

# ADJUDICATOR'S ORDER

Office of the Commissioner  
for Body Corporate and Community Management

**CITATION:** *Hedges 252* [2014] QBCCMCmr 210

**PARTIES:** The body corporate for Hedges 252 CTS 34572 (**applicant**)  
Sandra Cowell, the owner of Lot 701 (**respondent**)  
Matthew and Monika McLennan, the owners of Lot 603 and Noela Fletcher, the owner of Lot 702 (**affected persons**)

**SCHEME:** Hedges 252 CTS 34572

**JURISDICTION:** Sections 227(1)(b) and 229(3)(a) of the *Body Corporate and Community Management Act 1997* (Qld) (**Act**), applying the Act and the *Body Corporate and Community Management (Standard Module) Regulation 2008* (**Standard Module**).

**APPLICATION NO:** 0194-2014

**DECISION DATE:** 11 June 2014

**DECISION OF:** P Dowling, Adjudicator

**CATCHWORDS:** BY-LAWS – whether the body corporate acted reasonably enforcing a by-law.  
Act, ss 68, 94, 95, 169, 182 and 270; Standard Module, s 159.

**ORDER MADE:**

I hereby order that the outcomes sought are dismissed.

***I HEREBY CERTIFY this is a true copy of the order and reasons for decision.***

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2014. \_\_\_\_\_

P Dowling, Adjudicator

## REASONS FOR DECISION

### Introduction

- [1] The 20 lots included in the scheme are contained in a ten level building. Relevant to this dispute, Lot 603 is on Level G, and the respondent's Lot 701 and Lot 702 are on Levels H and I. Level J is common property. It is submitted that on or about Level J is the common property: core lift, stairwell roof, anchor points for inaccessible window cleaning, exhaust fan stacks, air extraction fans and television antenna.
- [2] Level J is only accessible through Lots 701 or 702. This seemingly has not been a problem in the past because since the establishment of the scheme the body corporate has maintained a master key system that enabled holders of a master key access to all lots. In 2013, the respondent and Mrs Fletcher changed the locks to external doors to their lots. The body corporate does not have a key to the new locks.
- [3] Consequently, the body corporate, through the committee, gave the respondent and Mrs Fletcher a by-law contravention notice. For the purposes of this application, by notice dated 7 November 2013, the body corporate informed the respondent that it had reasonable grounds to believe she was contravening By-law 29.7 because she had "re-keyed three door locks to Lot 701, each a community door lock without the consent of the body corporate on or about 10 August 2013". The respondent was required to cease the contravention within 7 days of receiving the notice. The respondent has not reinstated the original locks. The body corporate claims the respondent has not complied with the by-law contravention notice.
- [4] The body corporate now seeks the following outcomes:
  1. That the respondent reinstates the community door locks removed from the entrance doors to Lot 701.
  2. If the respondent does not reinstate the community door locks within 7 days, that the body corporate replace the entrance door locks of Lot 701 with other locks operable by security master key retained by the body corporate and slave key provided to the respondent as determined by the body corporate and the body corporate charge the respondent for the lock replacement costs.
  3. That the respondent must not alter, adjust, change, re-key or replace any community door lock without body corporate consent. The body corporate is authorised to reinstate such body corporate door lock at the sole cost of the respondent. The respondent is permitted to install internal door chains on the entrance doors of Lot 701 for use when Lot 701 is occupied.
  4. The respondent pays the reasonable costs incurred by the body corporate:
    - (a) If any, for reinstatement of the community door locks within 14 days of demand.
    - (b) Pursuant to By-law 41 costs within 14 days of demand.

### Procedural matters

- [5] The commissioner has invited the respondent and the other lot owners to make submissions about the matters raised (s 243, Act). The respondent, the affected persons, the owners of eight other lots and an occupier made submissions. Six owners and the occupier support the application.
- [6] After the body corporate replied to submissions, the commissioner referred the application to departmental adjudication (s 248, Act). As the body corporate did not receive a copy of all submissions, on 21 May I gave it opportunity to respond to the submissions it had not received. The body corporate responded on 27 May.

### Jurisdiction

- [7] I am satisfied this dispute falls within the dispute resolution provisions of the legislation (ss 227, 228 and 276, Act). I may make an order that is just and equitable in the circumstances to resolve the dispute.

