



HIGH COURT OF AUSTRALIA

12 October 2016

KJERULF AINSWORTH & ORS v MARTIN ALBRECHT & ANOR
[2016] HCA 40

Today the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of Queensland. The High Court held that opposition to a motion which was required to be passed by a body corporate without dissent was not unreasonable in circumstances where the proposal in question was apt to create a reasonable apprehension that it would affect adversely the interests of opponents of the proposal.

The *Body Corporate and Community Management Act 1997 (Q)* ("the BCCM Act") regulates the determination of disputes between the owners of lots in a community titles scheme. Here the dispute concerned a proposal for the alteration of the rights of lot owners in the scheme by an owner who sought exclusive use of part of the common property airspace in order to amalgamate the two balconies forming part of his lot so as to create one larger deck. Under the BCCM Act, approval of the proposal required a resolution without dissent of the Body Corporate. The motion was defeated. Item 10 of Sched 5 to the BCCM Act makes provision for an adjudicator to order that a proposal, otherwise required to be passed without dissent, be approved notwithstanding dissent by a lot owner if the opposition to the proposal was unreasonable in the circumstances.

The adjudicator accepted that individual lot owners voted against the motion in good faith, and in genuine reliance on architectural and other advice, but nevertheless considered that their opposition to the proposal was unreasonable. An order was made deeming the motion supporting the proposal to be passed.

The appellants appealed to the Queensland Civil and Administrative Tribunal, which concluded that the adjudicator had impermissibly substituted her own opinion as to the reasonableness of the proposal, rather than focussing on whether the opponents' grounds of opposition were reasonably held. The adjudicator's orders were set aside. The first respondent appealed to the Court of Appeal, which held that the adjudicator did not adopt the wrong approach in resolving the dispute. The decision of the adjudicator was upheld.

By grant of special leave, the appellants appealed to the High Court. The Court held that the adjudicator had adopted the wrong approach in resolving the dispute. The adjudicator's task under Item 10 of Sched 5 to the BCCM Act is not to determine whether the outcome of the vote of the general meeting of the Body Corporate achieved a reasonable balancing of competing considerations, but whether the opposition to the proposal was unreasonable. The Court further held that a lot owner may not be regarded as acting unreasonably in declining to assist another lot owner gratuitously to enhance that lot owner's interest, where the enhancement of that interest is reasonably viewed as adverse to the interests of the other lot owner. In the result, the Tribunal's decision to set aside the adjudicator's orders was reinstated.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*