

AUSTRALIA / JUDGMENT

The Owners - Strata Plan No 105126 v Mokhtari

[2026] NSWCATCD 23**COURT**

Civil and Administrative Tribunal

DECIDED

18 February 2026

BEFORE

N Kulkarni, Senior Member

CASE / FILE NUMBER

2025/00286241

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Civil and Administrative Tribunal New South Wales

Medium Neutral Citation: The Owners - Strata Plan No 105126 v Mokhtari [2026] NSWCATCD 23**Hearing dates:** 16 January 2026**Date of orders:** 18 February 2026**Decision date:** 18 February 2026**Jurisdiction:** Consumer and Commercial Division**Before:** N Kulkarni, Senior Member**Decision:** (1) The application is dismissed.**Catchwords:** LAND LAW — Strata title — Owners corporation — claim against lot owner to recover cost of work to repair common property power cable and cost of generator pending repair**Legislation Cited:** Strata Schemes Development Act 2015 (NSW)
Strata Schemes Management Act 2015 (NSW)**Cases Cited:** Briginshaw v Briginshaw (1938) 60 CLR 336
Browne v Dunn (1893) 6 R 67
Coscuez International Pty Ltd v The Owners-Strata Plan No 46433 [2022] NSWCATAP 147
Masterton Homes Pty Ltd v Palm Assets Pty Ltd [2009] NSWCA 234**Category:** Principal judgment**Parties:** The Owners – Strata Plan No 105126 (Applicant)
Martin Mokhtari (Respondent)

Representation: M Buckland (Chairperson) (Applicant)
Respondent (self-represented)

File Number(s): 2025/00286241

REASONS FOR DECISION

This is an application by the owners corporation of a strata scheme to recover from a lot owner the cost of work to repair a common property electrical power cable and the cost of installation and operation of a generator pending repair of the cable.

Background

The strata scheme was registered on 4 October 2023. It comprises 10 lots. Lots 1, 2 and 3 are in a line. Lot 1 is closest to the street and lots 2 and 3 are behind it. The three lots receive power from a utility pole at the street. A power line runs from the utility pole to lot 1. The line is connected to a distribution board outside lot 1. A power cable (Cable) runs from the distribution board to lots 2 and 3. It provides them with power. It runs underneath the floor of lot 1.

On 26 May 2024, lots 2 and 3 ceased to have power. The owner of lot 3 arranged for an electrician to attend. The electrician rectified an issue at the distribution board. The electrician also undertook cable tracing. The electrician could not access the section of the Cable underneath the floor of lot 1 and assumed there was an issue with that section.

On 28 May 2024, the owners corporation arranged for CitiWide Electrical Contractors Pty Ltd (CWEC) to attend to restore power to lots 2 and 3. It appears that CWEC sought access to lot 1 to do work to repair the Cable, but the owner of lot 1, who is the respondent, did not agree to give access.

Following discussions between the strata manager and the respondent, it was agreed that a temporary cable would be installed to provide power to lots 2 and 3 until the owners corporation obtained orders from the Tribunal in relation to accessing lot 1 and repairing the Cable.

On 31 May 2024, the temporary cable was installed which restored power to lots 2 and 3. It ran from the distribution board along the side fence to lot 2.

On 9 August 2024, Endeavour Energy disconnected the supply of power to lots 2 and 3 from the temporary cable. It does not appear to be in dispute that this occurred after the respondent had contacted Endeavour Energy.

On 10 August 2024, the owners corporation arranged for CWEC to attend to repair the Cable. The respondent did not agree to give access to his lot. There were discussions between the respondent and the chairperson of the owners corporation, but no agreement for access was reached. A decision was then made for a generator to be installed until the owners corporation obtained orders from the Tribunal for access to lot 1 to repair the Cable.

Subsequently, the generator was installed.

On 16 August 2024, CWEC invoiced the owners corporation \$8,351.75 for the attendance on 10 August 2024 and for installation of, and fuel for, the generator.

On the same date, the owners corporation lodged an application to the Tribunal, 2024/00302411, seeking an interim order for access to lot 1 to repair the Cable.

