



Bernie, one small dog on the Gold Coast, epitomises the fight over penthouse pets.

CLAYTON GLENISTER

The penthouse pet

ALMOST seven years ago, I walked into the family home and announced, with a healthy dose of sarcasm, that I had reached the pinnacle of my professional career. I had just given expensive and complicated advice about... wait for it... a cat defecating on the common property of a strata scheme.

Who would have believed that some seven years later I would be acting as the solicitor in an emotional, lengthy and expensive appeal again involving a four-legged friend – this time a dog by the name of Bernie.

The case pertained to Bernie's status within a Gold Coast apartment block.

Bernie, a six-year-old shitzu-cross Maltese, and his loving owners Warren and Bente Tutton have recently completed their rounds of publicity after their successful high-powered legal challenge.

This publicity trail involved feature articles in national newspapers and segments on national current affairs programs, leaving

GETTY IMAGES

Warren and Bente as the new champion of animal rights throughout the country.

The reason this case is so newsworthy is because the issue of pet ownership is such an emotional one. The “pro-pet” party will go to all lengths to protect their right to their beloved family member.

“This was about our rights... and Bernie’s,” Mr Tutton says. “Most people would have given up. They wouldn’t have spent \$70,000. We felt so strongly it was wrong, it was worth doing.”

Meanwhile those who aren’t so animal friendly will vigorously defend their position not to have pets within a building and indeed pursue all avenues to uphold this “pet-exclusion” right.

To put both sides of the issue in one balanced statement: Someone’s little darling will nearly always be someone else’s nightmare.

Scratched furniture, stained carpets and constant ear-splitting whining for walking or due to boredom have caused many to consider that apartment living and pet ownership are mutually exclusive.

“Just as we were very passionate about our rights for Bernie, there were committee members very intent on ostracising us in this process, not allowing our side of the story to be voiced to other owners and generally making life very uncomfortable for us in our own home,” says Mr Tutton.

THE CASE FOR BERNIE

The case involving the Tuttons resulted from their building’s body corporate changing the by-laws after the Tuttons and others had originally been given approval for their pets from the developer when they bought off the plan.

Their right to keep Bernie couldn’t be challenged, however it was the fact that the body corporate had changed the building from being “pet-friendly” to now being “anti-pet” that spurred the Tuttons to challenge the by-law change. The new by-law under challenge stated that except for original owners who’d been given approval, owners were not to keep animals.

In handing down his orders resolving the dispute, Mr Dorney QC on behalf of the Commercial and Consumer Tribunal noted that the original owners who were given the approval for a pet by the developer had a “right” to their animal and it wasn’t subject to any “approval” being granted by the body corporate.

The wider ramifications of this decision come from Mr Dorney QC determining that the by-law which purported to ban “all animals” was “unreasonable” because it had the effect that an animal such as a goldfish was also the subject of the absolute ban once all “prior” approvals had run out (either because the animal had left the building or gone to the big

“pets paradise” in the sky). Therefore, the by-law change which attempted to ban animals *carte blanche* was held to be invalid and therefore the previous by-laws (allowing pets) were reinstated.

AN ISOLATED CASE?

The Tuttons’ fight is not unique. These pet battles are becoming increasingly common in buildings from Melbourne to Sydney to the Gold Coast and right the way up to Cairns. The model by-laws in New South Wales and Queensland put pet ownership in the negative – that pets aren’t allowed unless approval has been given.

There’s a push for these model by-laws to be changed so that pets are allowed subject to conditions and restrictions being put in place. A good example of a suitable by-law that I saw recently for a complex is the following:

“1. Subject to this by-law, you may keep:

- (a) goldfish or other similar fish in an indoor aquarium; or
- (b) a guide dog if you need the dog because you are visually or hearing impaired.

2. You must have consent from the Body Corporate to keep other types or numbers of animals.

3. The Body Corporate will not give you consent to keep:-

- (a) a large size dog or a dog that is not considered suitable for apartment living by the committee, acting reasonably;
- (b) a dog that is vicious, aggressive, noisy or difficult to control;
- (c) a dog that is not registered under the local council laws;
- (d) a dangerous dog under the Corporation Animals Act (NSW) or local council law.

4. If you keep an animal under this by-law you must ensure that the animal does not wander onto another lot or common property.

5. If it is necessary to take your animal onto Common Property, you must restrain it (eg. by leash or cage) and control it at all times.

Conditions for keeping an animal

6. The Body Corporate may make conditions if it gives you consent to keep an animal.

7. A condition that automatically applies if you keep an animal under this by-law is that the Body Corporate has the right at any time to order you to remove your animal if:

- (a) it becomes offensive, vicious, aggressive, noisy or a nuisance;
- (b) you do not comply with your obligations under this by-law;
- (c) if you keep a dog, your dog is a

dangerous dog or is not registered under the Companion Animals Act 1998 (NSW) or a local council law.

8. You are responsible:

(a) To other owners and occupiers and people using common property for:

- (i) any noise your animal makes which causes unreasonable disturbance; and
- (ii) damage to or loss of property or injury to any person caused by your animal.

