

REFEREE'S ORDER

Office of the Commissioner
for Body Corporate and Community Management

CITATION: *Gracemere Gardens* [2019] QBCCMCmr 42
PARTIES: The Body Corporate for Gracemere Gardens (**applicant**)
Christopher Green (**respondent**)
PLAN: GTP 107024
JURISDICTION: *Section 77(1) of the Building Units and Group Titles Act 1980 (Qld)* (**Act**).
APPLICATION NO: 1174-2018
DECISION DATE: 29 January 2019
DECISION OF: M A Schmidt, Referee
CATCHWORDS: Breach of by-law.
Act, ss 27(3), 77(1).

ORDERS MADE:

1. **I hereby order** that the proprietor of Lot 44 must, within seven days of the date of this order, remove any trailers and boats currently parked in the front of the Lot from the front of the Lot so that the trailers and boats cannot be seen from outside the Lot; and
2. **I further order** that the proprietor of Lot 44 must thereafter adhere to the by-laws pertaining to parking and refrain from parking vehicles, including boats and trailers, in contravention of by-law 7.4.1.

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

Dated this *29th* day of *January* 2019.

M A Schmidt

M A Schmidt

REASONS FOR DECISION

Introduction

- [1] This application is brought by the body corporate against the proprietor of Lot 44, Mr Christopher Green, in relation to alleged breaches of by-law 7.4.1 (*Vehicles*) by parking trailers and boats in the front of the Lot. The body corporate seeks an order that the proprietor of Lot 44 remove the two trailers and two boats from the front of the lot so that the trailers and boats cannot be seen from outside the Lot; and that the proprietor adhere to the by-laws pertaining to parking and refrain from parking vehicles, including boats and trailers, which can be seen from outside the lot.

Overview

Procedure and jurisdiction

- [2] "Gracemere Gardens" GTP 107024 is a plan for the *Integrated Resort Development Act 1987 (IRDA)*. The scheme is a subsidiary scheme in Hope Island Principal Body Corporate. There are 44 lots in the scheme.
- [3] The *Building Units and Group Titles Act 1980 (Act)* applies for the operation of IRDA (section 5A, Act) and continues to apply to a group titles plan subject to IRDA (section 328, *Body Corporate and Community Management Act 1997*). Section 179A IRDA provides –
- "Subject to subsection (2), a dispute about the operation of this Act or the rights and obligations of persons under this Act may be dealt with under the Building Units and Group Titles Act 1980, part 5"*.
- [4] Part 5 of the Act concerns disputes. Part 5, division 3 makes provision for orders by a referee. Within division 3, section 77(1) provides a general power for a referee, on application of a body corporate, a body corporate manager, a proprietor, a person having an estate or interest in a lot or an occupier to "make an order on any person entitled to make an application under this subsection or on the chairperson, secretary or treasurer of the body corporate for the settlement of a dispute, or the rectification of a complaint, with respect to the exercise or performance of, or the failure to exercise or perform, a power, authority, duty or function conferred or imposed by this Act in connection with that parcel".
- [5] Given section 179A of IRDA, the body corporate may make an application against a proprietor in the scheme seeking an order under section 77(1) of the Act.
- [6] In accordance with section 73(1)(d) of the Act, submissions were invited from the respondent and all lot owners, being persons who in the referee's opinion, would be affected if the order sought was made.
- [7] Two submissions were received from individual owners. The respondent did not make any submission.
- [8] I have decided the application based on this written material and the most relevant arguments from this material are referred to below.

Analysis

- [9] By-law 7.4.1 provides as follows:

A proprietor or Occupier will not park store or keep upon the Common Property, a Lot or any part of the Parcel any motor vehicle (which will for the purposes herein include a motor cycle and a motorised buggy, being an electric or motorised cart or buggy used to transport persons, luggage or golf clubs), boats, trailers, jet skis and caravans other than:

- i. In garages;
- ii. In the case of motor vehicles only, on driveways in front of garages; and
- iii. On other parts of a Lot that are screened so that the thing parked cannot be seen from outside the Lot.

J. A. D.
29/01/11

- [10] The body corporate seeks to enforce by-law 7.4.1, which it asserts Mr Green is contravening by way of storing two trailers and two boats out the front of the property which can be seen from outside the Lot.
- [11] The body corporate states that it has sent considerable correspondence to the respondent, and has offered to meet with the respondent, from which there has been no response or resolution to remedy the breach.
- [12] Copies of correspondence to the respondent from Cambridge Management Services (**CMS**) at his physical address dated 5 February 2016, 2 March 2016, 30 March 2016, 9 June 2016, 1 February 2017, 9 March 2017, 18 August 2017, 19 March 2018, 24 May 2018 and 11 May 2018 were included with the application.
- [13] The minutes of the committee meeting held on 5 June 2018 record that conciliation had been attempted on 25 May 2018, to no avail. The proprietor of Lot 44 is stated to have subsequently advised the Office of CMS that remedial works will be undertaken within two weeks. The Chairperson confirmed that two trailers were still being stored on the Lot and were not screened from view. At that meeting, the committee resolved to engage CMS to lodge this application. This application was made on 29 October 2018.
- [14] The only two submissions made support the application and were to the following effect:
- The success and harmony of the tightly held gated community has been the abidance and respect for both the rules governing body corporate members and the mutual respect shown by all owners and residents towards one another.
 - The patience shown by all other residents/owners in relation to these breaches for over two years now has not resulted in any meaningful corrective action taken.
 - The respondent displays a wanton disregard for body corporate rules and that of the will of the majority of all current owners and residents.
 - The chairperson personally visited Carlton Drive on a Sunday during November 2018 and spoke to all but two residents concerning this action against the proprietor of Lot 44.
 - The attitude of all the residents was almost identical. The consensus was:
 - The front yard is an eyesore and should be cleaned up to comply with the by-laws.
 - They were not prepared to personally put their names to a complaint for fear of repercussions.
 - They were concerned that if the body corporate did not do something about it, other residents would ignore the by-laws and let their homes become eyesores, as by-laws would be viewed as being useless.
 - The driveway to 2044 is usually full with at least four parked cars extending off the premises, and often other cars are parked on common property outside of the premises.
 - There is also a boat in the front yard of the premises.
 - Garbage bins are regularly left outside the front of the premises, instead of being stored out of sight.
 - Ladders, trailers, and other tools etc are often seen to be discarded and lying around the front yard.
 - Police have been observed visiting the premises on occasions, raising concerns.
 - On the evening of 16 November 2018, four cars were observed parked in the driveway with two further cars parked on the common property outside, contrary to the by-laws. This is not an unusual occurrence.
 - Recently, the body corporate of the adjacent precinct wrote to the body corporate of Gracemere Gardens requesting that action be taken to enforce the by-laws against the owner of 2044 as it is an unsightly entrance to their precinct.

Conclusion

- [15] The body corporate is required to do all things reasonably necessary for the enforcement of the by-laws¹. The material before me satisfies me that there have been breaches of by-law 7.4.1

¹ Section 27(3), Act.

Handwritten signature and date:
C.B. A.D.
29/01/19

by the proprietor of Lot 44. I am further satisfied that the proprietor of Lot 44 has been notified of the breaches (on numerous occasions), has had ample opportunity to remedy the breaches and has failed to do so. I have therefore made the order sought.

Ob. A. A.
29/01/19