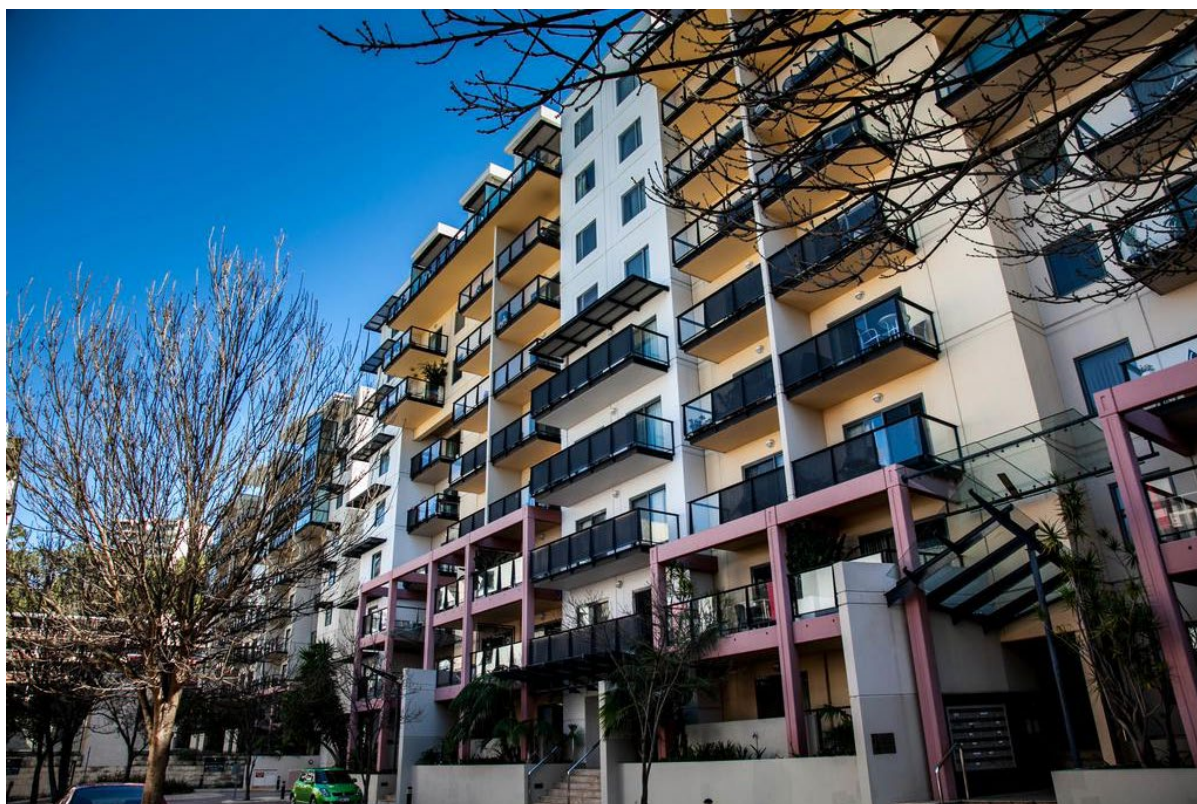


Law

Strata And Property

Case Note: The Owners of Arbor North Strata Plan 67510 and Sun [2020] WASAT 28

By Pragma | 1 April, 2020 | No Comments



In the recent case of *The Owners of Arbor North Strata Plan 67510 and Sun* [2020] WASAT



28, the State Administrative Tribunal (SAT) considered the meaning of ‘structure’ in the context of section 7(2) of the *Strata Titles Act 1985* (WA) (Strata Act). The Respondent is a ground floor lot owner in a multi-storey strata scheme comprising of 154 apartment dwellings who had erected in her lot:

1. a temporary portable gazebo;
1. a shade cloth which was attached to the gazebo; and
1. a lattice which was attached to the fence and gate

(Works).

The Works were erected without prior approval, expressed by a resolution without dissent, of the strata company. It was contended by the Applicant that the Respondent’s conduct constituted a breach of section 7 of the Strata Act.

The Law

Section 7(2) of the Strata Act relevantly provides that a proprietor of a lot shall not cause or permit any structure to be erected on his lot except with the prior approval, expressed by resolution without dissent, of the strata company.

Party Positions

The Applicant submitted that the Respondent was in breach of section 7(2) of the Strata Act and sought an order that the Respondent remove the gazebo, shade cloth and lattice at their expense. Relevantly, the Respondent took no part in the SAT proceeding. Despite this, the SAT was satisfied that the application and all correspondence was sent to and received by the Respondent. Therefore, the Respondent was taken to have been aware of the proceedings.

Decision

In deciding whether the Works constituted a structure, the Member gave consideration to the meaning of ‘structure’ in the context of the Strata Act. The Member considered that the term ‘structure’:

1. is not defined in the Strata Act apart from in section 7(6) of the Strata Act which provides that ‘structure’ includes ‘any prescribed improvement’;
1. ordinarily means something which is constructed in the way of being built up as is a building;
1. is defined by the *Macquarie Dictionary Online* (2020) as ‘anything composed of parts arranged together in some way’; and
1. can include works which are not fixed to the ground.

Finally, the Member concluded that determining whether a thing is a structure is a mixed question of law and fact having regard to the context of the Strata Act.

In this case, the Member concluded that the Works were a structure for the purposes of section 7(2) of the Strata Act. A determinative factor in the Member reaching this decision was the substantial size of the Works which were erected on the Respondent’s lot.

Based on the above, the Respondent was ordered to remove the Works within 28 days.

Summary

Whether something constitutes a ‘structure’ for the purposes of section 7(2) of the Strata Act is a mixed question of law and fact. However, it is important to give regard to the ordinary meaning of the term.

If you require any assistance in relation to the above, please contact us on (08) 6188 3340 or by email to jason@pragma.law or hello@pragma.law.