(b) for cleaning up after your animal.

Your visitors

9. You must not allow your visitors to bring animals onto the Scheme unless they are guide dogs or hearing dogs and your visitors are visually or hearing impaired.

These proposed changes to by-laws should proceed with caution. It's not in anyone's interests to have a scenario where holiday complexes have pets in the building. It's unlikely that holidaymakers want to share their holiday with Noah's Ark and therefore these by-laws are not a 'one size fits all'.

HIGHER DENSITY AND THE DOG

Across the country pet ownership in apartment living is on the rise.

Developers and investors are becoming aware of the needs and demands of the consumer when building stock and looking for buyers of their developments in a slower property market.

When the Housing Industry Association's figures show that apartments, units and flats are the increasing housing option for Australians it's becoming increasingly clear that pets and apartments need to exist in harmony with the changing face of home ownership and investment in Australia.

"Australians are increasingly choosing to downsize to high-rise apartments and townhouses over the traditional house on a large block," according to town planning consultant Virginia Jackson.

"And it's not just people approaching retirement who are downsizing, it's people of all ages and lifestyles."

The Tuttons are a case in point. They decided to downsize to a luxury apartment given it was just the three of them these days – and the fact they could take Bernie with them was an integral part of that decision.

"No dog owner would leave their pet behind if they could afford it. There was no way the dog wasn't coming," Mrs Tutton says.

Pet-friendly apartments are springing up due to this demand. Melbourneans in particular are embracing this trend, choosing apartment living and pet ownership.

Australand residential general manager Rob Pradolin lives in a pet-friendly building in Melbourne city and made the decision that

other Australand developments would also be a home for animals.

"I think this is an issue we need to be aware of. When we build apartments we are building them as homes, not just as flats," Pradolin says.

THE UPSIDE FOR INVESTORS

There's a growing belief among developers and property investors that pet-friendly by-laws can improve the value of a building. Since 42 per cent of Australians have dogs, if they're expressly excluded from buying or renting in a particular building then the market of potential buyers or renters will be reduced. As a seller of a property there will therefore be a smaller pool of buyers to compete for your property.

Angela Radich, the chair of the Animal Law Committee for NSW Young Lawyers says: "It's become known as the 'fur family'. It means more and more people want to buy or rent units that allow pets and they're prepared to pay more for that, which drives up prices."

"Up to 80 per cent of potential apartment buyers either have a cat or a dog or intended to get one," adds Tim Holmes, senior project

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marketing manager at PRDnationwide's Gold Coast corporate office.

"The ones who are pet-friendly are showing greater capital growth than those which are not and they stay on the market a shorter time," Holmes says.

Units on the Gold Coast that allow pets are in high demand and owners tend to hang on to the property, he says.

"When the properties did come up for sale, they were snapped up quickly and generally at higher prices than buildings where no pets were allowed."

Holmes carried out a comparison of pet-friendly and anti-pet buildings; Sunland Group's Malibu building at Main Beach had a no-pets policy and recorded an average capital growth of 15 per cent over a four-year period, compared with Girvan's Silverpoint at Broadbeach, which allowed pets and recorded growth during the same period of 20 per cent.

PROBLEMS WITH PETS

Those against pets in buildings point to the fact that nuisance pets cause more complaints to local councils than any other issue in the local community.

Melissa Pahl, a body corporate manager at Strata Sphere Management, also suggests that pets in apartments have been known to

cause their share of disputes for body corporates.

"It's the pets creating nuisance that cause problems in a building and these become difficult to manage. Building managers find there can be an increase in their workload due to these issues and the resulting complaints by other owners. Often these can be a political hot potato as they are very emotive," she says.

"By the most part it comes down to responsible pet ownership. Suitable animals and responsible pet ownership should in most cases cause little disruption to the community-style living. Statistics show that people with pets have lower stress levels and live longer, both qualities that are extremely useful in making better neighbours."

FUTURE FOR 'FUR FAMILIES'

Changing attitudes towards apartment living will necessarily result in pets being given more access to buildings. Buildings that embrace pets sooner are likely to reap the benefit of higher capital growth and better returns on owners' investments.

Overseas examples demonstrate that high-

density apartment living and pets can work. Europe, South America and the United States have proved that animals in high rises work and are needed to support the government's aims in achieving higher-density living throughout our country.

As the public's attitude towards this issue relaxes it's likely that the courts' willingness to provide pet ownership in apartments will also increase. What remains to be seen are the ramifications that the Tuttons' case will have for other buildings in Queensland, and possibly around the country. If more successful challenges are made, then we can expect to see higher-density living embraced by more Australians. Until then, pet owners will be reluctant to own or rent apartments in buildings that have a "no-pets" policy. This has significant ramifications for all of us who have a passion for property investment.

The answer has to lie in a philosophy that with appropriate guidelines, good policing and better education, apartments and animals can co-habitate to ensure unit and apartment living and investing remain a viable and profitable exercise for owners and investors. **api**

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