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YSP Podcast Transcript: Episode 197. Bathroom renovation gone wrong | committee nominations | another win for pets

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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. Hi, Reena.

Reena Van Aalst: Hi Amanda, how are you?

Amanda Farmer: I'm doing very well. It is lovely to have you with me today on this week's episode of the podcast. Lots of wins and challenges, and that's what we're here to talk about. I am looking forward to getting stuck into them this week. Let's kick off with your challenge, Reena.

Reena Van Aalst: Well, the challenge I have this week, Amanda, is with a bathroom renovation and the by-law is, in one case, being already passed and the other case has been submitted but not yet passed. Now, in relation to the first one, part of the by-law requirements was that the owners corporation needed a waterproofing certificate from the contractor who did the work. And, unfortunately, because the contractor hasn't been paid by the owner for the work, they're refusing to provide it. So that's one of the items where we have a bond in place that we were happy to refund, but unfortunately, until we receive all the criteria that was listed in the by-law, including the waterproofing certificate, then we can't release the actual bond.

The other case, which is even a bit more interesting, is that the owner proceeded with doing this bathroom without any authority. She asked us what was required and we said to her, "What work are you proposing?" And then she provided an outline of the works. Then she said, "Oh no, I'm not doing any waterproofing, I'm just removing tiles from the bathroom." And I said, "Well, if there's tiles on the boundary then they are still common property, then you still need to obviously put an application in."

So we didn't hear anything apart from finding out that the work was starting. We had complaints in the apartment underneath that there was water going into the apartment, and lo and behold, there was obviously a full renovation done because the building manager could see that it's going up with baths and toilets and everything. And there's obviously CCTV footage in this particular building. So anyway, we said to the owner that we're going to proceed with mediation, this bathroom has been installed without consent, we've had advised them from the resident underneath that there's leaking occurring.

They said, "Oh, no, no. I'll submit a by-law." Then we got receive, Amanda, the contractor's details and it's different from the person who did the work. The license is expired, and then she comes back and we said, we're going to go to mediation now, we've given you some time. Unfortunately, it's not what we had asked you to do. Oh no, he's back from holiday's now, here's his current license, which has been updated. And the actual waterproofing certificate was one that I hadn't seen.

So I looked up the actual fair trading website and it said it's actually a separate type of license that you need. So what had happened, we just did some Googling and like he would have, and found this old certificate, which refers to the APA.

So we're actually now at a standstill, obviously having to include the by-law that the owner submitted, but the committee will be advising against it because again, this person is not authorised to do waterproofing. So I think it's probably an important thing that strata managers understand, which I really didn't know much that this tiling license is different to the waterproofing license, so basically unless the person has both licenses, they actually can't do the work or certify that the waterproofing is actually approved.

We're a bit of a stalemate in both instances, Amanda, so I'm not sure what your experience has been with bathroom renovations but they are usually problematic because of the waterproofing requirements.

Publication Date: 28 January 2020
YSP Podcast Transcript: Episode 197. Bathroom renovation gone wrong | committee nominations | another win for pets

Amanda Farmer: Yes, so your first example there is a good one for how to do it properly, I guess. How to set it up in the beginning so that when you do have problems you've got some leverage if you like as an owners corporation or something to fall back on. You've got a by-law already in place before the work has started. You've got provisions in that by-law or I imagine that say a bond is payable and that the bond won't be released at all or in full without all the conditions of the by-law being complied with and one of those is to provide the certificate. Not the owners corporations problem if they own a cannot provide the certificate and therefore the owners corporation cannot release the bond. That's something obviously the owner has to sort out with their contractor.

However, I suppose your committee is saying what if they're never able to resolve this, we will never release the bond. We never see the waterproofing certificate so we don't know if it's been done properly. And I imagine your bond, well, depending on the circumstances, it wouldn't be enough to cover consistent water leakage if there is a problem with the waterproofing.

The owners corporation does have, and this is relevant to your second example as well, it does have as you'd know Reena, a right to go to the Tribunal and seek an order that the owner carry out work that needs to be done on the lot or permit the owners corporation access to carry out that work if the owner won't do it and the owners corporation can recover the costs of carrying out that work from the owner. So you want to have a look at Section 124 of our Strata Schemes Management Act and also Section 132. That's the section that says that the tribunal can make an order that an owner occupier performs work or takes other specified steps to repair damage if the owner or occupier has carried out work that has caused damage to the common property or to another lot.

