpful for you or your community, you can get access to it along with all the benefits of membership by heading over to stratamembership.com. There you'll find out everything that's on offer to our members. We would love to have you with us on the inside.

Now, turning to the three further cases that I wanted to highlight for you today after the popularity of our episode from a couple of weeks ago.

Sometimes in my podcast chats with strata manager, Reena Van Aalst, we publish these once every few weeks. Reena and I share our wins and our challenges from our respective positions as strata lawyer and strata manager. Reena is the owner of strata management company, Strata Central. That's often the place where I am bringing cases to the podcast, sharing them as a win, which is not necessarily to form an opinion on whether I think the case was decided in favour of the right party, but I generally class the publication of strata decisions as wins because the more information we have out in the public domain about the inner workings of our strata communities, the better.

So if you're a regular listener and you do enjoy those chats between Reena, you've probably heard me unpack some cases previously, three to draw your attention to today.

First up, back in episode number 156, quite some time ago now, I spoke about the case of Feletti and Eales. Now there are links to all of these cases in the show notes for today's episode. So if you want to explore these cases or the podcast episodes that they are featured in further, head over to the show notes and you'll be able to click through and you'll be able to click through and do that.

The case of Feletti and Eales, a New South Wales tribunal decision. The tribunal considered whether or not a landlord has an obligation to ensure their tenants comply with the by-laws. Now in that case, there were tenants who were breaching the noise by-law. The owners corporation pursued both the tenant and the landlord in the tribunal.

Now at first glance that sounds like a good idea. Why not pursue the owner of the lot? The person has the financial interest? The person who is invested long term? Tenants come and go? Owners are usually there for a few years at least. Owners are more likely to take notice of letters. Notices to comply. They are the ones with the interest in making sure everything runs smoothly in their property. So surely it's a good idea to include them to list them as respondents together with their tenant when you're making an application to the tribunal.

But in this case what was alleged by the owners corporation was that the tenants were making noise sufficient to disturb the peaceful enjoyment of others. That was a breach of the noise by-law. And enlisting both the tenant and the landlord as respondents to the application, the owners corporation had to prove that it was both the tenants and the landlord who were making noise sufficient to disturb the peaceful enjoyment of others. And of course, the landlord doesn't live there, the owners corporation could not prove that the landlord was breaching the by-law, only the tenant.

So the application was not successful against the landlord in that case. And there is a discussion there about why landlords are not directly responsible for ensuring that their tenants comply with by-laws.

Well, you'll hear me chat about with Reena in this podcast episode number 156 is why it is so important in light of this case to make sure that if you do want to make landlords responsible for the actions of their tenants, that you do state that in your by-laws.

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You can have a clause in the noise by-law, that clearly states occupiers, tenants, must not create noise that will disturb the peaceful enjoyment of others, and that owners, whether or not they live on site, landlords, if they don't live on site, are responsible should their tenants be in breach of that by-law.

You can even have a separate by-law altogether that is dedicated to explaining, making clear that owners are responsible for the actions of occupiers, whether or not those owners are themselves living in the property. I see many buildings with those types of by-laws in place, and it provides that fallback where you may have a non-responsive occupier or you may be looking for a way to engage owners in a discussion about behaviour in the building, you can rely on that by-law or that part of a particular by-law to be able to draw in the owner, the landlord and avoid the problem that was identified in the Feletti and Eales case.

So if that situation sounds like it might be happening in your building also and you might be assisted by a review of the Feletti and Eales case and turning your mind to whether you've got the right by-laws in place, head over and check out that discussion in episode number 156.

Another episode where I spoke in some detail about an important strata case, episode number 233. In that episode I referred to the case of Walker and the owners of Strata plan number 1992, a 2020 case coming out of our tribunal appeal panel. This case is about access to books and records. It is one that I speak about often in my training with strata managers. I do an entire webinar training on how to facilitate records inspections, how to make sure that the documents that you're providing are exactly the documents that should be produced in accordance with the relevant legislation. And I talk about this Walker case.

This case makes very clear that all financial records of an owners corporation, in particular, the levy registers, that is what lot owner Mr. Walker was seeking in this case, production of all levy registers for all owners. The strata manager had refused to provide these saying that was a privacy issue and the lot owner had no interest in seeing the financial position, the levy register of other lots.

When the case reached the level of the appeal panel, the appeal panel confirmed that all records under the custody or control of an owners corporation are required to be produced for inspection. This includes the financial records that must be held in accordance with the act and the regulation, and it includes the levy registers.

By the by, it also includes the strata roll, the complete strata roll, and I do refer in this podcast episode to another case that deals with the production of strata rolls. That's Legge, L-E-G-G-E. These are cases that I actually cite that I refer to when I am assisting owners, as well as members inside our community when I'm assisting them to access their own books and records via their strata manager. When they get pushback when they're told by the strata manager, no, you can't have the strata roll. No, you're not entitled to those financial records. These are the cases that I recommend are quoted in emails that are being sent to the strata manager or the secretary, whoever it is who is the custodian of the records when you are able to point to decisions of our tribunal proving your point, you put yourself in a much stronger position. And I have seen some very rapid changes in opinion, let's say when these cases are drawn to a strata manager's attention.

The third case I want to remind you of today, I discussed in episode number 261. This one's a little out of the ordinary. The case is Brazel, B-R-A-Z-E-L and Sydney Water Corporation. Again, an appeal panel case from 2021.

You'll notice I haven't mentioned there that there was an owners corporation involved in this case. I've mentioned Sydney Water. Well, in this case, a lot owner was trying to get their hands on records and was aware that the secretary of the Strata Committee was actually an employee of Sydney Water, and the secretary had been sending emails about Strata Business from their work email account.

The lot owner was in dispute with the strata committee. They were having trouble getting their hands on emails. The owners corporation was saying, "We don't have those records". The Strata manager said, "We don't have those emails on our file". So the lot owner, Brazel, issued a summons to Sydney Water, requiring them to produce the emails of their employee, so far as those

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emails were relevant to strata business. Now ultimately the tribunal appeal panel found that Sydney Water had to produce those emails.

So in this podcast episode, you will hear me say that the lesson here, particularly for committee members, for secretaries, for those busy people who have a lot on their plate with the day-to-day management of their strata committee, if you're firing off emails from the office, please be aware that you may be implicating, you may be involving, you may be burdening your employer down the track. Should there be a dispute, and should a clever lot owner want to gain access to those communications by issuing a summons as happened in this case.

So those are just three quick references to past podcast chats where I have covered tribunal cases. If you're interested in those topics in particular, and you love learning by listening to stories, that's really what our cases are. Other people's stories of how they have dealt with strata challenges, then revisit those episodes, check out the links in the show notes. If you are a member, as I said, there's lots more where these cases came from, check your inbox for this week's member resource. That is your ready reference spreadsheet of further strata cases you can quickly get across just by listening to specific podcasts. I've also got Friday live chats listed in there where I have covered off cases.

I've done the legwork for you. Have a quick scan through that spreadsheet and see if there are topics of interest there for you and your community where you can learn more by hearing me unpack an interesting strata case.

Thank you for your company this week. It's always a pleasure to be here. I look forward to catching you next time. Bye for now.

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 yourstrataproperty.com.au.