## Analysis

### By-law 29

- [8] The application primarily relies on By-law 29.7. This is evident from the body corporate letter to the respondent dated 25 September 2013, the minutes of the committee meeting dated 1 October 2013 and the November 2013 by-law contravention notice.
- [9] The body corporate may make by-laws regulating: the administration, management and control of common property; and the use and enjoyment of lots and common property (s 169(1), Act). There is no question about the validity of By-law 29 or By-law 29.7. The by-law must be enforced by the body corporate (s 94(1)(b), Act).
- [10] By-law 29 regulates security. By-law 29.7 provides that “An owner or occupier of a lot must not alter, adjust, change, re-key or replace any community door lock without the prior written consent of the body corporate”.
- [11] In a letter to Robinson & Robinson Lawyers<sup>1</sup> dated 13 November 2013, the body corporate said it considered the locks in the front door of every lot are community door locks. In the abovementioned by-law contravention notice and this application, the body corporate claims the external door locks to the respondent’s Lot 701 are community door locks.
- [12] The respondent and Mrs Fletcher submit it is misconceived for the body corporate to suggest that By-law 29 is concerned not with access to body corporate property but with access to lots. They assert the by-law does not deal with access to a lot and “community door lock” implies a door to an area accessible to the community of owners or residents. The owners of Lot 603 submit a community door lock is a door lock controlled by the body corporate for the community’s benefit. They say the door locks on lots are not community door locks and the keys to these locks are not a body corporate asset.
- [13] “Community door lock” is not a term mentioned in the Act. From my reading of the scheme’s community management statement<sup>2</sup>, “community door lock” is not defined in By-law 1 and is a term used only in By-law 29.7. This is the last of seven provisions in a by-law titled “Security”. By-laws 29.1 to 29.6 appear to regulate security of the scheme and body corporate personal property. A number of these provisions regulate the creation and monitoring of keys or operating systems associated with security measures.
- [14] In the absence of a definition of “community door lock” the term is open to the interpretations given to it by the respondent and the affected persons. That is not to say the term does not have the meaning relied on by the committee. However, the problem for the body corporate (and the point that is significant in this dispute) is that the by-law has an undefined term and there is nothing persuasive in the submitted material which establishes the committee’s view should prevail. The onus rested with the body corporate to establish that “community door lock” is or includes a lock in an external door to a lot. In my view, the body corporate has not established the term has this meaning. I do not consider it is my role to determine a meaning for the term in the circumstances of this dispute. The term is in a by-law made by the body corporate. It is a matter for the body corporate to give it meaning.
- [15] As I have said, it is possible that the term includes an external door to a lot accessible by the community, whether that door is on the lot or common property. Such an interpretation would be consistent with the security theme of the by-law. In this regard, I agree with submissions that an owner has a right to secure his or her property. The by-law may seek to regulate security measures proposed by an owner or occupier.
- [16] Even if this was the case, the provision would be permissive in nature similar to by-laws such as By-laws 3, 4, 9 and 13. The by-law would not empower the committee to place a blanket ban on changing an external door lock as seemingly noted at the 1 October 2013 meeting where it is minuted that owners are reminded that given “By-law 29.7 no door key locks are to be altered for any reason”. If the provision applied, an owner or occupier could, with body

<sup>1</sup> Acting for the respondent and Mrs Fletcher.

<sup>2</sup> No. 709050479.

corporate approval, change a door lock. The body corporate or the committee would have to act reasonably considering a request to change a door lock (ss 94(2) and 100(5), Act). This essentially means the request would have to be considered on its merits which may include the effect of the change on the door's integrity if the body corporate had some obligation with respect to the door, or the effect on body corporate maintenance obligations (if any), or possibly any appearance implications.

### **The by-law contravention notice**

- [17] The outcomes sought are a consequence of the 7 November 2013 by-law contravention notice given to the respondent (ss 182 and 184, Act). The body corporate claimed to have reasonable grounds to believe the respondent was contravening By-law 29.7 because she re-keyed community door locks without its consent.
- [18] It is apparent from submissions the contravention notice was not a product of a belief that By-law 29.7 applied in the circumstances mentioned above at paragraphs 15 and 16. Rather, the notice was given because the body corporate believed its master key security system was compromised. This is evident from the 25 September 2013 letter to the respondent, the minutes of the 1 October 2013 committee meeting, the 6 December 2013 body corporate letter to Robinson & Robinson Lawyers<sup>3</sup> and from the outcomes sought.
- [19] I have already dealt with the issue of giving meaning to "community door locks". For the above reasons, I am not satisfied the locks in the external doors to the respondent's lot are "community door locks". Even if these locks are "community door locks", the body corporate's only concern is its master key no longer operates the locks. Notwithstanding that the body corporate sought an interpretation of By-law 29.7, the significant (and relevant) point in this dispute is that there is nothing to suggest By-law 29.7, either expressly or by implication, empowers the establishment and maintenance of a master key locking system of the nature argued by the body corporate. The master key locking system would not be a basis for the body corporate to not approve a request to change a door lock.

