CONSUMER, TRADER & TENANCY TRIBUNAL

THE SECRETARY, THE OWNERS STRATA
PLAN 50785
1-3 McDonald Street
CRONULLA NSW 2230

File No: SCS 09/40324
(Quote in all enquiries)

Application to the Tribunal concerning 1-3 McDonald Street CRONULLA NSW 2230 Australia

On 31/8/09 the Registrar received an Application for an Order. A copy of the application is attached.

You may lodge a written submission in respect of the application stating whether you agree or disagree. Your written submission must be received by the Registrar by Tuesday 6/10/09. You should not include any information which you do not want disclosed to the other parties.

Copies of submissions are not forwarded to parties, however you may inspect the file at the Registry. File inspections are available by appointment only on the Wednesday, Thursday and Friday following the close of submissions date. An appointment to inspect the file can be arranged by contacting the Registry. Any photocopies of submissions requested at the file inspection will incur a fee. You should be aware that other persons may inspect the file.

Following the close of the submission period the file will be forwarded to an Adjudicator for written decision.

The file number should be quoted on your submission.

J Hoskin
for the Registrar
08/09/09

Please read this information carefully

- **Display of this Notice:** When the Owners Corporation receives this notice and a copy of the application it must put a copy on the scheme notice board immediately (unless the by laws do not require one to be maintained) and keep it there until the date for making submissions expires. The Owners Corporation must immediately serve a copy of the notice and application on each person shown on the strata roll.
- **Content of Submissions:** Written submissions should include information relevant to the order asked for including photographs, technical reports and minutes of meetings. Disputes about by-laws, should include a copy of any relevant registered by-laws. Disputes about repairs to common property or damage to a lot should include a copy of the registered strata plan. These are available from the Land Titles Office, Queens Square, Sydney.
- **Adjudicator or Hearing:** Orders under sections 138 to 170 will be referred to the Strata Schemes Adjudicator for determination. Orders under sections 182 to 192 and 202 to 204 must be referred to the Tribunal for determination. You can appeal to the Tribunal from a decision of an Adjudicator. In addition, an Adjudicator may refer an application to the Tribunal if, for example, the legal complexity or importance of the application or other good reason justifies referral. You will be notified if the application has been referred to the Tribunal.
- **Applications to the Adjudicator:** These are decided on the material in the application and submissions. There is no hearing. The decision and the reasons for that decision are made in writing.
- **Applications to the Tribunal:** There is a hearing. Witnesses may give evidence and make submissions. You may represent yourself or be represented.
- **Notice of Decision:** In all cases a notice of the final order is sent to the person who applied, the person it is against, anyone who sent in a submission and the Owners Corporation.
- **Appeal Rights:** A decision of an Adjudicator may be appealed to the Tribunal. The Tribunal may admit new evidence. A decision of the Tribunal may be appealed to the District Court on a limited basis, in relation to questions of law only.
- **Further Inquiries:** If you need more information about your rights and responsibilities please contact Fair Trading Information Centre on 13 32 20.

STM | STRATA TITLE MANAGEMENT

www.stratatitle.com.au

Dated 28th Day of August 2009
Our Ref: Adjudication Application – Support letter

Hurstville Registry
P.O. Box 148
HURSTVILLE BC NSW 1481

Re: Outline of Owners Corporation's Case
Strata Plan 50785 – 1-3 McDonald Street, Cronulla

Dear Sir/Madam,

We write as the Strata Managing Agents of Owners Corporation SP50785 regarding the lodgement of an application for an adjudicators order.

The application relates to the painting of the lift tower soffit, which is part of the lift tower roof. The Owners Corporation registered a By-Law in 2003 granting Exclusive Use of the lift, elevator tower and surrounding stairs leading to Lot 21. In this By-Law the owner of lot 21 was made responsible for payment of all expenses related to the regular lift maintenance contract with Thyssenkrupp Elevators and all other costs associated with the repair and maintenance of this elevator.

