

**INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE
TRIBUNALS IN NSW**

Name: Ms Ning de Tarle

Date received: 23/11/2011

Ning de Tarle

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LEGISLATIVE
COUNCIL

20th November 2011

The Director
Standing Committee on Law and Justice
Parliament House
Macquarie Street
Sydney 2000

**Re: Opportunities to Consolidate Tribunals in NSW
(inquiry)
- The Jurisdiction and Operation of the Consumer Trader
and Tenancy Tribunal**

Dear Sir/Madam,

I am writing to you to make a submission about my experiences and opinions of the above Tribunal (CTTT) regarding STRATA matters.

FACT:

In August 2009, a new owner purchased an apartment in our building. Before moving into the building in October, he wanted enclose his car spaces in our open plan secured garage. Without applying to Owners Corporation (O/C), this owner (applicant) directly went to the Department of Fair Trading, lodged an application for mediation on 22/09/2009. Application accepted.

Two days later, he lodged a DA with Owners Corporation. The mediation was held on 19/10/2009.

On 17/11/2009, at O/C's Annual General Meeting, the proposed by-law for this DA was unanimously rejected, except by the applicant (59 votes by entitlement in favor and 682 against).

In December 2009, the applicant filed two applications with CTTT, requesting for orders by an adjudicator to pass the proposed by-law and to allow the enclosure of the car spaces.

In February 2010, two orders were issued from CTTT; one was to dismiss the application of passing of the by-law; the other one was to order O/C to allow the enclosure of the car spaces.

O/C appealed the 2nd order in March 2009. After both sides submitted evidences, the hearing was held on 23/06/2010. The applicant brought a strata lawyer, the committee members of the O/C represented themselves (one of the committee member is an IT lawyer, the CTTT counted him as a solicitor representing the O/C).

The Tribunal Member who chaired hearing admitted that he did not have time to read the files; there were too many papers, as he said. He made a comment expressing his dislike of "Owners Cooperation" before the proceeding started.

At the hearing, the lawyer representing the applicant put a number of O/C committee members on the witness stand. But the Tribunal Member would not allow the witness to speak and explain the O/C's position after they answered (most of them only "yes" or "no") the questions from the lawyer.

After 2 hours, the hearing terminated without any decision being made. The Tribunal Member ordered both sides to submit a new summary of evidence.

On 22/07/2010, O/C received the written decision, ordering O/C to allow the enclosure.

The result of this order (car space enclosure) led to this:

1. Enclosed whole building sewer system within a locked space;
2. Relocating from the new enclosed space, all the electrical controls of the 2 sewer pumps to outside the enclosed space;
3. Having adverse effects on 2 joining car spaces;
4. Reducing the applicant's car spaces from 2 to 1 due to the wall built around space making it non-compliant for a double garage.

In August 2010, I wrote a complaint to the Chairperson of CTTT, outlined my grievances. I was advised that the chairperson is not in a position to revisit the evidence or review the findings of the Tribunal member.

The whole experience with CTTT is very stressful ordeal for me and for most of our community members who were involved in this case. The hearing is nothing like what CTTT Act stated: *"The Tribunal is to act with as little formality as the circumstances of the case permit..... without*

regard to technicalities or legal forms.” Even ordering a recording CD of the hearing was not an easy task.

OPINIONS:

1. The mediation application should only be accepted by Fair Trading, after, or if the dispute can't be resolved by the O/C, in this case, the applicant by-passed the O/C.
2. Considering the benefits and losses due to the enclosure, and previous decisions made by CTTT on the similar cases, the Tribunal Member has made an anti-social and inconsistent decision, confirming his antagonism against Owners Corporation in general.

ARGUMENTS:

1. According to dictionary, “mediation” is to intervene between people in a dispute in order to bring about an agreement or reconciliation.

At the time that the applicant applied for the mediation with The Department of Fair Trading, there was no dispute. There was no application lodged with the O/C, no discussions or considerations made by the O/C. Yet, the Department still went ahead with the mediation.

Apart from wasting time and resources, this mediation only helped the applicant, showing his aggression towards the O/C and the harmonious community living in the building (it may not be relevant, but the applicant has already a track record of having troubles with various O/Cs, involving them with CTTT few years ago).

2. Strata living is community living. An order made by an Adjudicator or a Tribunal Member must have regard to the interests of all the owners in the use and enjoyment of their lots and common property.

In our case, this enclosure benefited no one, not even the applicant himself. People who live in our building all understood this, not only all owners voted against it, 10 out of 17 owners wrote to CTTT in different forms to support the O/C.

Disregarding all the evidence presented and 3 earlier similar cases that were rejected and published on CTTT's own website, this Tribunal Member made the decision allowing the enclosure.

Both at the hearing and in his written decisions, this Tribunal Member did not perform his duty in accordance with Tribunal Objectives and the

Code of Conduct for CTTT members. His decision reasons are not consistent with previous decisions of the Tribunal.

RECOMMENDATIONS FOR ACTION

1. The STRATA disputes are totally different from any other consumer and trade disputes. In most cases, the STRATA issues have been evaluated and decided in a democratic environment – the Owners Corporation.

The Owners Corporation is made of **all** the owners of the community. If a decision is made unanimously, as long as it is lawful, it should be respected. We live in our building, made our largest investment in our lives into where we live, certainly the owners wish the best for our surroundings.

CTTT could well mediate, but should not have the right to make an order against the interests of all the owners in the building to fulfill one person's wishes.

2. If we do need a Tribunal for resolving STRATA disputes, this Tribunal should be an expert body in strata law. Its' member should understand the community responsibilities of STRATA living. It should make consistent decisions.

The Tribunal should have periodical review the attitude of its members towards the public; should conduct ongoing training program.

3. The Tribunal staff should scrutinize the applications more carefully. It could reduce the chances for some people using the system to bully their way in a community.

I do hope the new government will reform the current CTTT. So, it can provide a genuinely fast, informal and flexible process for resolving disputes, and to restore the faith we lost in this Tribunal.

Regards,

Yours faithfully

Ning de Tarle