### **Body corporate power to establish and maintain a master key system**

- [20] The respondent, Mrs Fletcher and the owners of Lot 603 made submissions referring to a number of adjudicator's decisions about a body corporate establishing and maintaining a master key system<sup>4</sup>. The committee responded these decisions are dependent on each scheme's by-laws and circumstances.
- [21] The referred to decisions have relevance because they state the law with respect to a body corporate seeking to establish and maintain a master key system. The adjudicator making the Mercantile-Dalgety Place decision relevantly stated<sup>5</sup>:

"Notwithstanding the various responsibilities for the doors and the locks, the resolution of the Body Corporate to re-key the lock cannot be seen to fall within its maintenance responsibilities, as there is no suggestion that the door or lock were faulty or in need of repair. Therefore, the question is whether the Body Corporate has a general power to re-key locks to individual units and whether the Body Corporate has acted reasonably and for the benefit of lot owners in resolving to do so.

The Body Corporate's general functions include reasonably administering common property for the benefit of lot owners (*section 94*, Act). The body corporate also must administer, manage and control common property reasonably and for the benefit of lot owners (*section 152*, Act). I acknowledge the concern of the Body Corporate regarding access to units in case of an emergency. The implication in the Body Corporate's submission is that this is the *sole* reason for their desire for locks to be keyed alike.

*Section 163* of the Act provides for a person authorised by the Body Corporate to access a lot when reasonable necessary to inspect the lot to ascertain whether work is necessary or

<sup>3</sup> Acting for the respondent and Mrs Fletcher.

<sup>4</sup> Trafalgar Towers [2004] QBCCMCmr 153, Le Beach [2005] QBCCMCmr 442, Mercantile-Dalgety Place [2006] QBCCMCmr 313, Palm Springs Retirement Village [2006] QBCCMCmr 485 and Burleigh Beach Tower [2009] QBCCMCmr 163.

<sup>5</sup> At pages 4 to 5.

to carry out work that the Body Corporate is required or authorised to carry out. In an emergency the power of entry can be exercised at anytime. By-law 14 also provides a right of entry for works or repairs, with notice not necessary *“if in the opinion of the body corporate or the manager (if any) it is an emergency.”* (In the event of an inconsistency in the application of section 163 and By-law 14, the provisions of the Act would prevail.)

While common locks are certainly more convenient for a Resident Manager, I do not consider that they are necessitated under the body corporate legislation or the current scheme by-laws. Both the Act and the by-laws contemplate the need for emergency access. There is certainly no suggestion in that body corporate legislation that all schemes must have all lots keyed alike and the by-laws clearly contemplate individual locks being fitted. As such, it is evident that the legislation and the by-laws envisage emergency access being afforded without master keys.

In considering this application I have had the benefit of the decision in application reference 0573-2003<sup>6</sup>. In that matter the Adjudicator determined that the Body Corporate was not permitted to master key deadlocks fitted to any lot door without the consent of the owner, notwithstanding a general meeting resolution in favour of master keying of deadlocks. In reaching this decision, the predominant issue of security was seen as a justifiable concern. I also refer to the comments of the Adjudicator on page 4 of her decision:

“It goes without saying that if there were an emergency and access was required to a lot which was not master keyed, then if the owner or occupier of the lot in question was not at home, access would have to be gained by other means, whether by a locksmith or by an emergency service such as the Fire and Rescue Service. ... Provided it could be shown that it was a genuine emergency and access to the lot was in fact necessary, then the cost of gaining access by such alternative means would most likely be payable by the owner or occupier in question.”

If the Applicant chooses to have an individually keyed lock when a commonly keyed option is available, she should give consideration to whether she may have any additional responsibility for the cost of any repairs to the lock which may be caused by forcing the lock or other costs of gaining access in a genuine emergency.

