

Subject: WITHOUT PREJUDICE: Request to stop wasting strata funds on legal expenses that cannot succeed - 18Jun2019
From: SP52948 owner
Date: 18/6/19, 22:59
To: Robert Crosbie waratahstrata.com.au
CC: Frank Tallaridi waratahstrata.com.au

Hi,

To be shared with all owners in the complex immediately. Any attempt to avoid doing it as a risk for the strata agency.

Waratah Strata Management and the Executive Committee are politely but firmly advised not to proceed with legal advice at owners corporation expense, firstly because it does not benefit owners in general but only some members of the Executive Committee, strata managers, and the Solicitors themselves, and secondly because SP52948 is already under dire financial stress (after elevators upgrades are completed which start in mid-July 2019, then two and a half roof membranes which are overdue, Block D hot water system upgrade, replacement of many obsolete smoke alarms, and so on). The owners do not realise it yet but they will soon.

Instead of wasting strata funds, simply work on resolving ongoing issues and enforcing proper management of the complex.

a) The attempt to engage Solicitor Adrian Mueller (or any other legal advice at owners corporation expense) must be prevented, or owners who are financial allowed to vote through FULL DISCLOSURE at the general meeting. Lot 158 looks forward to the next general meeting, which MUST reintroduce all their Motions from AGM 2018.

b) For the Executive Committee to "vote" they must be legally elected and financial before general meetings. Putting aside previous general meetings for the moment, it is proven beyond reasonable doubt that Annual General Meetings 2016, 2017, and 2018 were conducted by failing to satisfy quorum due to owners who were unfinancial before the meeting. Lot 158 has that evidence. To be an authorised person of the owners corporation, an owner must be financial before the general meeting. Strata Schemes Management Act (SSMA) 2015, Schedule 2, c9(4) states: voting rights cannot be exercised if contributions not paid - member of the strata committee is not entitled to vote on any motion put or proposed to be put to the strata committee if the member was, or was nominated as a member by a member who was, an unfinancial owner of a lot in the strata scheme at the date notice of the meeting was given and the amounts owed by the unfinancial owner were not paid before the meeting.

It is crucial stating that some owners were disallowed to vote at general meetings even when they owed as little as \$0.10 in the past (Lot 158 has that evidence).

c) Solicitor Adrian Mueller is currently under investigation by the Office of Legal Services Commissioner since 24 January 2019 and listed by Lot 158 as "person of interest" in Police Event E65804633 since July 2017. Partial listing of issues that were submitted (legal practitioners call them "allegations"):

- Continuous professional misconduct since 2012 that earned him close to \$80,000.00 so far.
- Four versions of the Standard Costs Agreement and only one contained the alleged signature by Mr. Gary Webb nine months after the engagement:
 - 17 July 2012: Signed Standard Costs Agreement by BCS Strata Management Epping Branch Manager Mr. Paul Banoob in document generated on 16 April 2013 and undisclosed to owners, CTTT, and District Court in 2012, 2013, and 2014. Found in strata documents in sixth paid document search on 13 June 2017.
 - 25 July 2012: Allegedly signed Standard Costs Agreement by BCS Strata Management Mr. Gary Webb as provided in Statutory Declaration by Mr. Peter Bone to CTTT on 19 April 2013 (nine months after the event).
 - 28 August 2012: Undisclosed to owners, CTTT, and District Court in 2012, 2013, and 2014. BCS Strata Management insurance claim form and files without signed Standard Costs Agreement.
 - 29 January 2013: Solicitor Mr. Adrian Mueller's submission to CTTT without signed Standard Costs Agreement.
- Solicitor suggested to the Executive Committee to use insurance claims to pay for his invoices on 2 July 2012 in spite of knowing that the owners corporation had no funds to pay even the standard bills in that month (had to withdraw money from the other funds secretly).
- Solicitor was well informed about the secret change of the insurance contract clause (without owners corporation knowledge or approval) and the first claim made for his expenses only two weeks later (at the end of August 2012).
- Solicitor provided false statement to the Tribunal that Lot 3 was away from the country at the CTTT Hearing on 19 October 2012 but the same evening Lot 3 was found present at the Annual General Meeting.
- Solicitor confirmed to CTTT in letter on 26 October 2012 that Lot 3 was NOT part of the proceedings, and yet, had full knowledge of insurance claims for "Defence of Lot 3" which amounted to \$24,919.31 (plus GST) in period August 2012 to mid-2013.
- Solicitor was well informed about the invoice paid for insurance premiums to Gallagher Australia on 21 September 2012 in amount of \$84,414.77, which was 74.38% higher than in September 2011 (due to warning by the Insurance Broker about the "high risk" CTTT case in August 2012).
- Solicitor was well informed about losses to Lot 158 in amount of close to \$29,000.00 due to his actions.
- Solicitor was well aware that in 2012 and 2013 none of the owners (including the Executive Committee members) were paying levies for second gas connections.