Now arguably an owner who has removed a waterproofing membrane and not replaced it or not replaced it with a membrane that meets the relevant standard has caused damage to the common property being the common waterproof membrane and may have, if it sounds like this might be happening in your second example, be causing damage to another lot because there is water penetration happening, so that's the Section 132 where the Tribunal can order that the owner or occupier actually carries out the work or pays the owners corporation for doing the work.

Reena Van Aalst: Yes. Well as you know, Amanda, with waterproofing and bathrooms, it's quite, I mean obviously a costly exercise because normally in apartments where there's only 1 bathroom, that tenant will have to be relocated in this particular instance. So it's all just a matter of having the work done but also relocating the tenant while the work is being done. So it's another consideration that the owners corporation has to take into account.

Amanda Farmer: Yes.

Reena Van Aalst: For example. So yes, it sounds fun and games and I must say.

Amanda Farmer: It is and it is a big deal. These bathroom renovations, good on your first building for trying to tackle that from the beginning and put in place the measures that they can now rely on. Hopefully they'll be able to work that one out. But again, there's always a circumstance like your second building where owners just go ahead and start doing the work. And I think the important thing to be aware of there for buildings is that you can't ignore that kind of thing. You do have to go through those painful steps of enforcing your by-laws and enforcing the legislation, being aware of what your rights are and just saying to your strata manager, we need to tackle this in a way that best protects us and protects the other residents. We can't let this go as painful and costly and time consuming as it is.

Reena Van Aalst: It can be, you don't want that to go Amanda because obviously they're also concerned about the effects and secondly, in terms of setting a precedent where people can just do work, like you know there's that saying it's better to ask forgiveness than to seek permission. Well, not in this case.

Amanda Farmer: Not when it comes to strata, everybody was saying. Yes, a good one to remember there always ask for permission when you are doing work that's going to impact the common property and if you're not sure, have a chat to your strata manager or your committee members.

Publication Date: 28 January 2020
YSP Podcast Transcript: Episode 197. Bathroom renovation gone wrong | committee nominations | another win for pets

Reena Van Aalst: Exactly.

Amanda Farmer: All right. Thank you for sharing that one Reena. We're going to head across to my challenge for this week and this is a question that has come from a listener. Helen sent me an email asking this question and she said, "Amanda, can a husband and wife both be on the strata committee?"

She was concerned that that was happening in her building and she'd heard some conflicting views about whether or not that was the case and I told Helen that we'd have a chat about this one on the podcast. It's something we've talked about a few times Reena this rather confusing it can be, process of who is eligible for the committee, who can nominate, who can stand for election. Do you want to give me your views on this one?

Reena Van Aalst: Yes, so basically they both can be if they own separate lots, so they can't be on the committee, if they're nominated from the same lot, but if they're from different lots, and sometimes people do own more than 1 lot, they can own more than 1 apartment or a car space lot. That is still a separate lot that's paying levies and is in someone's name, maybe both names, but obviously the election process has to be correct in terms of who's being nominated.

Amanda Farmer: Yes. If they own separate lots then they can absolutely self-nominate, the same way that a sole owner of a lot can self-nominate to the Strata Committee. No problem. If they are co-owners, they both own the same lot. They can still both stand for election, but they have to be careful about who nominates them so they can't nominate each other because they are both standing for election. That's what Clause 31 of our Strata Schemes Management Act says.

They need to be nominated by someone who is not themselves a candidate for election as a member.

Reena Van Aalst: That's correct.

Amanda Farmer: Right. And Helen, I'm not sure if in your example, the husband and wife are co-owners or whether they are owners of separate lots or one of them may not be an owner. If one of them is not an owner, they again can still be nominated for election because a committee member does not have to be an owner. A non-owner can be nominated for election, but again, must be nominated by an owner who is not themselves seeking election as a member of the strata committee. So I think for couples, whoever they may be co-owners, they do just need to be careful about that nomination process. And I suppose Reena, maybe the rule of thumb is just don't cross nominate, find someone else to nominate you.

Reena Van Aalst: Exactly. Yes. And also the other thing to remember too is that if the person that nominates you no longer is an owner, then that will affect you being on the strata committee as well. Especially if you're not an owner.

Amanda Farmer: That is very true. And that is because section 35 of our Act says that an elected member of a Strata Committee vacates their office if the person was not an owner at the time of election and the individual who nominated them ceases to be an owner. So that's interesting and something to be aware of. I don't know how many strata managers, committee members do you think would be tracking the situation of nominators and making sure that the eligibility is still met?

Reena Van Aalst: Yes, that is really a problem, Amanda, because in most cases, software that strata managers use.

