Supreme Court of New Zealand

9 October 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

CHUAN WU v BODY CORPORATE 366611 and THETA MANAGEMENT LTD (SC 20/2013) [2014] NZSC 137

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

Mr Wu owns a unit in the Empire Apartments building in Auckland. Body Corporate 366611 is the building's body corporate. Theta Management Ltd (Theta) is the building manager. The building is run as a student hostel. A majority of the owners lease their units to Theta, which in turn licenses them to students. Mr Wu and a small number of other owners did not wish to lease their units to Theta but wished to manage their units and lease them to students themselves.

Only the Body Corporate and Theta had the ability to programme and activate access cards for the Empire Apartments building and its units. Mr Wu sought access to the building in order to lease his unit but the Body Corporate and Theta refused. They required Mr Wu to sign a Security and Access Protocol (the Protocol) and pay a security deposit as a condition of access. Mr Wu issued proceedings claiming (both in nuisance and trespass) that this wrongfully interfered with his ability to rent his unit.

In the High Court, Asher J found in favour of Mr Wu and held the respondents liable in nuisance. The Court of Appeal allowed the respondents' appeal in part, finding in favour of Mr Wu on a more limited basis. In both courts below, it was held that signing the Protocol was an unreasonable step and that Mr Wu was not required to sign in order to mitigate his loss.

The Supreme Court has unanimously held that neither the building's Body Corporate Rules nor the Unit Titles Act 1972 gave the respondents the power to

require owners or occupiers of owner-managed units to sign the Protocol and to pay the security deposit as a condition of access to the building. In any event, the Protocol purported to impose "informal rules" on owners and occupiers, circumventing the rule-making provisions of the Unit Titles Act.

The pleadings contained actions in private nuisance and trespass. At the hearing of the appeal, this Court indicated to the parties that the most appropriate cause of action may have been trespass rather than private nuisance. The majority of the Court has found that to be the case. The Court has held that that the respondents are liable in trespass for ousting Mr Wu from the common property, which he part owns.

While not necessary given the conclusion with regards to trespass, the Court has said that, attached to a unit holder's unit title, there is a natural right of access to the unit. It is arguable that there could, by analogy with the cases regarding access to and from a public highway, be an argument that the respondents have committed a private nuisance by substantially and unreasonably interfering with Mr Wu's right to access his unit.

With respect to damages and the cross appeal, a majority of the Court has agreed with the finding of the Courts below that Mr Wu took all reasonable steps to mitigate his loss. Mr Wu was not required, in mitigation, to accept the offer to pay a reduced security deposit and accede to the Protocol. The Court has also upheld Asher J's quantification of damages.

William Young J has dissented on the mitigation issue and has held that Mr Wu should have accepted the offer from the Body Corporate and mitigated his loss.

The Court has therefore unanimously allowed the appeal, dismissed the cross appeal and, in accordance with the views of the majority, reinstated the damages awarded in the High Court judgment.

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