On 18 September 2024, the Tribunal made the following interim orders:

1. The respondent, by consent, will tomorrow on 19 September 2024 give access to a licensed electrician to enter the respondent's lot no 1 to reconnect the power supply in accordance with all relevant Australian Standards to facilitate and allow the supply of electricity to lot No 2 and No 3.
2. After the power supply is reconnected the licensed electrician will supply to the owners corporation and the respondent a report or letter setting out that the electricity connection is compliant with all Australian Codes and Standards. The letter should set out with some specificity why the power supply is compliant and safe.
3. The letter/report should also address the email from Endeavour Energy of 30 August 2024 to the respondent which the respondent alleges establishes that only a Level 2ASP electrician can re-connect the supply in accordance with order 1 above.
4. The applicant owners corporation is directed to provide a copy of that letter to the respondent and the Tribunal by close of business on Monday 23 September 2024.
5. The respondent will provide a copy of an electrician's report to the Tribunal and the owners corporation on 10 October 2024.

The Tribunal adjourned the application to a further hearing to determine whether the electricity connection the subject of order 1 should be retained or some other order made. Subsequently, the application was listed for hearing on 23 October 2024.

On 19 September 2024, CWEC repaired the Cable. The repair included replacing a section of it. An electrician with CWEC, Mr Luca Campanari, provided the strata manager a compliance certificate in relation to the work.

On 23 September 2024, CWEC invoiced the owners corporation \$12,985.36 in relation to the hire and operation of the generator up to 20 September 2024.

On the same date, CWEC invoiced the owners corporation \$8,845 for work related to repair of the Cable and disconnection of the generator.

At the hearing on 23 October 2024, the Tribunal dismissed the application on the basis that the owners corporation sought no further remedy.

On 27 July 2025, the owners corporation lodged the current application. By its application, as clarified by the evidence it relies on, the owners corporation seeks to recover from the respondent the total of the amounts of \$8,351.75, \$12,985.36 and \$8,845 it has paid to CWEC, being \$30,182.11, for repair of the Cable and the costs associated with the generator. It also seeks costs of \$4,400 for fees charged by the strata manager. It claims that these amounts represent loss caused by acts or omissions of the respondent.

Evidence

The documents relied on by the parties were admitted into evidence as follows:

Applicant:

Exhibit A - white folder lodged 3 September 2025

Exhibit B - response to respondent's submissions (annexure 9) lodged 15 October 2025

Exhibit C - case summary (annexure 12) lodged 12 January 2026

Respondent:

Exhibit 1 - grey folder lodged 30 September 2025

Exhibit 2 - black folder lodged 5 November 2025

Exhibit 3 - written submissions lodged 7 January 2026

Exhibit 4 - timeline lodged 12 January 2026

Legislation

Section 106(1) of the Strata Schemes Management Act 2015 (NSW) (SSM Act) imposes a duty on an owners corporation to properly maintain and keep in a state of good and serviceable repair the common property.

Section 119 of the SSM Act permits an owners corporation to carry out work to rectify, relevantly, any defect in any cable that provides electricity or other service (including telephone, internet, radio or television services) within a lot.

Section 122 of the SSM Act relevantly provides:

- (1) An owners corporation for a strata scheme may, by its agents, employees or contractors, enter on any part of the parcel of the scheme for the purpose of carrying out the following work—
 - (a) work required or authorised to be carried out by the owners corporation in accordance with this Act...,

...

- (2) An owners corporation for a strata scheme may, by its agents, employees or contractors, enter on any part of the parcel for the purpose of determining whether any work is required to be carried out by the owners corporation in accordance with this Act.
- (3) In an emergency, the owners corporation may enter any part of the parcel for those purposes at any time.
- (4) In a case that is not an emergency, the owners corporation may enter any part of the parcel for those purposes with the consent of any occupier of that part of the parcel or, if the occupier does not consent, in accordance with an order of the Tribunal under this Division.
- (5) A person must not obstruct or hinder an owners corporation in the exercise of its functions under this section.

Maximum penalty—5 penalty units.