- Solicitor was well aware about the documented losses above \$120,000.00 for private water and gas reimbursements to selective townhouse owners without Special Resolution of Special By-Law in period 1999 to May 2013.
- Solicitor was well aware of the plan for BCS Strata Management to submit Statutory Declaration and be present at CTTT Hearings in 2012/2013 but he disallowed it.
- Solicitor was well aware of SP52948 owners not wanting to engage him as per Lot 158 evidence in May 2013. One of the votes against the Solicitor belonged to Rabbi Cohen, who is still the owner in the complex.
- Solicitor sent secret note to the Executive Committee urging them to produce "signed contract" one day after third CTTT hearing on 17 April 2013.
- Solicitor initiated CTTT case without official owners corporation approval or disclosure to owners on 10 December 2012, although he was well aware that the insurance had approved \$12,714.65 for his legal costs three days earlier on 7 December 2012.
- Solicitor was directly involved in preventing Lot 158 from viewing strata files in 2012 and 2013 without valid reason. Solicitor's invoice dated 6 March 2013 shows the efforts by him to prevent access to them (including the Standard Costs Agreement which ALL owners should have received as early as July 2012).
- Solicitor Adrian Mueller is a listed "person of interest" in Police Event E65804633 since July 2017.
- Payment was uncovered for the Solicitor dated 28 May 2018. It was in amount of \$350.00 (plus GST) for "Report to Police", in which, according to the Police statements on 28 August 2018, he did not provide crucial eight emails. In strata files I found no Standard Costs Agreement for the expense dated 28 May 2018 and no invoice issued by Solicitor Adrian Mueller. In strata files on 31 May 2018, we found no Standard Costs Agreement for the expense dated 28 May 2018 and no invoice issued by the Solicitor.
- In FY 2018, the Solicitor charged SP52948 \$5,550.00 (plus GST) for services which include attempt to silence Lot 158 through "Bylaw Prohibiting Unreasonable Communication". None of the owners were notified about the amount of costs incurred by the Solicitor at any time during 2018 and 2019. The registration of the By-Laws was illegal because there was no quorum to approve them at the general meeting.
- OLSC made a judgement on 31 May 2013 in file 41366_2, in which this was acknowledged the Solicitor partially acted in breach of legal obligations. OLSC confirmed that his "Fee Proposals" did not fully comply with the costs disclosure requirements set out in section 309 of the Legal Professions Act 2004 (LPA).
- Solicitor was actively involved in the creation of the Statutory Declaration with eight crucial emails still missing as evidence, against the wishes of owners corporation or approval at any general meeting or disclosure, caused excessive courier costs to owners corporation in amount of \$851.56 on 19 April 2013.
- Eight emails that are part of the Statutory Declaration signed by Mr. Peter Bone are crucial and "nobody" seems to have them or prove they existed. Lying in a Statutory Declaration is punishable by up to five years in prison, according to the NSW Oaths Act. Former judge Marcus Einfeld served two years in prison for knowingly making a

false statement under oath and for attempting to pervert the course of justice. The case stemmed from the improbable catalyst of a false statutory declaration over a \$77 speeding fine. Justice James said the retired judge engaged in "deliberate, premeditated perjury" in order to avoid incurring demerit points on his driver's licence.

