

One of many pieces of evidence that BCS Strata Management never investigated their staff for misconduct in spite of evidence provided.

- In this specific case Simon Wicks was removed from managing SP52948, but not because of action by BCS but because owners corporation was very dissatisfied with his performance and conduct.
- Another example of his poor performance: in CTTT case for different strata plan, it was proven that Simon Wicks did not take minutes of meetings correctly and tried to :

<http://www.austlii.edu.au/au/cases/nsw/NSWCTTT/2012/182.html>

OC SP 37466 v Loombah Investments (Strata and Community Schemes) [2012] NSWCTTT 182 (1 May 2012)

APPLICATION NO:

SCS 11/51344

STRATA SCHEME:

SP 37466

PREMISES:

"..." Lindfield NSW 2070

APPELLANT:

Owners Corporation Strata Plan 37466

RESPONDENT:

Loombah Investments Pty Ltd

HEARING:

23 February 2012 at Sydney

APPLICATION:

Appeal

APPEARANCES:

Mr Bannerman on behalf of appellants

Mr Cunio on behalf of the respondents

ORDERS

Appeal dismissed.

APPLICATION NO:

SCS 11/51344

APPLICATION

Loombah Investments Pty Ltd made application for adjudication to seek the following orders:

"That the Owners Corporation comply with the resolution passed as Motion 8 at general meeting of the Owners Corporation held on 3 May 2010."

On file SCS 11/26870 on 21 September, 2011 the Adjudicator made the following orders:

"The Owners Corporation Strata Plan 37466 is to comply with the special resolutions passed as Motions 7 and 8 at the extraordinary meeting of the Owners Corporation held on 3 May 2010".

The Owners Corporation lodged an appeal in respect of this decision.

The minutes of an Extraordinary Meeting of 3 May 2010 state the Owners Corporation passed resolution 7 and 8 approving that the Owners Corporation were responsible to repair, maintain and replace from time to time the air conditioning units installed in the original balcony area of lot 18. Further a quotation to replace the air conditioning units from Riverview Air Conditioning was endorsed.

Witnesses for the appellant gave evidence that this was not the final decision of the Owners Corporation and that further discussion took place that meant that resolution was not passed.

Under cross examination, the witnesses agreed that Mr Wicks from Raine and Horne Strata was responsible for the minute taking and there had not been any other issues with the accuracy of the minutes.

At an Extraordinary Meeting General Meeting of the Owners Corporation on 20 August 2010, the above notices of motion were re-submitted for consideration. Following discussion at the meeting the notices of motion were withdrawn.

The matter proceeded to adjudication for orders in respect of the resolution of the 3 May 2010. The orders were made and this appeal was lodged in respect of that determination.

At an Extraordinary Meeting on 13 January 2012, the Owners Corporation resolved to rescind Motion 7 and 8 of 3 May 2010.

There is no dispute that this resolution was validly passed.

The Tribunal finds as follows:

There is no evidence that any discussion after the passing the resolution 7 and 8 on 3 May 2010 had the effect of rescinding those resolutions.

There is no reasonable explanation why the notices of motion appeared on the agenda on 20 August 2010 and the outcome reflects this.

The notices of motion of 13 January 2012 are valid and have the effect of rescinding the original resolutions of 3 May 2010.

If the appellant considered that the notices of motion of 3 May 2010 were invalid and a decision pending on that question on appeal, why was a notice of motion placed before the Owners Corporation in the interim period to circumvent the proceedings.

In any event, the proceedings in respect of the notice of motion of 3 May 2011 are now otiose and the appeal is dismissed.

I make no order for costs.

P R Smith

Member

Consumer, Trader and Tenancy Tribunal

- In SP54248, Simon Wicks was personally involved in dubious Extraordinary General Meeting that provided exclusive rights to common property between Lots 136 and 137.**

The agenda for the EGM held on 7th of May 2012 was non-compliant with the SSMA 1996 Clause 32 (1) and the Interpretation Act 1987 Section 76 as it was not sent to owners in prescribed timeframe.

