

On 20th of December 2012, BCS Strata Management sent an agenda for paper EC meeting, scheduled for 4th of January 2013.

The agenda had only one item:

To issue a notice to comply with the By-Law 17 to owners of Lot 109 because of bamboo screen on their balcony:



A concerned owner, unhappy about such a strong threat against very peaceful and innocent tenants took action immediately.

It turned out that the Strata Manager failed to follow the proper procedure and, in essence, tried to bully two young tenants. Mr. Peter Bone (Strata Manager, removed from office soon afterwards) did not apply the same vigour to owners of Lot 3 who were not compliant with Special By-Law 4 for nine years (they were granted exclusive rights to common property through fraudulent Extraordinary General Meeting in 2003). BCS Strata Management showed extreme bias in how they addressed issues in the complex.

BCS Strata Management did not issue two advanced warnings to tenants.

Owner's letter to Raine & Horne Strata Sydney BCS in regards to paper meeting on 26th of December 2012

With the powers vested in me as duly appointed proxy for three owners in the complex, and in my own name, I submit the following official response in regards to EC paper meeting scheduled on 4th of January 2013.

For the sake of brevity, four owners, including myself, vote against both Motions as listed in the agenda for paper meeting scheduled on 4th of January 2013.

For more details, see below.

a) The EC meeting on 5th of December 2012 was the first full meeting after the Annual General Meeting 2012.

In accordance with SSMA 1996, at the close of the AGM an Executive Committee meeting should have been convened to elect the office bearers for the ensuing year (Chairperson, Treasurer and the Secretary).

The office bearers were not recorded in the EC minutes held on 5th of December 2012, so no owner in the complex really knows who they are (apart from guessing it).

In addition, it is unclear what duties have been delegated to the Strata Manager in Financial year 2012/2013.

This information must and should have been provided to all owners.

b) The agenda for the EC paper meeting was prepared on 20th of December 2012. In fact, it almost look like this is an Extraordinary General Meeting, as otherwise there would be no need to notify all owners about it.

The EC members can meet as many times as they wish, as long as no input of the owners corporation is required.

This paper meeting is actually an Extraordinary General Meeting (EGM), and if so, the agenda is invalid because my Motions that were deliberately excluded from AGM 2012 were not listed in it. Any Motion that is not listed in a general meeting must be added in the agenda for the subsequent general meeting.

Likewise, the Motion 1 to confirm the minutes of the previous meeting is misconceived because it does not state which meeting that applies to (the EC meeting held on 5th of December 2012, or the AGM meeting held on 17th of October 2012).

In both cases, the Motion should be rejected due to lack of precise information and details in the Minutes of both meetings.

If we, rightfully, say that the paper meeting on 4th of January 2013 is an Extraordinary General Meeting, special "clear days notice" rule apply.

Altogether, between period between 20th of December 2012 and 4th of January 2013 is 16 days inclusive. Counting from the post of the agenda (21st of December 2012) this period is 15 days.

Let's take a look at SEVEN CLEAR DAYS NOTICE rule.

For every EGM and AGM (except the first one) there must be 7 clear days notice given plus time for postage (if the notice is being mailed).

Where the meeting notice is required to be MAILED, the clear days notice will also need to allow a reasonable amount of time for postage - which should include the date of posting PLUS 4 working days and exclude the date of the meeting.

In our case, it means 11 clear days notice must be given to owners. Majority of legal advice states that clear days are counted as working days (not weekends and public holidays).

In that period, these are the holidays, weekends, and days of special importance for the paper meeting:

21st of December 2012 (date of posting the agenda)

22nd and 23rd of December 2012 (weekend)

25th of December 2012 (Christmas Day)

26th of December 2012 (Boxing Day)

29th and 30th of December 2012 (weekend)

1st of January 2013 (New Year's Day)

4th of January 2013 (the paper meeting)

Of 15 days between the post of the agenda for the paper meeting, till the day of the meeting, 8 days are excluded:

$$15 - 8 = 7$$

7 clear days notice is seemingly not enough to hold an EGM (11 days required by law).

Interestingly enough, this is the THIRD TIME in last 12 years that these rushed requests for meetings are organized by Raine & Horne Epping when everybody is on holidays.

c) There are many more pressing and urgent matters in the complex that deserve owners' attention.

It is unjustified to waste owners' money on preparation of the meeting for such a trivial problem that the EC and the Strata Manager can handle alone. A simple calculation shows between \$200.00 and \$250.00 was spent on postage and photocopying alone.

Having a special meeting to issue a notice to comply with the By-Law 17 to owners of Lot 109 is unnecessary.