#### Conclusion

I am satisfied that it is reasonable for owners to want a lock that is unique to their unit, to ensure the appropriate protection of their property. Even with the best intentions and procedures of the Body Corporate and the Resident Manager, when keys to a lot are given to persons other than an owner, the risk to the owner's property is placed beyond the control of the owner. Where doors are keyed alike, the loss or theft of a single master key puts all lots at risk. I consider it reasonable that an owner has the right to choose to have sole control over the access to their lot, subject to the provisions of the legislation and by-laws regarding reasonable access.

- [22] In my view, these views are relevant and applicable to the issues argued in this dispute, including the body corporate's reference to section 159(2)(a)(ii) of the Standard Module. I do not consider that section 68(3) and (4) of the Act provide a relevant power to the body corporate. The adjudicator has properly outlined emergency access issues.
- [23] I do not consider there is any basis for distinguishing the adjudicator's views in the circumstances of this scheme. The fact that parts of common property are only accessible through a lot does not empower the body corporate to establish and maintain a master key security system. Nor does it obligate the respondent to provide a key to her lot to the body corporate. It is noted the respondent and Mrs Fletcher have made undisputed claims the Fire and Emergency Services Department has indicated it does not require a master key to be held on the scheme. The purported frequency that a master key has to be used to access any lots included in the scheme is not relevant. As submitted by the owners of Lot 603, the body corporate's right of entry to a lot does not overrule, eliminate or extinguish owners' rights of reasonable privacy and security of their property.

<sup>6</sup> Trafalgar Towers [2004] QBCCMCmr 153 (23 March 2004)

## Conclusion

- [24] In my view, the body corporate has not established By-law 29.7 applied to the applicant changing door locks or that the by-law applied in the way argued. I am not satisfied from submissions the respondent was contravening the by-law in the way notified by the body corporate (s 182(6), Act). The body corporate argues an adjudicator can apply discretion under section 276 of the Act to make an order that is just and equitable in the circumstances. An adjudicator's power under section 276(1) of the Act is not unrestrained. It is necessary to show some proper basis in law or equity<sup>7</sup>.
- [25] For the above reasons, I have dismissed the first outcome sought. As the second outcome is consequential to the first, it is also dismissed.
- [26] The third outcome relates to a possible future event. There is nothing to suggest there is a dispute between the body corporate and the respondent about the respondent doing something to a community door lock. As I have stated, the meaning of "community door lock" is uncertain. The outcome is dismissed.
- [27] Given these decisions, there is no basis for making an order in the terms of the fourth outcome.
- [28] The respondent has asked that the application be dismissed under section 270(1)(c) of the Act as: the application is misconceived; it failed to have regard to any of the existing jurisprudence on the subject; it was unreasonable and heavy handed; and the committee should have known better as one member is a solicitor.
- [29] The committee responded: it was unreasonable to retain a Queens Counsel in this matter; the body corporate has effectively asked for an interpretation of its by-law in a reasonable and proper way as permitted by the Act; the committee is acting reasonably making the application to determine the issue; and members know of no other way the issue can be determined.
- [30] If I dismiss the application for being frivolous, vexatious, misconceived, or without substance I may award costs not more than \$2000 (s 270(3), Act).
- [31] The body corporate makes its by-laws. It decides on the content of the by-laws. The by-laws apply to the body corporate, owners and occupiers (s 59(2), Act). The body corporate must act reasonably enforcing its by-laws (s 94(1)(b) and (2), Act).
- [32] The body corporate cannot reasonably enforce a by-law if it does not know or understand how the by-law applies. In this case, it is apparent from submissions the committee was aware of the respondent's legal advice questioning By-law 29.7's relevance to her changing the locks in particular doors. The committee proceeded to attempt to enforce the by-law despite this advice. Given the questions raised about the by-law, it may have been more prudent for the committee to, for example, decide to obtain legal advice or seek the input of owners. The committee proceeded to dispute resolution.
- [33] While there may have been other ways of proceeding with the issue given the ambiguous nature of By-law 29.7, I do not consider the way the committee proceeded warrants dismissing the application under section 270(1)(c) of the Act. In my view, the body corporate will need to decide how it deals with By-law 29.7, including possibly amending the by-law. As I have said, I do not consider the body corporate can decide to amend the by-law to compel an owner to participate in a master key security system or to compel an owner to give the body corporate a key to the person's lot. It should be noted that if the body corporate seeks to enforce By-law 29.7 again on this basis, and if there is a question as to costs in any future application, an adjudicator may have regard to this and any other application (s 270(3), Act).

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<sup>7</sup> *Body Corporate for Palm Springs Residences v J Patterson Holdings Pty Ltd* [2008] QDC 300 at paragraph 98.