

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Baradel v The Body Corporate for Skyring* [2018]
QCATA 135

PARTIES: **MARA BARADEL**
(applicant/appellant)
v
THE BODY CORPORATE FOR SKYRING
(respondent)

APPLICATION NO/S: APL075-18

ORIGINATING
APPLICATION NO/S: 0935-2017

MATTER TYPE: Appeals

DELIVERED ON: 17 September 2018

HEARING DATE: 10 September 2018

HEARD AT: Brisbane

DECISION OF: Member Roney QC

ORDERS: **1. The application for a stay is dismissed.**
2. The order of the Tribunal made on 30 May 2018 suspending operation of the Adjudicator's order is set aside.

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – Body Corporate and Community Management – appeal from order of adjudicator – by-law of the Body Corporate concerning use of balconies to cause minimum disturbance to other occupiers – By-law of the Body Corporate concerning disturbance by animals of other occupiers – whether to stay an Adjudicator's order pending determination of the appeal

LANDLORD AND TENANT – RESIDENTIAL TENANCIES LEGISLATION – OTHER MATTERS – Body Corporate and Community Management – appeal from order of adjudicator – by-law of the Body Corporate concerning use of balconies to cause minimum disturbance to other occupiers – by-law of the Body Corporate concerning disturbance by animals of other occupiers – whether urinating dog caused a breach of s 167 of the *Body Corporate and Community Management Act 1997* (Qld) – whether a nuisance or

interference with peaceful enjoyment of another lot – whether to stay an Adjudicator’s order pending determination of the appeal

Body Corporate and Community Management Act 1997 (Qld), s 167

Bodies Corporate for East Village Ridges and The Ridge v Ridges Peregian Springs [2017] QCATA 51
Re Skyring [2018] QBCCMCmr 115

REPRESENTATION:

Applicant: Self-represented

Respondent: Hynes Legal

APPEARANCES:

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

REASONS FOR DECISION

- [1] In 2017, the Respondent to this appeal, the Body Corporate for Skyring, which is a multilevel high-rise in Newstead, Brisbane, brought an application before the Office of the Commissioner for Body Corporate and Community Management alleging that the Applicant, Ms Baradel had, in the way that she had kept her dog in the unit, caused a nuisance to other owners, and breached s 167 of the *Body Corporate and Community Management Act 1997* (Qld) (‘BCCM Act’).
- [2] The events which were the subject of that application concerned the fact that the Applicant was keeping a dog in her unit, which was being permitted to urinate on the balcony of the unit, and that urine was running off the balcony onto the lot below the Applicant’s unit.
- [3] In the course of attempted resolution of the dispute, in May 2017 the Body Corporate entered into an agreement which was the result of conciliation between the parties by which:
- (a) The Applicant acknowledged that she had taken responsibility and stopped the dog urinating on the balcony;
 - (b) The Applicant would be permitted to keep her dog in her lot provided she complied with her acknowledged responsibility and also the conditions in the by-laws relating to the keeping of animals;
 - (c) If she failed to comply with those conditions she would be given one more opportunity to comply but if she did not, the committee would withdraw approval for her to keep the dog; and

- (d) The committee would lodge an adjudication application seeking the removal of the dog, but providing she complied with the conditions of approval, the committee would withdraw the application prior to any order being made. The parties undertook to act in good faith to carry out the terms of the agreement.
- [4] The Body Corporate contended that she did not comply with the terms of the agreement and that the dog continued to urinate on the Applicant's balcony, and which dripped onto the balconies below. It sought an order, which in due course on 1 March 2018, was made by an Adjudicator, that within a period of six weeks from the date of the order, the Applicant was required to remove the dog named 'Lulu', which she was keeping within her lot, and thereafter keep the dog removed.¹
- [5] One of the bases for the Adjudicator's order requiring the removal of the dog Lulu within six weeks of the date of the order, was that the Applicant had conceded that the dog's urine had dripped over the balcony previously and caused a disturbance to the occupiers of the lot below, but despite the conciliation agreement which gave her ample opportunity to act to prevent further disturbance resulting from her dog's activities, it continued to urinate on the balcony of the lot. That urine had in the past and continued to drop onto the balcony below, notwithstanding the actions taken by the Respondent to prevent that occurring. It was concluded that the dripping of the dog's urine onto the lot below as well as liquids used in cleaning it up constituted a breach of By-law 7 in the CMS, and also a breach of By-law 9 which required that animals not disturb other occupiers. The Adjudicator also found that the dripping urine constituted a breach of s 167 of the BCCM Act because it was found to constitute a nuisance and to unreasonably interfere with another owner's use of their lot.
- [6] By application filed in the Tribunal on 28 March 2018, the Applicant appealed that decision. The matter before me concerns an application that the Applicant has brought that the order of the Adjudicator be stayed pending the determination of this appeal. The Body Corporate opposes that application. Her application for a stay was made on 30 May 2018. Without there being any formal hearing in relation to that application, on 30 May 2018 the Tribunal made an interim order suspending operation of the Adjudicator's order until further order of this Tribunal. It also made directions requiring the Applicant to file and serve a copy of her submissions in support of the stay application and for the Respondent to do likewise. The Respondent Body Corporate was not heard in relation to that interim order.
- [7] In the stay application filed 30 May 2018, the Applicant seeks the stay because she wants to keep her dog 'until a final decision has been made'. That certainly comprises a pithy statement of why a stay would be something she would enjoy, however it does not specify the grounds on which a stay is being sought. It may be readily inferred from the combination of what is in the principal application, and also in the stay application, that the basis upon which she seeks a stay is that the balance of convenience lies with permitting her to continue to keep her dog until a final determination of the appeal is made, and because she believes that she has now acted in a way to prevent any ongoing problems with the dog's urinary activity.