- Solicitor must not engage in helping members of the SP52948 Executive Committee to directly or indirectly cause physical or mental harm to Lot 158 just because they found strong evidence of financial mismanagement in the complex. This especially applies to a female owner, who has special medical conditions and any stress can kill her (medical certificate confirms it).
- During 2012, Solicitor Adrian Mueller failed to comply with CTTT orders for the Hearing three times as well.
- Four fraudulent insurance claims for non-existent CTTT case "Defence of Lot 3", which, four years later, CHU Insurance forced owners corporation to repay \$8,800.00.
- Over the last seven years, Solicitor was well informed and had received numerous pieces of evidence that SP52948 did not have valid Executive Committee and that their decisions were not made with valid quorum at general meetings, as per SSMA 1996 and 2015. Failing to know that a contract for his engagement had to be valid is negligent to the extent that disciplinary action can and should be taken due to repetitive nature of his involvement.
- Section 316 of the Crimes Act 1900 (NSW) makes the knowing concealment of information relating to a "serious indictable offence" a crime punishable by up to 2 years imprisonment. Section 4 of that Act defines "serious indictable offence" to mean an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more. Subject to certain exclusions this generally includes the fraud offences in Part 4AA of that Act as well as stealing and similar offences in Part 4. Section 316(1) states if a person has committed a serious indictable offence and another person who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate authority, that other person is liable to imprisonment for 2 years.
- Solicitor engaged in personal threats and bullying trying to prevent CTTT cases in period 2012-2014.
- Solicitor continued to delay CTTT proceedings in spite of persistent requests to provide evidence of his legal engagement for six months (until 19 April 2013).
- Duty of care arises where it is reasonable to expect that Lot 158 might be injured or harmed if they act or behave with a lack of care. This is called foreseeability. Just during 2018, these events occurred:
 - Police Event E244254697 on 26 March 2018, which ended with Lot 158 female owner being taken to emergency due to fear of stalking and intimidation with blood pressure 218/109 (she had two mild strokes 12 years ago and any stress can literally kill her – she is even excused from Jury duty due to multiple medical conditions),

- Police Event E69860959 on 26 October 2018, with another attempt to stalk, bully, and intimidate Lot 158 female owner,
- Police Event E265804296 on 14 November 2019, attempt to intimidate and threaten even male owner of Lot 158 whilst collecting information about OH&S and smoking in the complex.
- Solicitor worked against owners corporation by merely protecting own interests and interests of a group of selected Executive Committee members of which some had/have not been legal to represent owners corporation. With knowledge that his contract was NOT signed on the date as listed in Statutory Declaration to CTTT on 19 April 2013, Solicitor continued to misrepresent the owners corporation to this day (including the District Court mediation in February 2014).
 - Solicitor must not provide a statement which they know to be untrue,
 - Solicitor must act with honesty, integrity and candour,
 - Solicitor must correct any statement made subsequently discovered to be wrong,
 - Solicitor must avoid conflicts of interest,
 - Solicitor must avoid any compromise to their integrity and professional independence,
- Solicitor's continuous actions constitute repetitive, premeditated, orchestrated efforts to:
 - Mislead the Court,
 - Abuse the Court's processes (continuing with court proceeding found to be wrongly conceived).
 - and much more.

d) Crime Stoppers Report dated 25 July 2017 which evolved into Police Event E65804633. Some of the persons of interest listed in the Event with allegations of misconduct and acts against the laws:

Mr. Stan Pogorelsky

Mr. Moses Levitt

Mrs. Maureen McDonald

Waratah Strata Management (Mr. Robert Crosbie and Mr. Simon Wicks)

Solicitor Mr. Adrian Mueller

e) Based on referral by the Member of Parliament, Minister for Innovation NSW Matthew Kean asked Fair Trading NSW to consider the concerns about SP52948 and strata managers on 10 October 2017. Since that time, Fair Trading NSW has been gathering evidence and files about BCS Strata Management, Waratah Strata Management, and SP52948 (mis)management. Fair Trading NSW is conducting its own investigations, without Lot 158 formally raising any case. Waratah Strata Management is well aware of file 9363613 because they responded to Fair Trading NSW

this year.

