

AUSTRALIA / JUDGMENT

Keren v Hain

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Land and Environment Court New South Wales Medium Neutral Citation: Keren v Hain [2025]
NSWLEC 1595 Hearing dates: 24 July 2025 Date of orders: 24 July 2025 Decision date: 24 July 2025
Jurisdiction: Class 2 Before: Galwey AC Decision: The Court orders:

- (1) The application is refused.
- (2) The exhibits are returned, other than Exhibit A. Catchwords: TREES (DISPUTES BETWEEN NEIGHBOURS) — Pt 2A application — neighbouring hedges — obstruction of sunlight and views — whether the obstruction is severe Legislation Cited: Trees (Disputes Between Neighbours) Act 2006 (NSW), ss 14A, 14B, 14D, 14E, 14F Category: Principal judgment Parties: Gidon Keren (Applicant) Adam Hain (Respondent) Representation: Counsel: G Keren (Self-represented) (Applicant) A Hain (Self-represented) (Respondent) File Number(s): 2025/205907 Publication restriction: Nil

Judgment

This decision was given as an extemporaneous decision. It has been revised and edited prior to publication.

Background

COMMISSIONER: Gidon Keren has applied to the Court seeking the following orders relating trees and structures on the neighbouring property belonging to Adam Hain: Removal of bamboo; Removal of pine trees; Removal of bamboo structure; Trimming the [lilly pilly] trees; Maintaining the [lilly pilly] trees in the future to the height of the house. The hearing took place onsite, allowing me to observe the trees and both properties. The parties were self-represented. Framework for this decision Mr Keren applied to the Court pursuant to s 14B (Pt 2A) of the Trees (Disputes Between Neighbours) Act 2006 (NSW) (the Trees Act). The trees are on land adjoining the applicant's land. Some of the orders he seeks are orders the Court can make at s 14D of the Trees Act. Therefore, relevant issues to be determined in these proceedings are: Whether the trees are ones to which Pt 2A of the Trees Act applies: s 14A(1) of the Trees Act. Whether the applicant has made a reasonable effort to reach agreement with the respondent and given the required notice of the application: s 14E(1). Whether the Court can be satisfied that the trees are severely obstructing sunlight to the applicant's windows or views from the applicant's dwelling: s 14E(2)(a). Whether the Court can be satisfied that the applicant's interests outweigh reasons for not interfering with the trees: s 14E(2)(b). If orders are to be made, how consideration of the

relevant matters at s 14F of the Trees Act should influence those orders. Reasonable effort to reach agreement Mr Keren and Mr Hain have discussed the trees on several occasions. Mr Hain submitted that those discussions did not include issues of sunlight or view obstruction, which he became aware of only when he received a copy of Mr Keren's tree dispute application.

Nevertheless, I am satisfied that Mr Keren has made a reasonable effort to reach agreement with Mr Hain and that the timeframe set down by the Court has allowed for the required notice of the application. The bamboo A row of bamboo runs approximately 8 m on Mr Hain's land along the common boundary. It is now 2–2.5 m tall but was, according to Mr Keren, 4–4.5 m tall before it was pruned on 22 June 2025. Mr Hain submitted that he prunes it annually in a manner similar to the recent pruning event. I am satisfied that the bamboo is planted to form a hedge and that it rises to more than 2.5 metres tall. Therefore, Pt 2A of the Trees Act applies to the bamboo.

Sunlight obstruction Mr Keren provided very limited evidence in support of his application. For instance, he has no shadow diagrams nor any photographs showing the obstruction of sunlight to his windows. In fact, the evidence he presented shows the bamboo does not severely obstruct sunlight to his dwellings. Mr Keren showed the Court a photograph taken on his phone in May 2025, before the bamboo was pruned, when he said it was 4–4.5 m tall. An aerial image from May 2025, when the bamboo was at that same height, shows the bamboo's shadow on the ground on Mr Keren's property, but the shadow clearly does not reach his dwelling, so it does not impact his windows. The image was taken only one month before the winter solstice, and before the bamboo was pruned. I cannot be satisfied that the bamboo severely obstructs sunlight to Mr Keren's windows.

View obstruction From the rear part of Mr Keren's dwelling, the view includes the dividing fence, some vegetation, and the sky above. Due to the roof over Mr Keren's alfresco area, the principal outlook is to the west, not towards Mr Hain's property to the north. The bamboo obstructs only a small part of the sky view to the north, so I find the obstruction is minor at most, and certainly not severe. No orders can be made on this element of Mr Keren's application.

The 'pines' A row of cypress trees in the front setback of Mr Hain's property was planted recently and is less than 2.5 metres tall. Part 2A of the Trees Act does not apply to these trees: s 14A(1). Even if I accept that these trees will reach that height, Mr Hain submitted that they must be maintained at a height below a service wire. At that height, they would not obstruct sunlight or views. I cannot be satisfied that the cypress trees cause a severe obstruction of sunlight or views, nor that they are likely to do so. No orders can be made on this element of the application. Bamboo screen Mr Hain's bamboo screen is not a tree, so the Court has no jurisdiction within the Trees Act to make orders affecting the bamboo screen. The lilly pilly The lilly pilly is a single tree. It is not a 'group of two or more trees', so Pt 2A of the Trees Act does not apply to this tree: s 14A(1).

Orders

The Court orders: The application is refused. The exhibits are returned, other than Exhibit A. D Galwey Acting Commissioner of the Court

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