Meeting rushed to approve exclusive rights to common property to an owner on 7th of May 2012. In person attended only two (out of nine) members of the Executive Committee (including EC member), plus one townhouse owner, and the owner who requested exclusive rights to common property, and two managing agents.

Due to lack of quorum, it was adjourned for 14th of May 2012.

At the original meeting, according to EC member's own between 10-12 votes were missing to declare meeting valid. 55 owners, or 2500 entitlement points were needed to make the meeting valid. EC member and BCS Strata Management BCS refused to provide access to proxy votes at the beginning of the meeting. That means that around 45-47 votes were present at the original meeting.

At the adjourned meeting, 53 votes were counted as valid, which did not match the EC member's statement at the original meeting.

One proxy vote was counted INCORRECTLY with wrong vote for (not against) the Motion. In his email to the owner Strata Manager acknowledged the error promising to update the minutes. That never happened. One proxy vote was invalid because BOTH owners should have signed the form. Wife of an owner DID NOT SIGN IT. One proxy vote was rejected because ONLY proxies issued on the date of the FIRST GENERAL MEETING could be legally used. Quite the opposite rule BCS Strata Management BCS used at other general meetings.

Owner who requested exclusive rights to common property did not pay all costs as per approved Special By-Law.

Outcome: Meeting was non-compliant with SSMA 1996 Schedule 2 Section 12 2 (a) and (b), SSMA 1996 Schedule 2 Section 10 (8), SSMA 1996 Clause 32 (1) and the Interpretation Act 1987 Section 76, and SSMA 1996 Section 183.

Special By-Laws was, hence, illegally registered with the Land and Property NSW:

SPECIAL BY-LAW NO.10

LOT 136 AND LOT 137 IMPROVEMENTS

1. This by-law confers on the Owner special privileges in respect of part of the common property as a consequence of the Improvements to be made to the Owner's lot.
2. The special privileges conferred by this by-law are the rights to alter and use the common property by making Improvements that affect the common property.
3. "Improvements" means the alterations and additions undertaken by the Owner (at the Owner's cost and to remain the Owner's fixture) to remove part of the common wall separating the dining and living room areas of Lot 136 and Lot 137, as described in the structural engineering report and drawing prepared by Murdocca & Associates Pty Ltd dated 14 January 2012, annexed to this by-law and marked "A".
4. The Owners Corporation acknowledges that other aesthetic works are being undertaken by the Owner that do not affect common property and do not require the consent of the Owners Corporation.
5. The Owners Corporation, under this by-law, provides its consent for the special privileges granted to the Owner.
6. To the extent of any inconsistency with previous by-laws, this by-law prevails.

Conditions

Before making Improvements

7. The Owner must obtain written approval for the Improvements from the relevant consent authority under the *Environmental Planning and Assessment Act 1979* (if required) and any other relevant statutory authority whose requirements apply to making the Improvements.
8. The Owner must ensure that any party carrying out the Improvements effects and maintains contractors all works insurance, workers compensation insurance and public liability insurance in the amount of \$10,000,000 and provides certificates of currency evidencing the insurance on request by the Owners Corporation.

In spite of all evidence that the owner did not cover all costs for the general meeting (more than \$2,500.00 missing in common funds), BCS Strata Management and EC refused to reimburse owners corporation for the general meeting organized for purely private benefits. This is confirmed in undisclosed email correspondence between the EC member of the EC and the Strata Manager on 21st of January 2015. In it, the EC member offers advice how to hide expenses like this in "bundled disbursements" charged by BCS Strata Management:

As to the costs for the EGM in question I think that the reason this was as low cost is the fact that it was covered under bundled disbursements, so as long as R&H carried the cost as part of that invoice to the Owners Corporation there can be no issue.

- **Simon Wicks continued to work for other complexes and was even secretly involved in electricity contract renewal for SP52948 without tender, without owners corporation approval, or knowledge in 2015:**

From: Sydney Clarisse [<mailto:Sydney.Clarisse@energyaction.com.au>]

Sent: Wednesday, 11 March 2015 2:35 PM

To: Simon Wicks

Subject: Strata Plans [removed], 52948, [removed]

Hi Simon,

I hope all is well. It was good chatting with you earlier.

As discussed, I'm proposing that I take all the above strata plans out to Auction.

