

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV-2015-404-2494
[2015] NZHC 2827**

UNDER the Unit Titles Act 2010 and Part 19 of the
High Court Rules

BETWEEN BODY CORPORATE 205373
Applicant

AND JONATHAN BALTAZAAR
First Respondent

AND YUANG ZHUANG AND ZHAOYU
MENG
Second Respondents

AND GEOFFREY ROSS NOWELL AND
TOMOTHY JOHN GOULDING
Third Respondents

Hearing: 12 November 2015

Appearances: JP Wood for the Applicant
No appearance on behalf of the Respondents

Judgment: 12 November 2015

ORAL JUDGMENT OF THOMAS J

Solicitors:
Rainey Law, Auckland.

AND CANDIDA CHERIE DOEL
Fourth Respondent

AND RAAM VENKATESH PARANJPE AND
SUSHAMA RAAM PARANJPE
Fifth Respondents

AND B W RENTALS LIMITED
Sixth Respondent

AND CELINO MEDINA ORQUEJO,
SUZETTE ORQUEJO AND JOSEPH
CARLO DICTADO ORQUEJO
Seventh Respondents

AND MONIKA RAAM PARANJPE AND
RAAM VENKATESH PARANJPE
Eighth Respondents

AND MICHAEL ARTHUR HERN
Ninth Respondent

AND JOON LOONG YONG
Tenth Respondent

AND ANNE VALERIE HOLLINGER AND
ANDREW BUSH
Eleventh Respondents

AND MARK DAVID ROLTON
Twelfth Respondent

AND JOHN EDWARD HASSELL
Thirteenth Respondent

AND PHILLIP KENDALL SHEPHERD AND
NICHOLAS JERED BRUELLEMAN
Fourteenth Respondents

AND PETER BOSCO FERNANDES AND
FIEL MICHAELA D'SOUZA
Fifteenth Respondents

AND SUSAN D'LIMA AND STEVE D'LIMA
Sixteenth Respondents

AND WESTPAC NEW ZEALAND LIMITED
Seventeenth Respondent

AND ANZ BANK NEW ZEALAND LIMITED
Eighteenth Respondent

AND ASB BANK LIMITED
Nineteenth Respondent

AND BANK OF NEW ZEALAND
Twentieth Respondent

AND PETER RONALD HOLLINGER AND
MICHELLE ANN HOLLINGER
Twenty-First Respondent

AND ACE INSURANCE LIMITED
Twenty-Second Respondent

[1] The applicant is the Body Corporate of a 20 unit complex at 103 Mays Road, Onehunga. It applies for an order under s 74 of the Unit Titles Act 2010 (the Act) to settle a Scheme of repair.

[2] The Body Corporate has served all those with an interest in the units and the insurers of the building.

[3] No opposition to the application has been filed and the applicant did not expect any such opposition. The Scheme was approved unanimously by a vote of 17 of 20 unit owners at an Extraordinary General Meeting on 24 September 2015. One unit owner sent apologies but did not vote. The first and second respondents own the two remaining units. They neither sent apologies nor voted.

[4] In those circumstances the applicant seeks orders today.

Analysis

[5] I am satisfied from the affidavit evidence that the complex clearly needs repair and the matter should be dealt with some expedition.

[6] In order for the Court to approve the Scheme the applicant needs to show that it is necessary, and I am satisfied that indeed it is; that the discretion to grant the Scheme should be exercised and that the content of the Scheme balances the interests of all the owners.

[7] There are five factors for the Court to consider as the Court of Appeal has mandated in the decision of *Tisch v Body Corporate No. 318596*.¹ They are:

- (a) a Scheme with broad support is preferred;
- (b) the Scheme is to be appropriately detailed;

¹ *Tisch v Body Corporate No. 318596* [2011] NZLR 679 (CA) at [36] - [44].

- (c) the order can have retrospective effect, as long as the Body Corporate has acted in accordance with the Scheme prior to the Court's approval;
- (d) normally work is to be done to the same standard and at the same time; and
- (e) the terms of the Scheme are not to depart from the Act and the Body Corporate Rules any more than reasonably necessary to achieve fairness between unit holders in the circumstances.

[8] I am satisfied that all five of those requirements have been met. I have already referred to the support for the Scheme which was evident at the EGM. As indicated, I have considered the Scheme and I am satisfied it has the level of detail necessary and is in substantially similar terms as schemes which have been approved by this Court on prior occasions. I am also satisfied that the Scheme has taken into account comments made in recent judgments of this Court.²

[9] I am also satisfied as to the basis of the funding to be raised in connection with the Scheme and of the standard of repair. Furthermore, the Scheme departs no more than necessary from the Act and Body Corporate Rules. There is nothing in the Scheme which suggests to me that the interests of any unit holder or mortgagee are adversely affected.

[10] For those reasons the application is granted and the Scheme is approved.

Thomas J

² *Body Corporate 183930 v Chua* [205] NZHC 2122; *Body Corporate 201036 v Westpac Banking Corporation* [2015] NZHC 1955.