- (6) An owners corporation is liable for any damage to a lot or any of its contents caused by or arising out of the carrying out of any work, or the exercise of a power of entry, referred to in this section unless the damage arose because the owners corporation was obstructed or hindered.

Section 111 of the SSM Act prohibits a lot owner from carrying out work unless relevantly authorised.

Section 132 of the SSM Act permits the Tribunal, if satisfied that work carried out by or for a lot owner has caused damage to common property, to order the lot owner pay the owners corporation a specified amount for the cost of repairs of the damage and any associated costs, including insurance and legal costs.

Section 151 of the SSM Act relevantly prohibits a lot owner from doing anything or permitting anything to be done in relation to the lot so that the provision of electricity and other services (including telephone, internet, radio or television services) through cables in the lot is interfered with.

Section 153 of the SSM Act relevantly prohibits a lot owner from creating a nuisance or hazard, or using common property in a manner that unreasonably interferes with the use by others of common property or a lot.

Section 232 of the SSM Act permits the Tribunal to make an order to settle a dispute about, relevantly, the operation, administration or management of a strata scheme.

Consideration

At the hearing, it appeared to be common ground that the Cable is common property. To the extent that this remains a live issue, I find it is common property. It is covered by a notation on the floor plan for the strata scheme which states “ALL COMMON SERVICES LINES ARE COMMON PROPERTY”. Further, it is “common infrastructure” which has not been described on the floor plan as part of a lot such that it is not comprised in a “lot” and is therefore “common property”: see definitions in s 4 of the Strata Schemes Development Act 2015 (NSW).

Cable repair claim

At the hearing, the owners corporation, represented by its chairperson Mr Mark Buckland, accepted that the claim for the cost of repair of the Cable depended on a finding that the respondent did something, or permitted something to be done, around 26 May 2024 which damaged the Cable.

The need for such a finding follows from the potential bases for the claim in ss 111, 132, 151 or 153 of the SSM Act, or from the potential causes of action at common law that would give rise to a power to award damages under s 232 of the SSM Act: see *Coscuez International Pty Ltd v The Owners-Strata Plan No 46433* [2022] NSWCATAP 147 at [133].

To establish such a finding, the owners corporation submitted that it relied on:

an unsigned, undated statement purportedly made by the owner of lot 2, Mr Alex Baker, that was part of the evidence provided to the Tribunal in support of the interim orders that were made on 18 September 2024;

an invoice issued by CWEC dated 20 June 2024;

an unsigned document described as a “report” by Mr Campanari of CWEC dated 27 September 2024; and

a unsigned document described as a “statement” by Mr Campanari dated 8 October 2025.

According to the statement said to have been made by Mr Baker, on the afternoon of 29 May 2024, he and the owner of lot 3, Mr Richard O’Keefe, met with the respondent and had a discussion. It then states:

“Martin [the respondent] had mentioned that he had cut the cable as he deemed it unsafe and did not want it on his property. Myself and Richard assessed the cable that Martin had damaged, with Martin’s approval, so I could send pictures to my personal electrician to get some advice.”

There is no evidence of any pictures that were taken. There is an email from Mr O’Keefe to the strata manager dated 2 September 2024 setting out his “series of events and interactions with Unit 1”. It did not refer to any discussion involving the respondent, Mr Baker and him. It did not refer to any admission made by the respondent of having cut the Cable. It did not refer to Mr Baker and him assessing the Cable. To the contrary, it refers to the respondent not permitting “access to check where the fault was”.

It was submitted that the statement should be accepted because Mr Baker was not asked to be cross-examined and thus its contents are unchallenged. I reject that submission. First, it is unsigned and I am not satisfied that it truly represents Mr Baker’s evidence. Secondly, on the assumption it does, it was made in support of earlier proceedings but no further statement was provided as part of these proceedings. The respondent, who is self-represented, has maintained throughout these proceedings that he did not cause the Cable to be cut. The issue was plainly in dispute. In those circumstances, I do not consider the second aspect of the “rule” in *Browne v Dunn* (1893) 6 R 67 is applicable to the statement. Thirdly, even if the statement were treated as Mr Baker’s unchallenged evidence, that does not necessarily mean the Tribunal is bound to accept it. Evidence not cross-examined on can be rejected if it is otherwise unreliable: *Masterton Homes Pty Ltd v Palm Assets Pty Ltd* [2009] NSWCA 234 at [105]. Based on the inherent nature of the evidence, the matters referred to in the preceding paragraph and the apparent inconsistency with the alternative hypothesis advanced in other material (and even loosely elsewhere in the statement itself) that the damage was caused by works being done by a contractor engaged by the respondent, I do not accept the claim in the statement is reliable.