If an owner ceases to be an owner, and they're on the committee, you'll get a flag from the software telling you that this person was on the committee. Are you sure? And you have to obviously make necessary changes in the software because those details appear on the Section 184 certificates, et cetera.

But yes, the issue is the person who is nominating a non-owner when they cease to be an owner, that's I think where it's being perhaps forgotten. And then that's where I think the trouble, may start, where if there are decisions made and that person was on the committee and they shouldn't have been, what ramifications are there if there are disputes in the future.

Publication Date: 28 January 2020
YSP Podcast Transcript: Episode 197. Bathroom renovation gone wrong | committee nominations | another win for pets

Reena Van Aalst: So I think that's one of the really important things. So it's really hard I think apart from a manager knowing their own portfolio and knowing the process, I mean, I suppose when you know your buildings and you know your people, you should remember that. But then again, sometimes managers have such a huge workload, some people have 70 buildings and I know you can remember all those details with 70 schemes, so.

Amanda Farmer: Nope, not at all. Don't even try it.

Reena Van Aalst: Yes.

Amanda Farmer: So good question there from Helen. Thank you for that. It's always good to refresh on that process. Strata committee elections we know can get quite complex. And I have indeed been in many a meeting as I know you have Reena, where strata committees have reported to conduct their election and it's become quite clear quite quickly that they're not following those processes because they're just, they're hard to know, how to remember.

Reena Van Aalst: Well, the other issue Amanda, is that if the minutes don't say who the nominating person was and how is anyone supposed to know, like let's say a nominator has been nominated by an owner who they're no longer an owner, then how would anyone know that that person needs to get off?

Amanda Farmer: Yes, exactly.

Reena Van Aalst: Nothing in the minutes. So it's a bit of problem when people don't really understand how the election occurs and what information must be included in the minutes.

Amanda Farmer: Yes. And I think these elections happen very quickly. Either the past committee is reelected or there are new members coming in and everybody's sort of relieved or happy to get it over and done with and nobody's actually paying attention to who's nominating. Yes. Okay. How about a win Reena? Share with us your win for this week.

Reena Van Aalst: Yes, so we took carriage of a strata scheme last year with books and records were taking some time to be provided, but there was actually a mediation session that had been agreed to by the owners corporation and in this case it was actually a dispute about costs of the managing agent that had been billed to the lot owner, whereby the lot owner had submitted an application for a renovation, had submitted us the manager, when do I have to submit this by-law by, this is my application, et cetera, what do I need to do? And it sort of got lost on their sort of online submission system. Having some sort of portal and it never got to the manager and therefore that owner actually had missed the AGM deadline in which to submit their motion and to get a by-law drafted. There would have been enough time for them to go and get a lawyer and to get it drafted, but it would have been tight. But there still was an up time, if you will, the calculation of the periods of when they put their application in and when the agenda was being issued.

So anyway, so the person missed out and then the owners corporation itself through the managing agent said, no, we should get the by-law drafted, which I thought was a bit strange, and they could obviously engage the lawyer, they billed the owner and then they obviously had to call a general meeting for that owner and they billed for their time and reviewing the by-law and disbursements. Meeting was done electronically. So there wasn't that much cost in that process. But I'm not around on email and people, it's quite a big document sometimes with plans and renovations and by-laws.

So the owner ended up getting like a \$3,000 bill, which she was never notified of that cost. She knew she had to pay, but no one ever gave her an estimate of the costs and therefore that owner then went to the tribunal and then strata manager said yes.

They encouraged the committee to agree to mediation, which I mean it was a good idea because it wouldn't be bad just to try and settle the costs because really in a sense, when we did go to mediation, it wasn't really a matter for the tribunal apart from the fact that I think it was put on the lot account, which I think that's might've been, and then mediation said yet that is part of it.

Publication Date: 28 January 2020
YSP Podcast Transcript: Episode 197. Bathroom renovation gone wrong | committee nominations | another win for pets

Reena Van Aalst: We can discuss it. I was thinking, why are we here because really this is a dispute about costs.

Anyway, so we sat there and I was sort of, I had done a sort of a calculation in my head of thinking, okay, well the person didn't know and if we do charge for the costs that would have been incurred had she had the motion put on the AGM and it's just come to some sort of agreement.

So anyway, she had something in her mind, I had something in my mind. It ended up being the same. I hired a telecommuter. That's what we should have done the first place and not gone to mediation. But anyways, that worked out and she was happy. She's paid the amount now, I don't have the receipt, it ended up being charged back to the owners corporation and of course again our time and going out there and attending for a few hours, 2 hours and coming back.

Amanda Farmer: Yes.