The next scheduled EC meeting is sometime in February 2013 (only about one month after this special paper meeting), so there is no much need to rush with this decision now.

d) The details of two written requests for removal of a bamboo screen from the balcony of Lot 109 were not recorded in any minutes of EC meetings in 2012:

22 February 2012

13 June 2012

22 August 2012

5 December 2012

In other words, owners are now supposed to vote or comment on something they have very little information about.

It is unfair and inappropriate to make any decision without proper evidence that should help all owners make an informed decision.

Too many decision in our complex have already been made on false or misleading information. It is high time to make a change for the better in our community.

e) I managed to speak to tenants in Lot 109 today. I was not lazy to walk around and check it before making my own decision.

It would be immoral and dangerous to make a decision based on unsubstantiated claims or without proper evidence. If others do it, it does not mean I will have to follow a bad and unethical practice.

I know very well how rumors and gossip can influence people and refuse to follow the pattern of behaviour that I commonly see in many places.

The tenants in Lot 109 are wonderful young couple, who were very approachable and friendly. We had a nice, honest discussion. It was an absolute pleasure to talk to them. They are smart and understand the issues too.

They manage the Lot 109 on behalf of an owner who is well known to them.

They were very shocked by the notice of the EC paper meeting, which they opened only today (due to holiday season), and they seemingly never received any phone call or compliance notices in the past.

In fact, they will most probably remove the bamboo screen soon as it is not really a crucial issue.

So, it seems that approaching the owner in a orderly manner would have helped, without the need to resort to the EC paper meeting.

f) I took couple of photos of the Lot 109 balcony today. The balcony is half-facing Lane Cove Road and half-facing M2 Motorway, well hidden behind the large trees on the first floor of the building.

Almost nobody can see their balcony too (neither from the street, nor from the complex). The area is well hidden in the corner.

The color scheme of the bamboo screen closely matches the appearance of the complex.

Frankly, it is the least important of many issues that we should be dealing with. I can show photos of much worse offenders in the complex.

g) SSMA 1996 Section 45 is very clear about how to enforce by-laws:

BEGIN QUOTE

45 How can an owners corporation enforce the by-laws?

(1) An owners corporation may serve a notice, in a form approved by the Director-General, on the owner or occupier of a lot requiring the owner or occupier to comply with a specified by-law if the owners corporation is satisfied that the owner or occupier has contravened that by-law.

(2) A notice cannot be issued under this section unless a resolution approving the issue of the notice, or the issue of notices for the type of contravention concerned, has first been passed by the owners corporation or the executive committee of the owners corporation.

(3) Subsection (2) does not apply to the issue of a notice under this section by a strata managing agent if that function has been delegated to the strata managing agent in accordance with this Act.

END QUOTE

h) The prescribed (official NSW form) Notice of Compliance with a By-Law states the following:

BEGIN QUOTE

The executive committee, or owners corporation if it has decided not to let the executive committee issue this notice, must convene and hold a meeting to decide to issue the Notice and record its decision in the minutes. Alternatively a managing agent that has been delegated the function may decide to issue a Notice.

Where an owners corporation consists of only 1 or 2 owners, the seal of the owners corporation must be affixed in the presence of the owner or owners or any strata managing agent appointed by the owners corporation. If an owners corporation has more than 2 owners the seal must be affixed in the presence of 2 persons who are owners or members of the executive committee chosen by the owners corporation for such a purpose or if no person has been chosen: the secretary and any other member of the executive committee; or the strata managing agent. Those person(s) present should sign the form at the time the seal is affixed.

Penalty: an application to the Consumer, Trader and Tenancy Tribunal must be made within 12 months of the Notice being served.

A secretary or managing agent should keep a copy of this notice, and a record of the date and method of service. A strata managing agent who issues a Notice must make a written record specifying that action and the manner in which it was done and serve a copy of the record on the owners corporation.
END QUOTE

So, the decision to proceed with the Notice to Comply with the By-Law 17 could have been made by the EC, or the Strata Manager alone.

If the EC and the Strata Manager wanted a fair process and input from all owners, then the agenda for the EC meeting should have had more information.

Now about the Votes for the Motions as listed in the agenda for the EC meeting scheduled on 4th of January 2013:

i) In regards to Motion 1: to confirm the minutes of the last EC meeting:

Our vote is: AGAINST (not to confirm the minutes of the last EC meeting).

Firstly, it is unclear which meeting the owners are supposed to approve or comment about (the AGM 2012 held on 17th of December 2012, or EC meeting held on 5th of December 2012).

Minutes of both Meetings were misconceived, lacked crucial information, and deceived owners.

The minutes did not deal or disclose crucial information in regards to AGM 2012 and current two CTTT cases.

The minutes did not properly deal with issues pending from the previous EC and AGM/EGM meetings.

