

AUSTRALIA / JUDGMENT

Mannix v Matthews [2024] NSWLEC 1698

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Land and Environment Court New South Wales

Medium Neutral Citation: Mannix v Matthews [2024] NSWLEC 1698 Hearing dates: 16 October 2024 Date of orders: 16 October 2024 Decision date: 16 October 2024 Jurisdiction: Class 2 Before: Galwey AC Decision: The Court orders:

- (1) The respondents names are corrected to Charles Matthews and Carol Matthews.
- (2) The application is refused.
- (3) The exhibits are returned other than Exhibit A. Catchwords: TREES (DISPUTES BETWEEN NEIGHBOURS) –Pt 2A application – neighbouring hedge – obstruction of sunlight – whether the obstruction is severe Legislation Cited: Trees (Disputes Between Neighbours) Act 2006, Pt 2A, ss 14A, 14B, 14D, 14E, 14F Category: Principal judgment Parties: Raymond Mannix (First Applicant) Linda Mannix (Second Applicant) Charles Matthews (First Respondent) Carol Matthews (Second Respondent) Representation: Counsel: R Mannix (Self-represented) (First Applicant) L Mannix (Self-represented) (Second Applicant) C Matthews (Self-represented) (First Respondent) S Matthews (Agent) (Second Respondent) File Number(s): 2024/285916 Publication restriction: Nil

Judgment

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

Background

1. COMMISSIONER: Raymond and Linda Mannix (the applicants) have applied to the Court pursuant to s 14B in Pt 2A of the Trees (Disputes Between Neighbours) Act 2006 (the Trees Act), seeking orders for trees in a neighbouring hedge to be pruned to remedy an obstruction of sunlight. Charles and Carol Matthews (the respondents) dispute that their trees cause a severe sunlight obstruction.
2. The Matthews' surname was spelt incorrectly in the application and on the Court's record. An order is made to correct the spelling of their surname.

The hearing

1. The hearing took place onsite in Maroubra, allowing the Court to inspect the trees, both properties and all relevant issues. Statements made by the parties were tendered and I heard their submissions. No shadow diagrams or other expert evidence were tendered.

The trees

1. On the Matthews' property, eight lilly pillies (*Syzygium* sp.) are planted to form a hedge approximately 3 metres tall along the common boundary they share with the Mannixes. They are trees to which Pt 2A of the Trees Act applies (s 14A).

Orders the applicants seeks

1. The Mannixes want the hedge maintained at fence height, or low enough to allow sunlight to enter their windows. These are orders the Court can make (s 14D).

The applicants made a reasonable effort to reach agreement

1. The Mannixes applied for mediation through the Community Justice Centres, but the Matthews did not take up the invitation to mediate this dispute. I am satisfied that the Mannixes made a reasonable effort to reach agreement and that the timeframe for the hearing allowed for the required notice of the application (s 14E(1)).

Do the trees cause a severe obstruction of sunlight?

1. The parties share a duplex development facing west onto Bunnerong Road. At the back of their dwelling, the Mannixes have a patio area covered by a roof, with a side wall that is parallel with, and close to, the common boundary shared with the Matthews. The back of the patio is open to the garden. The application concerns two windows.
2. The first window is to a spare bedroom. The bedroom has a row of windows that face roughly east. Most of the windows are within the patio area, enclosed by its roof and side wall, but the northernmost window is in the narrow gap between the patio's side wall and the common boundary. The Mannixes claim that trees in the hedge severely obstruct sunlight to this window.
3. The hearing took place in the afternoon. I rely on common knowledge of the sun's movements throughout the day and during different seasons. Trees at the western end of the hedge would obstruct early morning sunlight to the lower part of this window. It might be a nuisance to the Mannixes, but I do not regard this as a severe obstruction of sunlight. The impact to this window and to the spare bedroom is unlikely to be significant.
4. The second window is in the patio's north-facing side wall near the common boundary. The Matthews submit that the window was installed in the patio wall without any development consent. The Mannixes do not dispute this, but neither party could confirm whether such development consent was required in the circumstances. Due to my finding on sunlight obstruction below, the planning status of this window is not relevant to this decision.

5. Again, the Mannixes claim that the hedge severely obstructs sunlight to this window. Trees in the hedge obstruct morning sunlight during winter to the lower part of the window. Again, this might be a nuisance but I find the obstruction is not severe. Sufficient light still reaches the window. Furthermore, if I did find this obstruction to be severe, I would not make any orders once matters at s 14F are considered. The window is to a patio that receives ambient light from the south, where it is not enclosed.
6. Because I find that trees in the hedge do not severely obstruct sunlight to either window, no orders can be made in these proceedings (s 14E(2)(a) of the Trees Act).

Agreement noted

1. During the Mannixes' submissions, it became clear to the Court, and to the Matthews, that the hedge creates another issue for the Mannixes, perhaps one of a greater nuisance than the sunlight obstruction. To prune the hedge's face on the Mannixes' side, along the boundary, Mr Mannix has to climb over an air conditioning unit into the narrow gap between the fence and their patio wall. After pruning, he then has to clean out the debris that falls on the ground in this narrow gap. The task has become too difficult with age. On hearing this, the Matthews submitted that their own contractor already prunes the Mannixes' side of a hedge at the front of the properties, and cleans up debris afterwards. They offered to have their contractor do the same for the lilly pilly hedge in their back garden. The Mannixes were grateful for the offer and agreed to allow access for the Matthews' contractor. The Court notes this agreement between the parties.

Orders

1. The Court orders:
1. The respondents names are corrected to Charles Matthews and Carol Matthews.
2. The application is refused.
3. The exhibits are returned other than Exhibit A.

D Galwey

Acting Commissioner of the Court

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