Reena Van Aalst: So I think it was a good win, Amanda, in a sense that we were able to resolve it. But I think in terms of strata managing agents, being able to advise owners of cost, I mean you can estimate when you know, for example, how many lot owners don't get things by email as you know, 50 and is not getting it by email times, 20 pages for example, plus postage. You know what I mean? It's not that hard to work out. And she said I would have gone and got it photocopied myself if I, you know.

Amanda Farmer: True. Yes. So in case any of our listeners aren't across this process that we're talking about, it's not uncommon where an owner needs a by-law passed so they can start their innovation, that they say to the strata manager, I need this passed, I need to start within a month. And the strata manager says, no problem. We will convene a general meeting just for the purpose of your by-law, but you'll need to pay the costs associated with convening that meeting. And depending on the size of the building, those costs can start to add up.

Amanda Farmer: I agree 100% that the important lesson here is that that amount should be fixed. In my view, it should be agreed, it should be made very clear prior to anything being done or any costs being incurred that the amount is going to be \$1,500, 3 grand, whatever it is, \$500 in a smaller building and owner, do you agree with that? Because the owner might say, actually no, I can't afford that. I will instead wait for the AGM and then I will just have my motion on the agenda with everything else and there's no additional costs incurred.

Reena Van Aalst: And we also, Amanda, need to make sure that the strata committee obviously approves the convening of the general meeting for that owner because we don't have that authority, or that the secretary gives the instruction that we can convene general meeting on behalf of that owner as well. But you can give an estimate. I mean obviously you can't, you don't know how long the meeting's going to take, for example. That part you don't know. But overall you can give an estimate. And I think that people should be afforded that opportunity before that costs are incurred and then it's like 3 grand. It's like without her knowing exactly. I mean, had she been told beforehand? And also we also ask people when we give an estimate to ask them to consent in writing that they approved that estimate because you know, they might say it's on the phone, but then after when they look at the bill, it's always a separate thing.

Amanda Farmer: Yes. Or imagine if the by-law fails and they're unhappy and by-law and you had to pay for the meeting.

Reena Van Aalst: Oh yes. Double whammy Amanda, yes.

Amanda Farmer: It's interesting that you raise this one because I also had a win recently and it's not the one that I plan to raise for this episode, but very, very similar situation where there had been an agreement that the owner would pay the costs of the owners corporation's lawyer, preparing the by-law, all of the back and forth that went with that, convening the meeting and of course it all fell apart when the lawyers fees came in. They were quite astronomical in my view. They were in the tens of thousands for the work that I'd had done.

Publication Date: 28 January 2020
YSP Podcast Transcript: Episode 197. Bathroom renovation gone wrong | committee nominations | another win for pets

Reena Van Aalst: For by-law?

Amanda Farmer: Well, look, I didn't get into it too closely. It wasn't just the by-law dropping, it was a bit of a dispute and correspondence going back and forth, but I became the new lawyer acting for the owners corporation and the lot owner had ended up filing an application for mediation because they wanted their by-law made and the owners corporation was holding back on putting the by-law forward at a general meeting until this cost issue was sorted out and the lot owners, Laura and myself did exactly what you were saying, Reena, you wished your new building had done, which is not waste time or money on a mediation and instead the two of us got together and we said, all right, what would your client accept? What's your client willing to pay? And we were able to reach a resolution that my client was very happy with because they saved money that they were otherwise looking at spending in the tribunal and the lot owner was happy because they finally are able to get their by-law before a meeting and get their work done.

Reena Van Aalst: That's a great win, Amanda.

Amanda Farmer: It's a compromise on both sides in those situations is always helpful.

Reena Van Aalst: It's funny, Amanda also when strata manager is telling the owners corporation to agree to mediation, when it's the costs that are at the center of the mediation, I'm thinking, well, trying to settle the matter would have been much more advantageous I think to everybody.

Amanda Farmer: Yes, no doubt there is a reason they now have a new strata manager.

Now the win I want to bring to today's episode is a new pets case. We have had a raft of these in New South Wales and it's actually becoming a little bit hard for me to keep up with them. We've had a couple since the ones that I was talking about last year, which were the Yardi case and the unpublished McCormick case, which a lot you contacted me and asked for a copy of that one. The latest publication, and it's certainly not the only one since those cases is the owners Strata Plan number 58068 and Cooper. That was a decision that was handed down on the 21st of November 2019 and again it is a case that says a complete ban on pets is harsh, unconscionable or oppressive and a by-law that does that is invalid.

