



Brought to you by your Strata Committee
January 2022



IMPORTANT INFORMATION

LATEST NEWS:

We are pleased to announce the Owner Corporations' success against SunAust (Central Sydney Realty) in the NCAT Proceedings. The decision was handed down on 16 January 2022. The entire decision is 86 pages, 310 paragraphs, long. We attach the entire decision to this correspondence, so that no one can misinform or disinform you of what has been decided by the tribunal.

In summary, the Tribunal ordered that:

1. The CSR Caretaker agreement to be terminated for CSR's breaches and misconduct;
2. Lot 107 and 109 which are caretaker lots to be sold in accordance with the provisions under caretaker agreement;
3. CSR is to provide secretary of the Owners Corporation with access and password to the building's video recording system, which they have refused to provide for the past 2 years. CSR to be penalized for up to \$5,500.00 if refusing to obey the Tribunal's orders.

Given the length of the decision, we would like to highlight a few paragraphs, which might answer some of your long-standing questions regarding our strata. But we encourage everyone to read the full decision if you can, so that you could have a more complete understanding of what has been done to our homes over the past 20 years.

DIRECT FROM THE NCAT ORDERS:

There are very important findings about what CSR has done over a 20-year period, and the problems this has caused for the Owners Corporation. The full orders can be found here [NCAT Orders](#). Take the time to read the orders to understand the truth about what has been happening for the last 20 years, and the people who have been 'managing' our home.

Here are some extracts from the orders:

	In relation to the 5% increase of Caretaker Fee every year:
Para 168 – 176	“The Tribunal is comfortably satisfied, bearing in mind the serious nature of the allegation, that it should find the CA ¹ was never varied to permit a 5% annual increase for the following reasons...”
Para 178	“While the respondent adopted a 5% increase instead of a CPI increase from the first anniversary of the CA, and while the applicant paid the resulting invoices for many years, that does not alter the fact that the respondent's conduct was a breach of the CA. Although that breach occurred many years ago, it suggests the respondent was not willing to abide by the terms of the CA early in the life of that agreement.”

¹ CA: Caretaker Agreement

<p>Para 185 – 186</p> <p>Para 189</p>	<p>With regard to the additional costs charged by CSR on OC:</p> <p>“Thus, the need for Ms Sun’s evidence to be reliably corroborated has not been met since the evidence of Mr Xu’s was neither reliable nor corroborative. There was also a telling answer given my Ms Sun during her cross-examination when questioned about a paragraph in her affidavit on this topic (A744 at [33]) and she said words to the effect: “I did not any anyone. I just told myself to increase the fee.</p> <p>“Accordingly, the position is that the Tribunal is not persuaded that there was an agreement to pay an additional fee, based on the oral evidence of Ms Sun and Ms Xu...”</p> <p>“Accordingly, in relation to this issue, the Tribunal determines that there was no agreement by the applicant to pay the additional fee charged by the respondent, either in 2009 or in 2016”</p>
<p>Para 190</p>	<p>With regard to additional charges for gardening and mowing:</p> <p>“In those circumstances, the evidence led in the respondent’s case does not persuade the tribunal that there is a satisfactory explanation for the payment of invoices from Jim’s Mowing and Gardenmakers by the applicant despite the CA making the respondent, not the applicant, responsible for the cost of that work covered by those invoices.”</p>
<p>Para 203</p> <p>Para 208</p> <p>Para 209</p>	<p>With regard to Susan Sun’s membership of the Strata Committee in 2010, 2011 and 2012:</p> <p>“The minutes reveal that at the AGM held in 2010, 2011 and 2012, she was elected as an SC member without any prior disclosure of her connection with the respondent.”</p> <p>“the available evidence supports a finding that she was an SC member for more than six years, from 27 March 2009 to 14 May 2015.”</p> <p>“There appear to have been clear breaches of clause 18.2 of the CA by Ms Sun. However, a technical approach might suggest that clause 18.2 only required Ms Sun to not offer herself for election and there is no evidence she did that. Even if that is accepted, it is clear Ms Sun breached the requirements of the 1996 Act when she was elected to the SC at the 11 October 2010 AGM, the AGM held on 4 July 2011, and the 31 July 2012 AGM”</p>
<p>Para 214</p> <p>Para 216</p>	<p>With regard to Ken Xue’s membership of the Strata Committee:</p> <p>“The suggestion of Ken Xue, during cross-examination, that the 1% transfer was a “tax decision” is rejected and that answer damaged his credibility. Secondly, Ken Xue was evasive when questioned about emails issued in his name on 21 July 2020, initially suggesting Sylvia sent an email and later saying that she drafted and he sent it. Thirdly, he gave non-responsive answers to questions which challenged his conduct, such as in relation to the outcome of the 7 August 2020 Supreme Court hearing. Indeed, on the simple question of whether he and Sylvia were at the venue for the 8 August 2020 AGM, the question had to be asked three times before he admitted their presence on that occasion.”</p>

