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Article Information

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Probably the most expensive Balcony in Queensland – A warning to Bodies Corporate about acting Reasonably

Albrecht v Ainsworth & Ors [2015] QCA 220 (6 November 2015) – Bodies Corporate have a statutory obligation to act reasonably. But what does that actually mean? The Body Corporate for Viridian Noosa Residences probably thought that meant acting strictly in accordance with all relevant legislation. Unfortunately, a recent decision of the Queensland Court of Appeal has underlined that this may not always be the case, at least when it comes to approving a balcony.

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Background

Viridian Noosa Residences is an architectural award-winning community titles scheme at Noosa Heads ("**Viridian**").

Sometime around March 2011, a lot owner at Viridian, Martin Albrecht, decided that he wanted to extend the deck area of his property ("**Balcony**"). To create the Balcony, however, it was established that he required the Body Corporate for Viridian ("**Body Corporate**") to approve it at a general meeting by way of a resolution without dissent – meaning no lot owner could vote against it.

On 10 August 2012, the Body Corporate considered a motion to approve the Balcony ("**Motion**"). The Motion failed to carry because several lot owners at Viridian voted against it.

Mr Albrecht complained to an adjudicator for the Commissioner for Body Corporate and Community Management ("**Adjudicator**"). He argued that owners at Viridian had acted "unreasonably" when they voted against the Motion.

On 2 September 2013, the Adjudicator concluded that the sole issue to be determined was whether, as an objective question of fact, "there was something unreasonable in the decision not to pass the motion".[1] After considering all the facts, the Adjudicator found that the Body Corporate had acted unreasonably and deemed the Motion approved – meaning Mr Albrecht could have his Balcony ("**Decision**").

However, several lot owners at Viridian ("**Viridian Owners**") appealed the Decision to the Queensland Civil and Administrative Appeals Tribunal ("**Appeals Tribunal**"). They appealed the Decision principally on the basis that it was wrong in law. On 17 October 2014, the Appeals Tribunal agreed with them, stating (amongst other things) that the Decision had the effect of "overriding the will of a substantial majority of owners at Viridian".[2]

Mr Albrecht appealed the decision of the Appeals Tribunal to the Queensland Court of Appeal. On 6 November 2015, the Court of Appeal found that the Decision was not wrong in law and, therefore, that the Appeals Tribunal was not entitled to set it aside.

As result, the Decision was restored and the Motion was treated approved, albeit over 3 years after it had been voted down

and many hundreds of thousands of dollars in legal fees incurred in the meantime.

Comments

No doubt the Viridian Owners were disappointed with how these proceedings turned out. The Motion to approve the Balcony required a resolution without dissent and they dissented. On one view, that should have been the end of it. The reason it was not, however, is because of the overriding obligation on Bodies Corporate to act reasonably. Here, the Adjudicator found that the Body Corporate acted unreasonably which, in effect, meant that it was unreasonable for lot owners to vote against the Motion.

Interestingly, both the Adjudicator and the Court of Appeal accepted that the concerns of the Viridian Owners were not without substance. It was accepted, for example, that approving the Balcony may affect that architectural integrity of Viridian – particularly given that it was an award-winning design. It was also accepted that approving the Balcony could motivate other owners at Viridian to embark on similar projects – effectively opening up the floodgates.

However, the ultimate question was not whether the views of the Viridian Owners were reasonably held, but rather whether their opposition to the Balcony was unreasonable in the circumstances.

Ultimately, the Court of Appeal found that:

- the statutory obligation to act reasonably required the Body Corporate to balance all factors and consider all relevant circumstances
- the question was not whether the decision to refuse the Motion was "correct" but whether it was objectively reasonable, and
- the Decision of the Adjudicator was correct when she decided that it was "unreasonable" to vote against the Motion and the Balcony ought to have been approved.

Lesson for Bodies Corporate

The critical lesson for Bodies Corporate to understand is that "reasonableness" seemingly trumps all.

Unfortunately, what will and will not be a "reasonable" may be difficult to determine. As stated by the Court of Appeal, "*views as to what was reasonable or unreasonable involved value judgments on which there was room for reasonable differences of opinion, with no opinion being uniquely right*".[3]

Therefore, whilst lot owners may choose to vote against motions, they and their Body Corporate run the risk that if that vote is objectively unreasonable in all the relevant circumstances, that decision could be overturned, regardless of what it otherwise stipulated in the legislation.

If you or your Body Corporate is concerned about whether a decision you have made or about to make is "reasonable" or you simply wish to discuss the matters raised in this article, please contact our property & development team.

For another article on the importance of Bodies Corporate acting "reasonably" please see here:
The price for being "unreasonable" – Body Corporate ordered to pay costs in management rights dispute

1 Viridian Noosa Residences [2013] QBCCMCmr 351, [22].

2 Re Body Corporate for Viridian; Kjerulf Ainsworth & Ors v Martin Albrecht & Anor [2014] QCATA 294, [1]

3 Albrecht v Ainsworth & Ors [2015] QCA 220 (6 November 2015), at [84]