Oh yes. So I'm not aware of any appeal against this one. There were definitely lawyers involved on both sides, which we haven't seen necessarily in all of these pets cases and some fairly detailed submissions made. But this was a lady who was determined to keep her pet dog. His name is Angus and she defended an application by the owners corporation that she comply with the by-law and she did that on the basis of saying well the by-law is invalid. It actually can't be enforced. It always has been invalid. This building actually has no pets by-law because it is harsh, unconscionable or oppressive. And under our New South Wales legislation, that is enough to render a by-law invalid. So this is a message for both owners corporations who have these pet bans, complete pet bans in place, and also for owners who are thinking about perhaps challenging that position.

It's important for both sides to be across the direction that our tribunal seems to be heading in on a number of occasions now and have a think about whether or not that complete pet ban is in everybody's best interest, particularly if it's going to be challenged by lot owners and a lot of money and time is going to be spent on litigation. There were barristers involved in this case on both sides and lawyers, as I said, on both sides, it dragged on. It was quite hard for the media that it came out after this was that the lot owner understandably was incredibly relieved and happy that it was finally all over. So you can just think about the trauma that that lot owner has gone through and the committee of course thinking it was putting its best foot forward. The result didn't go their way on the day, but if you are a committee defending one of these applications, it's, these are important cases to be aware of.

Reena Van Aalst: Definitely, Amanda. I think I'm, and I've got a few schemes that have that no pets by-law, so yes.

Amanda Farmer: and it's, Queensland saw this change a long time ago that pet bans were challenged and successfully and they seem to have kind of gotten over it and gotten over this practice if you like, of banning pets and I think that's ultimately what we're going to see in New South Wales.

Publication Date: 28 January 2020
YSP Podcast Transcript: Episode 197. Bathroom renovation gone wrong | committee nominations | another win for pets

Amanda Farmer: One thing that I have seen up a couple of times now and I find this really interesting is owners who keep cats and they're allowed to keep cats because the by-laws say that they can and then they're concerned because they're in a high rise that the cat is unsafe on the balcony so they put up some safety netting to keep the cat from jumping off as cats like to do from jumping off the balcony. And I have been contacted a few times now, and I think this may be the new safety issue if you like, in strata schemes, particularly now is we're allowing more pets, owners who have been told they can't keep this netting because it affects the external appearance of the building.

I've definitely seen that before when it comes to child safety and child safety nets, but I'm starting to see it now for cat safety and most recently I was contacted by a vet who said that vets actually have a name for this where cats are injured or killed because they jump off high-rise balconies and they call it High-rise syndrome and it is very common. And this particular person is actually a vet living in high-rise, has installed one of these nets to protect her cat and she is having to deal with an unhappy owners corporation when it comes to those nets. So I'm just putting it out there. I think that'll be..

Reena Van Aalst: Can I ask you about that? I mean like child safety. Yes, I understand. But I mean in terms of aesthetic appearance of a building and having these cat nets, I mean those are the same or sort of like...

Amanda Farmer: Yes, this is an issue. The last couple of examples that I've seen, they are not the same as the child safety nets. There is a company out there that's doing cat netting or wiring and it is black and it is in my view, much more visible than the clear transparent child's safety nets that are done by NetZen, which I actually have installed in my own property to protect my child in our high-rise and I don't understand why the cat company is not developing the same kind of aesthetic pleasing nets. I imagine they're more expensive and definitely any client who comes to me with a difficulty with their owners corporation and the cat netting, I do suggest that a compromise may be to propose the more expensive but more aesthetically pleasing child safety nets.

Reena Van Aalst: Exactly yes, I agree with that. I think Amanda, as long as it sort of like he can't see it, but if it becomes an eyesore that's the same as having a washer on your balcony. I mean what's the difference if both of them are affecting the appearance of the lot?

Amanda Farmer: Yes.

Reena Van Aalst: So yes, I'm glad that at least you can get that netting that's perhaps, the more aesthetically pleasing and not as, an eyesore that's a dark color that perhaps may clash with the other parts of the building.

Amanda Farmer: Yes, fair enough. So I will put the link to that case. It is hopefully a reported case. It did take a few weeks for it to actually get reported. So we often have a bit of a lag here in New South Wales. We hear about the cases maybe in the media or we know as lawyers that they've been decided. The decision was published at the beginning of 2020 even though it was made in November 2019 so I'll put the link so you can all have a little read of that one. But other than that, I think that is about it for our episode this week. Reena, anything to add?

Reena Van Aalst: No, good Amanda, thank you.

Amanda Farmer: All good, and I will look forward to chatting to you again next time.

Reena Van Aalst: Bye Amanda.

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