

AUSTRALIA / JUDGMENT

Walker v Kelly [2024] NSWLEC 1136

Source: caselaw.nsw.gov.au · Research copy typeset by Esheria. Not court-issued or certified.

Land and Environment Court New South Wales

Medium Neutral Citation: Walker v Kelly [2024] NSWLEC 1136 Hearing dates: 13 March 2024 Date of orders: 13 March 2024 Decision date: 13 March 2024 Jurisdiction: Class 1 Before: Galwey AC Decision: The Court orders:

- (1) The application is refused. Catchwords: TREES (DISPUTES BETWEEN NEIGHBOURS) –Pt 2 application – damage to neighbouring property – whether tree removal is required Legislation Cited: Trees (Disputes Between Neighbours) Act 2006, ss 7, 10, 12 Category: Principal judgment Parties: Alison Walker (Applicant) Amelia Kelly (Respondent) Representation: Counsel: A Walker (Self-represented) (Applicant) A Kelly (Self-represented) (Respondent) File Number(s): 2023/360325 Publication restriction: Nil

Judgment

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

Background

1. COMMISSIONER: Alison Walker (the applicant) parks her car in the driveway of her Mount Colah property. Last August, a palm frond fell from a cocos palm (*Syagrus romanzoffiana*) on the neighbouring property belonging to Amelia Kelly (the respondent). Ms Walker has applied to the Court pursuant to s 7 (Pt 2) of the Trees (Disputes Between Neighbours) Act 2006 (the Trees Act) seeking orders to prevent further damage, for compensation, and for costs. I note, Commissioners of the court do not have the power to order costs.
2. Ms Kelly and her husband have several palms in their garden. Most are close to their own dwelling, but two cocos palms (the trees) are in their north-eastern corner among a patch of bamboo, close to Ms Walker's garage and bin storage area. Ms Walker parks her car in front of the garage and has done so for the last 12 years. She said that dead palm fronds fall frequently onto her garage roof and some have hit her rubbish bins. She is concerned for her safety when using the rubbish bins. She said a frond once caused minor damage to the front of her car, but in August a falling frond caused more significant damage to the roof of her car. This was repaired for \$660.

3. After the frond hit her car, Ms Walker spoke with Ms Kelly. Ms Kelly offered to pay for repairing the damage. Ms Kelly spoke with her husband, Jason Kelly. They thought removing the palms would cost several thousand dollars, which seemed disproportionate and unnecessary considering the damage caused.

Framework for this decision

1. The key jurisdictional tests in these proceedings are found at s 10 of the Trees Act: 10 Matters of which Court must be satisfied before making an order
 - (1) The Court must not make an order under this Part unless it is satisfied:
 - (a) that the applicant has made a reasonable effort to reach agreement with the owner of the land on which the tree is situated, and
 - (b) if the requirement to give notice has not been waived, that the applicant has given notice of the application in accordance with section 8.
 - (2) The Court must not make an order under this Part unless it is satisfied that the tree concerned:
 - (a) has caused, is causing, or is likely in the near future to cause, damage to the applicant's property, or
 - (b) is likely to cause injury to any person.
1. If the tests at s 10 are satisfied, the Court must consider a range of matters at s 12 of the Trees Act before determining the application. Ms Kelly does not dispute that one of her cocos palms has caused damage to Ms Walker's car.

Reasonable effort to reach agreement

1. Ms Walker wants the trees removed. She sought mediation via the Community Justice Centres (CJC) before lodging her application with the Court. Ms Kelly declined mediation. She had offered to pay for the damage. She submitted that she was unaware of the nature of the proposed mediation, as the CJC letter did not identify the issue and she wondered if it related to her barking dog.
2. I find Ms Walker made a reasonable effort to reach agreement, as required by s 10(1) of the Trees Act.

The tree caused damage to property

1. I find a frond from a palm tree on the Ms Kelly's property caused damage to Ms Walker's property, satisfying the test at s 10(2) of the Trees Act.

No orders will be made

1. I have considered the matters at s 12 of the Trees Act. The trees provide amenity and contribute to Ms Kelly's garden landscape. The damage to Ms Walker's car was relatively minor, and the cost of repair was not significant when compared with the cost of removing the trees. Damage of this nature has occurred only once in 12 years of Ms Walker parking her car in the driveway. Ms Kelly had no reason to expect the tree would damage Ms Walker's car. There is no reason here to shift the loss, or the cost of its remedy, to Ms Kelly.
2. Palm fronds fall only occasionally. Most fronds would fall into Ms Kelly's property. As Ms Walker stated, those that come across the boundary mostly hit the garage roof. I find that the risk of the trees causing further damage is low. The risk of the trees causing injury is low.
3. Without reason to remove the trees or to order compensation, the application will be refused.

Orders

1. The Court orders:
1. The application is refused.

D Galwey

Acting Commissioner of the Court

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated. Decision last updated: 21 March 2024

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.caselaw.nsw.gov.au/decision/18e59065e3da82e5bb5f6dfc>

CASE PAGE <https://chat.esheria.ai/case-law/australia/walker-v-kelly-2024-nswlec-1136-2024>

Prepared on 30 October 2026 · Esheria