Attention is drawn to the conditions noted in clause C of the By-Law and particularly subclause (iv), which clearly indicates that the owner of Lot 21 is also responsible for maintaining the Elevator Tower and must keep the tower in good and serviceable repair.

In the definitions of Special By-Law 2 the "Elevator Tower" is defined as follows:

"Elevator Tower" means the structure housing the Elevator (including the walls, surrounding stairs and roof) adjacent to the North Western boundary of Lot 21.

The Owners Corporation has noted that the owner of Lot 21 has been reimbursing the Owners Corporation for costs incurred for the maintenance agreement with Thyssenkrupp Elevators and has paid for repairs when and the lift telephone line as per Special By-Law 2.

The Owners Corporation would like an Adjudicator to provide an order on the owner of Lot 21, Universal Finance Holdings Pty Ltd instructing them to organise the painting of the Elevator Tower as per Special By-Law 2.

The Owners Corporation would also like the order to include a reimbursement of costs the Owners Corporation has incurred in attempting to have the owner of Lot 21 comply with their responsibilities as outlined in Special By-Law 2, as outlined in the costs summary included with the application.

The Owners Corporation would also like the Adjudicator to give consideration to the issuing of a pecuniary penalty to reinforce the importance of its occupants complying with the By-Laws.

Should you require any further information please do not hesitate to contact the undersigned.

Yours faithfully
STRATA TITLE MANAGEMENT SYDNEY

Michael Price
SENIOR STRATA MANAGER
M.I.S.T.M (Assoc)
mprice@stratatitle.com.au

CONSUMER, TRADER AND TENANCY TRIBUNAL
Strata & Community Schemes Division

REQUEST FOR AN ORDER BY AN ADJUDICATOR

Under the *Strata Schemes Management Act 1996* or the *Community Land Management Act 1998*

CTTT Consumer, Trader & Tenancy Tribunal

A copy of this application and any attached information will be provided to the other party.

1. Have you tried to settle this dispute through mediation?

☑ Yes If Yes, attach evidence of the mediation result *(a copy of the letter given to you by the mediator)*.

☐ No If No, Why?

2. Address of the

☑ Strata Scheme or

☐ Community Scheme

(Please tick one)

1-3 McDONALD STREET
CRONULLA
NSW 2230

3. What is the

Strata Plan No. or Community Plan DP No.: 50785

If a Community Plan, how many lots are shown on the plan?

If a Community Scheme, is your lot in a

☐ Community ☐ Plan Neighbourhood Plan
☐ Precinct Plan ☐ Strata Corporation

4. Your Name *(individual applicant or corporation)*: OWNERS CORPORATION SP50785

Your Postal Address:

C/ P.O. BOX 2727
TAREN POINT
NSW 2229

Daytime telephone: (02) 9570 4199

5. If a Strata Plan, are you applying as:

☐ Lot owner of lot ☐ Lessor
☑ Owners Corporation ☐ Council, public authority or statutory body
☐ Original owner ☐ Other *(Please specify)*

OR

If a Community Plan, are you applying as:

☐ Owner/proprietor of Lot No. ☐ Occupier
☐ Managing Agent
☐ Association ☐ Other *(Please specify)*
☐ Strata Corporation

6. Who is the application against?
(individual or company)
If more than one other party then attach a separate list

UNIVERSAL FINANCE HOLDINGS P/L

Other party's Postal Address:

SUITE 2, 394A ILLAWARRA ROAD
MARRICKVILLE
NSW 2204

Daytime telephone: (02) 9558 9666

7. If a Strata Plan, is the other party:

☑ Owner of Lot 21 ☐ Lessor
☐ Owners Corporation ☐ Other *(Please specify)*
☐ Tenant/occupier of Lot

OR

If a Community Plan, is the other party:

☐ Community Association* ☐ Owner/proprietor of Lot
☐ Precinct Association* ☐ Occupier
☐ Neighbourhood Association* ☐ Other *(Please specify)*

