

# THE PERILS OF BY-LAW ENFORCEMENT

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The job of an on-site manager can be a difficult one. It necessitates a delicate balance between maintaining a good relationship with lot owners and occupants on the one hand, and ensuring adherence to the Body Corporate scheme by-laws on the other.

This was illustrated in a recent case in the Southport Magistrates Court, in which Short Punch & Greatorix successfully acted for a manager.

In this instance, the manager had been concerned with ensuring that the pool and spa area of his building were operated in a manner that was compliant with the scheme by-laws.

The building had, amongst its occupiers, a number of families and small children. The manager became concerned when one particular lot owner was persistently breaching the by-laws of the scheme by bringing food and alcohol into the pool area, and, on occasions, bringing what appeared to be glassware.

After repeated attempts to have the lot owner remove these items from the pool area and refrain from breaching the by-laws, a heated disagreement occurred, at which time the manager, out of frustration, picked up the lot owners plastic drink bottle and food packets and threw them over the fence and out of the pool area. There was then an altercation between the manager and the lot owner.

The lot owner alleged that he was assaulted by the manager, although this was successfully disputed by the manager with the assistance of CCTV footage. The lot owner also alleged that the drink bottle (containing coca-cola) landed in the lot of the lot owner, exploded and caused damage to a floor covering.

The lot owner brought proceedings in the Southport Magistrates Court pursuant to a Complaint and Summons under the *Justices Act*. The substance of the Complaint and Summons was that the manager had breached Section 5 of the *Peace and Good Behaviour Act 1982*.

This particular legislation entitles a Complainant to bring action in the Court in circumstances where another person has threatened:

- to assault or do bodily injury to the Complainant or a person under their care or charge; or
- to procure another person to assault or do bodily injury to the Complainant or a person under their care or charge; or
- to destroy or damage the property of the Complainant; or
- to procure another person to destroy or damage the property of the Complainant.

These proceedings eventually resulted in a full day hearing in the Magistrates Court in January 2019. Had the Complainant been successful in establishing a breach of Section 5, it was open to the Court to make Orders against the manager, which could have included, amongst other things, an Order that the manager keep a certain distance from the Complainant lot owner.

Such an Order would have represented an extraordinary impediment to the manager in the context of his attempts to future enforce any breaches of by-laws by that particular lot owner.

After the examination and cross-examination of witnesses for both parties, and following legal submissions, the Magistrate ultimately dismissed the Complaint and ordered costs in favour of the Defendant manager.

The case highlights the difficulties that managers can face in attempting to enforce the by-laws by themselves.

In circumstances where a lot owner is displaying recalcitrant behaviour in the context of non-compliance with the by-laws, it may well be a safer path for the manager to seek the assistance of the committee in dealing with the issue.

The *Body Corporate and Community Management Act 1997* provides a mechanism for the Body Corporate committee to provide “*Continuing Contravention Notices*” to non-compliant lot owners or occupants, where there are ongoing breaches of by-laws. Section 182 of that legislation specifically authorises the Body Corporate to issue such notices, which in turn provide a reasonable time for that lot owner or occupier to become compliant with the by-laws.

If the lot owner or occupant fails to become compliant after the reasonable time, then the Body Corporate may bring proceedings against the non-complying lot owner / occupier,

either in the Magistrates Court (by way of private prosecution under the *Justices Act*) or to the Office of the Commissioner for Body Corporate and Community Management pursuant to Chapter 6 of the BCCM legislation.

The take out from this case is that it is better for managers and committees to work together in resolving the issue of habitual breaches of by-laws by lot owners or occupiers, rather than trying to go it alone.

Should you require advice regarding the above, please contact Tony O'Connor on (07) 5570 9380.

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