The fact that most of financial and many other files do not exist for SP52948 (as confirmed in document search on 13 June 2017 and 31 May 2019) creates serious issues for the Executive Committee and the strata managers. This might be of interest to the Australian Taxation Office as well.

f) Lot 158 has evidence that two current members of the Executive Committee (lot 147 and Lot 181) could not and cannot be legal representatives of the owners corporation and have no rights to be on the committee. A small hint for a few years (Lot 158 will not offer full details in this email):

- Not paid any levies in FY 2004, FY 2008, FY 2012, FY 2013, and possibly FY 2018 (based on Waratah Strata Management own statements at meetings in 2019). Lot 158 recently located four more financial years and this statement might extend.
- Not paid proper levies in many other years.
- Not paid prescribed 10% simple interest for years when levies were overdue.
- They also provided statements to CTTT in 2011 and 2012 which can now easily be seen as false.

This applies to other owners with second gas connection too.

Regards (SP52948 owner),

On 17/6/19 7:59 pm, SP52948 owner wrote:

Hi,

No updates have been received from the OLSC office.

An important update.

Today, Waratah Strata Management published agenda for the Executive Committee meeting, which was not sent to all owners, as prescribed by SSMA 2015.

The attachment "SP52948-agenda-EC-meeting-on-notice-board-page-2-17Jun2019.jpg" shows clear intention to engage Solicitor Adrian Mueller again, with "fee proposal from J.S. Mueller & CO to review correspondence from Lot 158 since AGM 2018 and provide legal advice".

OLSC is kindly advised that:

a) Solicitor Adrian Mueller is fully aware that none of the general meetings, including AGM 2018, satisfied quorum as per SSMA 2015, making all decisions, contracts, and By-Laws illegal. In practical terms, Solicitor would obtain money from SP52948 strata files through "proceeds of crime".

b) Solicitor Adrian Mueller is a listed "person of interest" in Police event E65804633.

As shown in the previous email, on 28 May 2018 Solicitor Adrian Mueller charged owners corporation \$350.00 (plus GST) for "Report to Police", although he provided no evidence of eight emails and such engagement was not disclosed to owners in any public correspondence.

The Police confirmed in email to me on 28 August 2018 that they still waited for an email from Solicitor Adrian Mueller to advise Police of the outcome of looking for "missing eight emails".

The request to Police to ask for OLSC help or issue subpoena was sent recently.

c) Currently, Fire & Rescue NSW and Ryde Council confirmed our complex not being fire safety compliant and rectification steps are under way.

d) Based on lack of financial documents for the last seven years (attachment "SP52948-outcome-of-document-search-at-Waratah-Strata-Management-by-Lot-158-on-31May2019.pdf"), a case was opened with Australian Taxation Office. The financial status is appalling and any Solicitor trying to make money trying to protect these activities through false statements or illegal means need to be reviewed by OLSC:

- None of the Cash Book Receipts By Receipt Date for FY 2012, 2013, 2014, 2015, 2016, 2017, 2018, and FY 2019 up to 31 May 2019 were found at Waratah Strata

Management on 31 May 2019.

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- Cash Book Payments By Account Code for FY 2012, 2013, 2014, 2015, 2016, 2017, 2018, and FY 2019 up to 31 May 2019 - Only one full financial year found in document "Detailed expenses for the financial year from 1/09/2017 to 31/08/2018" dated 16 October 2018. There were payments for FY 2019 but covering period only up to 2 May 2019 ("Detailed expenses for the financial year from 1/09/2018 to 02/05/2019"). There was also an incomplete document for FY 2012 in file "Cash Book payment by Account Code 1/09/2011 to 31/07/2012".
- Income Tax Returns for FY 2012, 2013, 2014, 2015, 2016, 2017, and 2018 - only two years found.
- Copies of all yearly Fire Safety inspection reports for FY 2013, 2014, 2015, 2016, 2017, 2018, and 2019 - only two years found.
- Unredacted (unmodified) eight emails submitted in CTTT Statutory Declaration by BCS Strata Management on 19 April 2013 and District Court in February 2014 (Solicitor Adrian Mueller was directly involved) - None of the eight files found.
- Copies of signed audits that must have been completed before AGMs in FY 2017 and 2018 - only FY 2018 details found. The auditor allegedly completed the report on 18 October 2018, the exact date
- when the Annual General Meeting was conducted.
- Invoices for all work related to painting and major repairs in 2017/2018, including work done on townhouses allegedly costing \$92,950.00 - files found for progress of payments but no files found with details of what exact work was done on townhouses.
- All invoices for second gas connection for FY 2012, 2013, 2014, 2015, 2016, 2017, 2018, and FY 2019 up to 31 May 2019 - only handful of files found. Majority missing.
- Details of reimbursements to townhouses for private water and gas usage for FY 2012, 2013, 2014, 2015, 2016, 2017, 2018, and FY 2019 up to 31 May 2019 - payment details for water leak damages only found for FY 2018 and few scattered quarters for previous years.
- Only eight entries were found in the cheque book for last seven years and older cheque books were not found.
- And much more.