***What is the DP number?**

RECEIVED
31 AUG 2009
CONSUMER TRADER & TENANCY TRIBUNAL
HURSTVILLE

Continued overpage

09/40324

8. **Where can the Tribunal contact the Managing Agent or Secretary of the Owners Corporation/Association/ Strata Corporation?**

P.O. BOX 2727
TAREN POINT
NSW 2229

9. **Have there been previous applications involving the same or related dispute?** ☑ No ☐ Yes Please list the file number(s):

10. **If known specify the section of the Act under which the application is made.** *(See Notes)*

SECTION 207 & THE ENFOLCEMENT OF THE SPECIAL BY-LAW.

11. **Specify the terms of the order(s) requested**
Time limits apply for certain applications. You should obtain information before making the application about the kinds of orders which the Tribunal can make.

THE OWNERS CORPORATION REQUIRES AN ORDER TO BE ISSUED ON UNIVERSAL FINANCE HOLDINGS FOR THEM TO UNDERTAKE THE PAINTING OF THE LIFT TOWER SOFFIT & CONSIDER ISSUING PENALTY ORDERS

12. **What are your reasons for requesting this order?**
Explain why you lodged the application and why the order(s) sought should be made

THE OWNER OF LOT 21 HAS REFUSED TO PAINT THE LIFT TOWER SOFFIT WHICH IS AN ESSENTIAL PART OF THE MAINTENCE FOR THE LIFT & LIFT TOWER. SPECIAL BY-LAW 2 GRANTS LOT 21 EXCLUSIVE USE OF THE LIFT & MAKES THE OWNER OF LOT 21 RESPOSIBLE FOR THE LIFT MAINTENANCE, WHICH INCLUDES THE LIFT TOWER, WALLS, SURROUNDING STAIRS & ROOF. THE OWNERS CORPORATION WOULD RESOLIKE AN ORDER FOR COSTS & PENALTY APPLIED.

13. **Your Name(s)** *(Please print)*

MICHAEL RICE

Your Signature(s)

If an Owners Corporation or Association, your position

SENIOR STRATA MANAGER

Date

28 AUGUST 2009

A copy of this application and any attached information will be provied to the other party or parties.

Fee details: A fee must be paid with an application. Refer to the separate fee schedule. You may claim a concession if you receive a Government pension, a social security or education benefit, or hold a Seniors Card; if so enclose a photocopy of your current pension or benefit card or Australy advice. If the fee is payable and it is not paid, the applicationlors be dismissed.

Return application with fee to: Registrar, Consumer, Trader and Tenancy Tribunal

For all CTTT Registries: Telephone 1300 135 399 Facsimile: 1300 135 247

Sydney Registry
Level 12, 175 Castlereagh Street
Sydney NSW 2000
GPO Box 4005, Sydney NSW 2001

Liverpool Registry
Level 3, 33 Moore Street
Liverpool NSW 2170
PO Box 723, Liverpool BC NSW 1871

Parramatta Registry
Level 2, 10 Valentine Avenue
Parramatta NSW 2150
PO Box 4117, Parramatta NSW 2124

Wollongong Registry
Level 3, 43 Burelli Street
Wollongong NSW 2500
PO Box 319, Wollongong NSW 2520

Penrith Registry
Level 1, 308 High Street
Penrith NSW 2750
PO Box 968, Penrith NSW 2751

Tamworth Registry
Suite 3 - 5, Kable Korner Complex
Cnr Kable Ave & Darling St
PO Box 1033, Tamworth NSW 2340

Hurstville Registry
Level 3, 4 - 6 Woodville Street
Hurstville NSW 2220
PO Box 148, Hurstville BC NSW 1481

Newcastle Registry
Level 1, 175 Scott Street
Newcastle NSW 2300
PO Box 792, Newcastle NSW 2300

OFFICE USE ONLY:

File No:

Receipt No: 389888
Date: 31-Aug-2009
Amount: $70.00