A couple of reasons as to why I want to do this now. Firstly, I have analysed the existing rates for all the Plans and I'm confident that if we were able to get pricing for these sites within the next fortnight, there will be a very good chance that there will be savings across all the three plans going forward.

Secondly, by going to Auction well in advance of the contract end date, it will enable me to request for pricing from all the various retailers without the risk of having transfer issues from retailer to retailer.

One of the most important aspect of not waiting until contract end date is that we can ensure that we are not pushed into a corner when it comes to pricing. An incumbent retailer will know that there is no chance of being able to transfer to any other retailer in time if waiting until contract end date and as such, their pricing will invariably not be as sharp.

Look out for the Authority documents that I will be aiming to get to you before the end of the week. Thank you.

BCS Strata Management and members of the Executive Committee went as far as deliberately removing the following Motion from AGM 2016:

Motion: Electricity Supply Contract Signed Three Months Before its Expiration Without Evidence of Tender and Without Disclosure to Owners Corporation

Similar process was conducted in 2011: EC member negotiated new contract through broker (tendering of electricity contract) as announced at the EC meeting held on 20th of July 2011, which was attended only by seven members of the EC (out of 218 lots in the complex) and Strata Manager Mr. Simon Wicks. The consequent increase in electricity costs were 18.010% and 18.76% in 2012 and 2013, well above the market trends.

SP52948 Common Property Electricity Expenses (GST exclusive)		
Financial Year from 1 Sep to 31 August the following year)	Electricity Expenses	Electricity Expenses Change to Previous Year
1997	\$36,369.00	
1998	\$69,048.00	89.85%
1999	\$32,392.00	-53.09%
2000	\$39,143.00	20.810%
2001	\$39,166.00	0.06%
2002	\$34,050.00	-13.06%
2003	\$35,195.00	3.36%
2004	\$36,979.00	5.07%
2005	\$38,901.00	5.20%
2006	\$42,341.00	8.810%
2007	\$46,169.00	9.010%
2008	\$49,065.00	6.27%
2009	\$50,875.00	3.69%
2010	\$60,200.00	18.33%
2011 Note 1	\$63,359.00	5.25%
2012 Note 2	\$74,792.00	18.010%
2013 Note 2	\$88,823.09	18.76%
2014 Note 2	\$83,730.83	-5.73%
2015 Note 3	\$69,150.15	-17.41% (~9% discount for Carbon Tax)

Note 1: EC member on his own "negotiated" new contract through broker (tendering of electricity contract) as announced at the EC meeting held on 20 July 2011:

The EC member introduced an energy supply broker to the strata manager. The broker arranged for a reverse auction of the electricity supply to be conducted on 25th of July 2011. Footnote: This reverse auction resulted in improved savings to the owners corporation over the increases quoted by suppliers to the auction. The increase in costs are estimated to be approximately 7%, which is significantly less than ordinary household account increases.

Note 2: LED lights purchased to save energy:

\$7,815.00	LED lights	Caretaker's Invoice 00000180 on 21 June 2012
\$8,313.00	LED lights/installation	Carbon&Energy Reductions Pty Ltd Invoice 00240656 on 9 December 2013

Numerous other emergency light replacements costing thousands of dollars

Other LED and lighting expenses as of July 2015 above \$60,000.00

Note 3: In October 2014, an ACCC report said electricity retailers estimated that the removal of the carbon tax lowered prices to customers by 5.2 to 12.4 per cent. Government was more reserved: they estimated power prices would go down by 9 per cent. Statement by Energy Australia:

Savings for residential customers

State	Fuel	Average % savings p.a	Average \$ savings p.a
NSW	Electricity	8.9%	\$158
NSW	Gas	4.10%	\$35

Savings for small business customers

State	Fuel	Average % savings p.a	Average \$ savings p.a
NSW	Electricity	8.3%	\$452
NSW	Gas	7.8%	\$944

Motion: That owners corporation confirms by ORDINARY RESOLUTION pursuant to Section 47 of the Strata Schemes Management Act 1996, BCS Strata Management and EC members

- Failed to disclose at AGM 2015 or at any other meeting, that Strata Manager Mr. Gary Mills, without official decision at General Meeting, or decision at any legally-convened meeting by the Executive Committee, signed the electricity supply contract for three-year period on 8th of July 2015, almost three months before the expiration of the contract,
- Acted in non-compliance with SSMA 1996 Section 108 for strata document search in 2012 and 2015 that failed to provide proof of electricity supply tender.