The questions raised for the EC meeting on 5th of December 2012 were not answered or addressed. The fact that my inquiries were "forwarded" to the Solicitor are irrelevant. The Solicitor should work on behalf of the owners corporation, not the EC and the Strata Manager exclusively.

The Solicitor is, in fact, working against the owners corporation at large.

j) In regards to Motion 2:

Our vote is: AGAINST (not to issue Notice of Compliance with By-Law 17)

There is lack of evidence in the agenda for the paper meeting.

The process to notify owner of Lot 109 was seemingly broken.

The reason to publicly humiliate owner of Lot 109 is doubtful.

I spoke to tenants in Lot 109 today and they removed the bamboo screen immediately.

In short, it is questionable who and why organized this rushed paper meeting and what the real agenda behind it is.

I am sorry that in this festive season we need to deal with these issues. This is supposed to be the time of love, friendship, good will, and understanding.

No reply from BCS Strata Management

Thanks to the above owner, the case was resolved on 26th of December 2012, without any involvement by Strata Manager or the EC.

No surprise that Strata Manager stayed silent and did not even reply to proactive owner.

Chairperson's letter to EC and Strata Manager on 31st of December 2012

In it, he neglected the fact that problem was resolved by another owner on 26th of December 2012.

He also advised how to "adjourn" the meeting.

To: Peter Bone
Cc: 'mcdonald151@bigpond.com'; 'pogo@ozemail.com.au'; 'JWARD@doh.health.nsw.gov.au'; 'esaults@elwaysonline.net.au'; 'jeffrey@adifferentcorner.com'; 'zelleev@primus.com.au'; 'hirsch25@gmail.com'
i You replied to this message on 2/01/2013 10:48 AM.

Dear Peter,

As a result of your letter regarding a paper committee meeting 4th January 2013 for the purposes of authorising a Notice to Comply to owners of unit 109 regarding a bamboo screen which transgressed the body corporate rules, I inspected the exterior of the unit on 23rd December and again today (with the caretaker). The screen has been removed and therefore there is now no need to approve an Order or hold a meeting to authorise it. I think that the minutes of the committee should not be approved by paper vote (the committee may wish to discuss these and make minor corrections in person at the next live meeting) and the meeting simply be adjourned (for lack of a quorum) to the date of the next committee meeting with an appropriate note that the unit owner has complied with your request and therefore no further action is required at this time.

Any committee members who have already responded may wish to alter or remove their vote (I suggest abstention) in the light of compliance.

Finally Peter I think that a brief letter to owners of 109 thanking them for complying with your request and noting that no Order will be sought, because of their action in complying, would be appropriate. You might add that enforcing bylaws is not something that the MA or EC take lightly and we are extremely reluctant to take any aggressive action as the vast majority of owners understand the need to comply with some fairly common sense rules about visual amenity.

The EC need to be sure not to overreact for minor transgressions where owners respond to a request from the MA to comply.

Chairperson criticising Strata Manager

Chairperson used sharp tone to show his displeasure with actions of the Strata Manager on 2nd of January 2013. He also urged him to write to tenants.

In addition, he clearly stated that BCS Strata Management was responsible for lack of action in other areas (like eight-year mismanagement of contract with wireless ISP at significant loss of earnings to owners corporation).

To : Peter Bone

Peter,

It is important that the follow up work requested at EC meetings is carried out or [REDACTED] letters will cause issues.

1. You were going to investigate the cost and usage of bin-liners – that is in your court. You should check the wholesale price and query both cost and usage with Ruth.
2. You do have to resolve the contractual position and/or terminate the internet wireless service – also in your court
3. You do need to write to the owners of 109. The EC were not happy that a paper meeting was called without discussion or any alternative method of resolving the removal of the bamboo screen attempted. You have my separate email on this matter. I would like to know why such a small matter was escalated so quickly?
4. You were provided with the minutes of an informal EC meeting to appoint officers. – we were to have them read into the record in some way at the last EC – we can correct the meeting minutes.

Strata Manager's letter to tenants on 2nd of January 2013

Dear Owners,

RE: STRATA SCHEME NO. 52948 - 109/1-15 FONTENAY ROAD, NORTH RYDE
REMOVAL OF BAMBOO AND BRUSHWOOD SCREEN FROM BALCONY

We are the strata managers for the above complex and refer to our earlier correspondence requesting the removal of the bamboo/brushwood screen from the balcony of your unit.

The Owners Corporation acknowledges that this bamboo/brushwood screen has now been removed from the balcony of your unit, and thanks you for your attention to this matter.

The Owners Corporation advises that further action will no longer be pursued by the Owners Corporation in relation to this matter

Should you have any questions regarding this matter please do not hesitate to contact the undersigned.

Yours faithfully,

RAINE & HORNE STRATA – SYDNEY

Photos showing how unimportant the By-Law breach really was