The CWEC invoice dated 20 June 2024 stated “Villa 1 has power and currently undergoing renovation”. It stated “Villa 1 denied us access” on 28 May 2024 and that the Cable “seems to be cut or damaged by unit”. It later stated “Original cable seems to be cut or damaged underneath unit 1”.

Mr Campanari’s “report” dated 27 September 2024 stated “The cable had been removed from bellow [sic] lot 1 by the owner after the damage had occurred, so this caused the cable to have to be replaced”.

Mr Campanari’s “statement” dated 8 October 2025 stated “Existing cables were damaged by the owner of Lot 1. Lot 1’s owner then proceeded to remove cables from the common area (under Lot 1’s property). This, in turn, disconnected the two properties fed through the sub mains”. It stated that on 28 May 2024 “We found the cable, underneath the house, had been cut”.

There are no photographs provided by CWEC from the attendances in late May 2024 showing the claimed cut or damage to the Cable. None of the three documents sets out the basis for the claim that it was the respondent who had damaged the Cable. The facts not in dispute establish that CWEC was not present when lots 2 and 3 ceased to have power. I am not satisfied that these documents establish that the respondent did something, or permitted something to be done, around 26 May 2024 which damaged the Cable. They raise no higher than speculation.

Although there were various claims in emails and other correspondence that the damage was caused by works being done by a contractor engaged by the respondent around the time lots 2 and 3 ceased to have power, ultimately, the material relied on by the owners corporation did not support such a finding.

It appears the owners corporation itself earlier appreciated that its evidence in support of this claim was no more than speculative. In its response to the respondent's submissions (Exhibit B), the owners corporation provided a summary of its position, including that:

"The cable was severed in circumstances that are unclear and irrelevant for present proceedings."

I presume the relevance of how the Cable came to be damaged to the claim for the cost of repair of the Cable was only realised during the hearing.

I am not satisfied on the evidence presented to the Tribunal that the respondent did something, or permitted something to be done, around 26 May 2024 which damaged the Cable.

Generator costs claim

At the hearing, the owners corporation accepted that the claim for the costs associated with the generator depended on a finding that they arose because of the respondent's refusal to give access to his lot for the Cable to be repaired on 10 August 2024.

There is no dispute that the respondent did not agree to give access to his lot for the Cable to be repaired on 10 August 2024 and, subsequently, the owners corporation installed the generator and commenced the earlier proceedings for an interim order for access to the lot to repair the Cable.

Section 119 of the SSM Act authorised the owners corporation to carry out work to rectify a defect in the Cable. Section 122(1)(a) of the SSM Act authorised the owners corporation to enter on lot 1 to carry out that work. If this did not amount to an emergency, absent consent by the respondent, an order of the Tribunal was required to enter the lot to carry out the work: s 122(4). If it did amount to an emergency, the respondent's consent was not required to exercise the power to enter the lot to carry out the work: s 122(3).

It follows from these provisions that, if the cessation of power to lots 2 and 3 did not amount to an emergency, the respondent was free to withhold consent, no matter how unreasonable. On that hypothesis, by reason of s 106(1) of the SSM Act, it was incumbent on the owners corporation to obtain an order from the Tribunal to repair the Cable. I would not accept that a lot owner, in a case that is not an emergency, is effectively under a duty to give consent to avoid causing loss associated with the statutorily mandated need to obtain a Tribunal order. I also would not accept that withholding consent in such a case would amount to obstructing or hindering the owners corporation in exercising its functions so as to constitute an offence under s 122(5) because the exercise of the function of entry in such a case is itself conditional on obtaining a Tribunal order.