Regards,

SP52948 owner

On 3/6/19 6:02 am, SP52948 owner wrote:

Hi,

I called your office on 29 May 2019 to confirm if you need any more assistance.

For the sake of evidence, I provide herewith small updates that are of importance.

a) On 31 May 2019, I organised strata document search at Waratah Strata Management. Partial listing of required files (that fall into legal obligation to keep strata files for at least last seven years) is provided in attachment "SP52948-document-search-partial-listing-of-files-required-on-31May2019.pdf". Waratah Strata Management was notified about the files well before the document search.

Among the other files, the following unredacted (unmodified) eight emails were sought again:

- o Email from Solicitor Adrian Mueller to Branch Manager Paul Banoob dated 5 July 2012 at 04:41 pm
- o Email from Branch Manager Paul Banoob to Strata Manager Garry Webb dated 5 July 2012 at 04:57 pm
- o Email to EC members from BCS Strata Management Garry Webb dated 6 July 2012 at 08:32 am
- o Email to EC members and two staff members at BCS Strata Management from SP52948 Chairperson dated 6 July 2012 at 12:48 pm
- o Email to EC members and two staff members at BCS Strata Management from SP52948 Chairperson dated 9 July 2012 at 10:18 pm
- o Email from Solicitor Adrian Mueller to BCS Strata Management Peter Bone dated 16 July 2012 at 6:52 pm
- o Email from BCS Strata Management Peter Bone to Solicitor Adrian Mueller dated 25 July 2012 at 2:13 pm
- o Email from BCS Strata Management Debbie Downes to EC members dated 16 April 2013 at 1:52 pm

As expected and predicted by me, none of the were found.

b) However, an interesting payment was uncovered for Solicitor Adrian Mueller dated 28 May 2018. It was in amount of \$350.00 (plus GST) for "Report to Police". Attachment "SP52948-paid-350-dollars-exclusive-of-GST-to-Adrian-Mueller-for-report-to-Police-28May2018.jpg".

The police confirmed in email to me on 28 August 2018 that they still waited for an email from Solicitor Adrian Mueller to advise Police of the outcome of looking for "missing eight emails". Attachment "Police-Event-E65804633-confirming-Solicitor-Adrian-Mueller-provided-no-files-and-Police-still-waiting-for-email-from-him-28Aug2018.png".

In strata files I found no Standard Costs Agreement for the expense dated 28 May 2018 and no invoice issued by Solicitor Adrian Mueller.

In FY 2018, Solicitor Adrian Mueller charged SP52948 \$5,550.00 (plus GST) for services which include attempt to silence myself through "Bylaw Prohibiting Unreasonable Communication". None of the owners were notified about the amount of costs incurred by Solicitor Adrian Mueller at any time during 2018 and 2019.

Regards,

SP52948 owner

On 20/5/19 8:04 pm, SP52948 owner wrote:

Hi,

Has there been any progress in the case or do you need any further help from my side?

Regards,

SP52948 owner

On 28/4/19 9:55 pm, OLSC wrote:

We acknowledge receipt of your email.

If your email relates to a new inquiry we will contact you within 5 working days.

If your email is about an existing complaint it will be forwarded to your case officer.