

AUSTRALIA / JUDGMENT

Sinclair v Savage [2024] NSWLEC 1672

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Land and Environment Court New South Wales

Medium Neutral Citation: Sinclair v Savage [2024] NSWLEC 1672 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 application is refused.
- (2) 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 Cases Cited: Drewett v Best [2010] NSWLEC 1305 Category: Principal judgment Parties: Monica Sinclair (Applicant) Olivia Savage (First Respondent) Janek Savage (Second Respondent) Representation: Counsel: M Sinclair (Self-represented) (Applicant) C Street (First and Second Respondents) File Number(s): 2024/280226 Publication restriction: Nil

Judgment

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

Background

1. COMMISSIONER: Monica Sinclair (the applicant) has 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 cypress hedge to be pruned or removed to remedy an obstruction of sunlight. Olivia and Janek Savage (the respondents) value the privacy provided by their trees and dispute that the trees cause a severe sunlight obstruction.

The hearing and evidence

1. The hearing took place onsite, allowing the Court to inspect the trees, both properties and all relevant issues. Ms Sinclair was self-represented, while Mr Street, of Counsel, represented the Savages.

The trees

1. Five trees form this Leyland cypress (*Cupressus × leylandii*) hedge. Trees 2–4 are 6–7 metres tall. Tree 5 is shorter, while Tree 1 has been planted only recently. The trees form a dense screen along the Savages' rear boundary. They are clearly planted so as to form a hedge. They are trees to which Pt 2A of the Trees Act applies (14A).

Orders the applicant seeks

1. Ms Sinclair wishes to increase her access to sunlight. She seeks orders for the Savages to prune and maintain the trees at the height of her balcony balustrade, or alternatively to remove the trees. These are orders the Court can make (s 14D).

Ms Sinclair made a reasonable effort to reach agreement

1. Ms Sinclair discussed the trees with the Savages. She attempted to arrange mediation through the Community Justice Centres. I am satisfied that she made a reasonable effort to reach agreement and that the timeframe for the hearing allowed her to give the required notice of the application (14E(1)).

Do the trees cause a severe obstruction of sunlight?

1. Ms Sinclair claims that the trees severely obstruct sunlight. She has not included issues of view obstruction in her application. At s 14E(2)(a)(i) of the Trees Act, the Court cannot make an order unless satisfied that the trees are severely obstructing sunlight to a window of the applicant's dwelling.
2. The Court considers 'sunlight' in the Trees Act to mean direct sunlight: *Drewett v Best* [2010] NSWLEC 1305 at [17]. While s 14E(2)(a)(i) refers to sunlight without specifying direct sunlight, the wording of s 14F(o) suggests that when Pt 2A of the Trees Act refers to sunlight, it is referring to direct sunlight:
 - (o) the amount, and number of hours per day, of any sunlight that is lost as a result of the obstruction throughout the year and the time of the year during which the sunlight is lost.
1. Mr Street pointed out during the onsite hearing that sunlight can only reach the very bottom of the glass sliding doors of Ms Sinclair's living area. Between those windows and the trees are her balcony with a ceiling and awning. The Court observed the situation at 9:30 am, when it was evident that little morning sunlight would reach these northeast-facing windows even if the trees were absent. The windows are shaded by the ceiling over Ms Sinclair's balcony.
2. As a result, the trees are not causing a severe obstruction of sunlight to these windows. It follows that the Court cannot make orders in these proceedings.
3. I have no doubt that the interior of Ms Sinclair's dwelling is darkened by the hedge during daylight hours. What she seeks does not seem unreasonable. Had I found the trees caused a severe sunlight obstruction, I would be required to consider the matters at s 14F. The Savages say that they need the trees at this height to maintain their privacy. Ms Sinclair

submitted that there is no real opportunity for overlooking due to the depth of the balcony and the presence of a planter box and its plants along its edge. If I were required to make a finding on the balance of these issues, I would find in Ms Sinclair's favour. Likewise, had I needed to consider an obstruction of a view from her dwelling, the outcome may have been different.

Orders

1. The Court orders:
1. The application is refused.
2. The exhibits are returned other than exhibit A.

D Galwey

Acting Commissioner of the Court

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Prepared on 24 October 2026 · Esheria