¹ *Re Skyring* [2018] QBCCMCmr 115.

- [8] Notwithstanding that the Applicant was to file and serve her submissions by 8 June 2018, or advise that no further material would be filed in support of the stay application, she has not filed any material in support of it. On 19 June 2018, the Applicant did file a miscellaneous application seeking further time to file those submissions, and orders were made on 28 June 2018 extending the time for her to file her submissions to 13 July. There was a guillotine order put in place should the Applicant fail to comply with that direction. She did not serve a submission in support of the application by the 13 July date. Instead, on or about 19 July the Applicant served what she described as an Appeal Book. The appeal book comprised documents that went to factual issues that related to the original application, and potentially to seek to substantiate the grounds of appeal.
- [9] It remains the case that the Applicant has not filed any submissions in support of the stay application, save to the extent that it can be elicited from the terms of the principal application itself.
- [10] Her grounds of appeal from the decision are in the following terms:
- (a) I believe the decision made has been unnecessarily harsh and extreme.
 - (b) There is very little, even no analysis of reasons given for the decision made for the removal of the dog.
 - (c) The dog is kept indoors at all times.
 - (d) The balcony does not have a drain or spitter therefore any liquid being from weather, accidental spillage has to run off.
 - (e) Wildlife eg birds perch on balustrades leaving droppings on balconies below.
- [11] Under the heading ‘Orders Sought’ (although as shall be seen, they are not in fact referable to any orders sought), the Applicant has set out what seem to be further grounds of appeal in the following terms:
- Considering the steps I have taken since the matter first aroused (sic)
- Walk the dog between 3-5 times daily
 - It weighs under 5kg
 - Rubber barrier approx 5cm in diameter has been glued to the entire length of the balcony to contain all liquid
 - A dog loo is been (sic) used if required by dog
 - As the owner of lot 2005 I would request to keep the family pet as she is a companion dog
- [12] The application goes on to refer to the fact that the matter had been resolved pursuant to the terms of the conciliation agreement referred to above, and she contends that all appropriate steps have been carried out on her behalf ‘to prevent the dog from being a nuisance’. Clearly that is not the case, and the Adjudicator’s findings demonstrate that.

Analysis and disposition

- [13] By s 289(2) of the BCCM Act, the Applicant may only appeal the Adjudicator's order on a question of law.
- [14] Doing the best one can with the grounds which have been cited above, they seem to fall into three contentions, namely:
- (a) That the decision was unnecessarily harsh;
 - (b) That there were inadequate reasons given for the Adjudicator's decision; and
 - (c) The evidence that the urine belonged to the Applicant's dog was unreliable or inadequate.
- [15] It is not easy to tease out any substantive basis on the evidence which was before the Adjudicator or indeed on any of the further material which has been contained in the appeal book, as to how it is that these propositions can be sustained. Even less apparent, with the exception of the contention that there are inadequate reasons, is how any of them constitute an appeal on a question of law.
- [16] Conceptually, the notion that an Adjudicator whose powers include to make orders that are just and equitable does not mean that an 'unnecessarily harsh' order cannot be made. In this case, the Adjudicator set out in detailed reasons why it was that the history of the matter dictated that after having been given many opportunities to remedy the situation, the appropriate outcome was that the Applicant be no longer permitted to have the dog on the premises. She was given six weeks in which to remove the dog but did not do so.
- [17] A further six months have now passed since the Adjudicator's decision was made. The Adjudicator's decision does not preclude her from having any dog on the premises. It affects only the particular dog that has been causing the problem. It does not therefore seem to me inherently unreasonable or harsh to require, that, in effect, the offending dog no longer be present.
- [18] The challenges to the factual findings of the Adjudicator have little to support them, even if one takes the Applicant's assertions about the evidence at face value. A concession was made on behalf of the Applicant to the Adjudicator that it had been her dog whose urine had dripped over the balcony and caused the disturbance below. The idea that there might now be an appeal based upon a challenge to that very proposition that had been conceded below is problematic. The Applicant has very limited prospects of success.
- [19] It is well accepted that in this jurisdiction, and probably in others, for there to be a stay of orders made by an Adjudicator, good reasons and a proper basis need to be shown. Obviously that would involve a consideration of whether it is appropriate to maintain the status quo pending the determination of the appeal so that orders are not rendered nugatory.²

² *Bodies Corporate for East Village Ridges and The Ridge v Ridges Peregrin Springs* [2017] QCATA 51.

- [20] Had this appeal been prosecuted by the Applicant expeditiously and in accordance with the directions made, it undoubtedly would have been heard and determined before now. The Applicant's failure to expeditiously progress it, or indeed progress it in any substantive way at all, has meant that it has not been determined as it ought, by now.
- [21] I am not satisfied, having regard to the history of the matter, and the numerous attempts that the Applicant has had to demonstrate an ability to end the problem of her urinating dog, that this is a case where there are good reasons to stay the Adjudicator's orders. I therefore dismiss the application.
- [22] The order of the Tribunal made on 30 May 2018 suspending operation of the Adjudicator's order is set aside.