In my view, however, cessation of power to lots 2 and 3 did amount to an emergency for the purposes of s 122. None of the documentary material submitted by the owners corporation to the Tribunal suggests the availability of the power to enter lot 1 without the need for the respondent's consent on the ground of emergency was considered at the time. The application lodged on 16 August 2024 referred to an order for entry being required. A statement made by Mr Buckland dated 2 September 2024 in support of that application set out a detailed account of the discussions between him and the respondent on 10 August 2024. As noted above, those discussions did not produce agreement for access to lot 1. There is no suggestion in that evidence that there was any discussion that the respondent's consent was not necessary. To the contrary, it is evident from the account that Mr Buckland had proceeded on the footing that such consent was necessary.

During the hearing, following dialogue about the operation of s 122, including the issue addressed in paragraph 46 above, the owners corporation submitted, seemingly for the first time, that s 122(3) had been considered at the time, but the CWEC contractors were not prepared to proceed because of a concern for their safety if they proceeded to enter the lot without securing the respondent's consent. The basis for this submission was that the respondent had acted in an aggressive and threatening manner on 10 August 2024, and on occasions before then. It was submitted that it was considered inappropriate to call police to oversee the repair of the Cable.

The allegation of aggressive and threatening behaviour by the respondent inducing a fear of personal safety for the CWEC contractors is a serious one. The detailed account in Mr Buckland's statement of his discussions with the respondent on 10 August 2024 do not support the view that there was such behaviour. To the contrary, it suggests that there were a range of concerns raised by each party and attempts at working out a solution that might be acceptable to both sides. The CWEC invoices and Mr Campanari's "report" and "statement" do not indicate any concern for safety arising from the respondent's behaviour. Indeed, they do not refer to the respondent acting in such a way, as opposed to being steadfast in his refusal to permit access.

Although the correspondence appears to suggest instances of the respondent badgering the strata manager with excessive contact, there is nothing from the communications indicating aggressive or threatening conduct, or that someone became fearful of their safety.

The seriousness of an allegation affects the strength of the evidence required to prove it to the reasonable satisfaction of the finder of fact: *Briginshaw v Briginshaw* (1938) 60 CLR 336. I would be prepared to accept that discussions got heated, perhaps on both sides. The respondent stated his central concern at that time was one of safety in relation to the repair work to the Cable. That is supported by Mr Buckland's account. It would not be unexpected for there to be animated exchanges on such an issue. However, I am not persuaded on the evidence, including the evidence given by the respondent at the hearing firmly rejecting the claim after the submission was made, that he acted in an aggressive and threatening manner. It seems to me the claim of a concern for personal safety making access to the lot without consent imprudent or impracticable was improvisation by the owners corporation when the potential obstacle in its case based on the terms of s 122 was perceived. I find that s 122(3) was not considered by the owners corporation

around 10 August 2024.

Against the background of the findings above, I find that the owners corporation did have power to enter lot 1 to repair the Cable without the respondent's consent, but it did not seek to exercise that power. Having not sought to exercise the power, and therefore not having raised the power with the respondent, I am not satisfied that the respondent obstructed or hindered the owners corporation in exercising its functions under s 122. Accordingly (and assuming, without deciding, that such obstruction or hindrance is capable of giving rise to a claim by the owners corporation for loss thereby caused), I find that the costs associated with the generator do not represent loss arising from the respondent's refusal to give access to his lot for the Cable to be repaired on 10 August 2024. Rather, in my view, the costs are attributable to the belief that a Tribunal order was required to enter the lot to carry out the repair work and the need to ensure provision of power to lots 2 and 3 until such an order was obtained.

Although such a conclusion may seem unfortunate, not least because the respondent could easily have avoided considerable time, effort and cost (including, proportionately, to himself) by giving consent, it is simply a product of the legislative framework for strata schemes.

To the extent there was a claim that the respondent agreed on 10 August 2024 to be liable for the generator costs, I am not satisfied on the evidence presented that there was any such agreement on his part.

The owners corporation has failed to establish both the Cable repair claim and the generator costs claim. The application should be dismissed.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.

Registrar

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