Para 221	<p>“For those reasons, the Tribunal does not consider the evidence of Ken Xue to be reliable with the result that it could not be accepted without reliable corroboration.”</p> <p>“It is the Tribunal’s view that membership of the SC, considered in isolation, could be considered inconsequential, but the membership of Ms Sun and Ken Xue cannot be so regarded as there is evidence that they not only acted in self-interest but ignored conflicts of interest and sought not to serve the applicant but to control it.”</p>
Para 69	<p>“Dr Mao accepted that he, Ken Xue and Ms Hu retained Beazley Lawyers and attempted to stop the 8 August 2020 AGM, those Supreme Court proceedings being brought in the name of the applicant²”</p>
Para 227	<p>With regard to the 8 August 2020 AGM and the Supreme Court proceeding brought by CSR before that meeting:</p> <p>“Further, the Tribunal is satisfied that the Supreme Court proceedings were not properly initiated or pursued and that what was said and done by those three persons (Susan, Ken and Sylvia³) on the morning of 8 August, prior to the AGM, was knowingly false. The Tribunal is also satisfied that such conduct, which sought to prevent the 8 August 2020 AGM from being held, was not motivated by any COVID-related concern but by an attempt to prevent the applicant passing resolution adverse to the interests of the respondent.”</p>

WHAT HAPPENS NEXT:

We will make submissions in terms of who shall pay the costs of these proceedings. It will be the Owners Corporation’s submission that CSR is to pay the OC’s costs. CSR has caused the OC to incur costs by running a hopeless defence to a case which they should have conceded from the very beginning. CSR has also stubbornly refused to accept various settlement offers made by the OC in the past, which are more than reasonable.

As CSR’s caretaker agreement has been terminated, the committee has sought to engage Kristal, the current building management of Stage 2, to temporarily takeover the management all of Acacia Gardens on a month-to-month basis, until the next AGM when the owners can vote. The owners corporation will see an immediate saving of building management fees, which could be put to better use for the maintenance and improvement of our home.

Whilst the Supreme Court hearing is yet to come (in which CSR sued the Owners Corporation for refusing to pay the excessive building management fee calculated on the wrong basis), the Tribunal’s decision is a clear indication of the attitude of the judicial system towards abuse of contract terms and building management role. We hope the CSR could see it now, if they fail to see it clearly before, that justice might be delayed, but it will never be absent.

At last, we would like to say thank you to all the owners who have been supportive of this cause during the past three years. There have been doubts and unjustified attacks on the committee members and other owners who only tried to do what is right to defend our home. We could never have come this far without your support. Let this decision be a wake-up call and reminder to those who have either being blinded, misled, or still holds false hopes on CSR – in fact, to all of us – that we could only protect our homes, when we care.

² The Owners Corporation is the Applicant to terminate the CSR Caretaker Agreement and CSR is the Respondent.

³ Sylvia: an Employee of CSR.

WHAT THIS MEANS:

DO NOT CONTACT CSR FOR ANY BUILDING MANAGEMENT ENQUIRIES.

CSR are no longer contracted to the Owners Corporation by order of NCAT. CSR have no authority to do anything on behalf of the Owners Corporation. We have asked CSR to return all OC property and to cease any activities in Acacia Gardens. However, to date they are refusing to follow the orders of NCAT, are refusing to return to the OC our property, and are insisting they are still the building manager. CSR are continuing to waste OC money while we have to get more legal advice about what to do.

Kristal Property Services is the building manager for all Acacia Gardens. John Monro is our onsite Building Manager.

Cleaning will continue and we are working to establish the best possible cleaning team, we know there have been some disruptions and problems in the past few months.

WHERE TO FIND HELP:

BUILDING MANAGEMENT FOR ACACIA GARDENS is located at the office in the reception area of 71 JONES STREET
08:00 and 16:00 – Monday to Friday
10:00 and 13:00 – Saturday
Contact details **John: 0431 084 001** and buildingmanager2@acaciagardens.com.au



SECURITY FOR BOTH ACACIA GARDENS is located at the office in the reception area of 71 JONES STREET
16:00 and 08:00 – Monday to Friday
13:00 Saturday until 08:00 Monday (weekend)
Contact details **Security: 0410 408 873**

ADDITIONAL CONTACT INFORMATION

The following are the best ways to contact the people you need:

BCS – Samantha Edwards (Strata Manager) Phone: 02 8216 0398 Email: stratamanager@acaciagardens.com.au
Strata Committee (all members) Email: stratacommittee@acaciagardens.com.au
Strata Committee Chairperson (Luming) Email: chair@acaciagardens.com.au
Strata Committee Secretary (Nick) Email: secretary@acaciagardens.com.au
Strata Committee Treasurer (Matthew) Email: treasurer@acaciagardens.com.au
Any other enquiries, Email: newsletter@acaciagardens.com.au

If you want to join the Acacia Gardens Owners groups on either WhatsApp or WeChat, or both, please email us with your phone number to be added. Email: newsletter@acaciagardens.com.au

You can find the Facebook page at: <https://www.facebook.com/groups/261530967880147>

The Acacia Gardens website is now up and running and has a lot of useful resources including new forms for renovations and pet applications. Check it out at: www.acaciagardens.com.au

Thanks for reading!
Acacia Gardens Strata Committee