Comment by Owner of Lot 158: Owners are also not notified about disclosure of rebates and commissions:

- | | |
|-----|---|
| 3.4 | If <i>item 6</i> is marked "Yes", the <i>agent</i> may retain rebates, discounts and commissions paid to it by the providers of goods and <i>services</i> to the <i>owners corporation</i> described in the <i>disclosure schedule C1</i> or as otherwise notified in writing to the <i>owners corporation</i> from time to time and agreed in writing by the <i>owners corporation</i> . |
| 3.5 | If <i>item 6</i> is marked "No", the <i>agent</i> must pay to the <i>owners corporation</i> any rebates, discounts and commissions paid to it by providers of goods and <i>services</i> to the <i>owners corporation</i> within 30 days of the receipt, however any rebates, discounts and commissions described in the <i>disclosure schedule C2</i> may be retained by the <i>agent</i> . |

Owner's original request to BCS Strata management with complaint about their Strata Manager Simon Wicks. Crucial note: instead of forwarding the complaint to managers, office staff Debbie Downes forwarded it back to Simon Wicks. Simon Wicks made a decision for himself, replied to owner, and acted as his own "judge" in the complaint.

Subject: RE: ENQUIRY: What is the process within your company to investigate wrongdoings of your Strata Manager

Date: Wed, 12 Oct 2011 16:46:32 +1100
From: Simon Wicks <SimonW@bcms.com.au>
To: SP52948 owner

Issues relating to problems with the provision of services by the managing agent should be referred in the first instance to the committee. You can be assured that the current committee have addressed with the managing agent any matters they consider are a legitimate and immediate concern and remedial measures have been agreed or if not agreed are being discussed to determine how they may be avoided in future.

Kind Regards

Office Closure on Tuesday 25th October 2011
Please note our office will be closed for Employee Professional Development training day

Simon Wicks
Raine & Horne Strata-Sydney
Level 1, Building D, 240 Beecroft Road Epping NSW 2121
T: (02) 9868 2999 F: (02) 8216 0331
<http://www.bcms.com.au/>

-----Original Message-----

From: Debbie Downes (BCS)
Sent: Wednesday, 12 October 2011 4:29 PM
To: Simon Wicks
Subject: FW: ENQUIRY: What is the process within your company to investigate wrongdoings of your Strata Manager

Debbie Downes
Raine & Horne Strata-Sydney
Level 1, Building D, 240 Beecroft Road Epping NSW 2121
T: (02) 9868 2999 F: (02) 8216 0331
<http://www.bcms.com.au/>

-----Original Message-----

From: SP52948 owner
Sent: Friday, 7 October 2011 9:24 AM
To: strataepping
Subject: ENQUIRY: What is the process within your company to investigate wrongdoings of your Strata Manager

To whom it may concern,

I live at Macquarie Gardens, SP52948, Macquarie Park.

In the second part of last year (2010), your company acquired Raine&Horne office at Epping.

For reasons difficult to understand, two managers who worked within your company (John Fry, "resigned and "retired" in April 2011), and Simon Wicks have been engaged in a serious number of NSW Strata Management Act breaches and have acted against the best interests of the owners in the Meriton complex (218 units and townhouses).

In spite of all warnings, the behavior of Simon Wicks has not changed and his refusal to act in accordance with law is extraordinary. But, do not take my words for it. Check it yourself.

It has become so obvious that something is wrong with the management of the complex that even the executive committee, who worked very closely with the agents and were their personal friends, now admits that owners want a change and said so in the EC's address for the AGM 2011.

Before we take serious actions against him and drag your company's name into it (not good for your reputation), I want to know what actions do you plan to investigate my claims (which I have in abundance).

For example, Simon Wicks REFUSES to add a motion for the AGM which is almost a year old (in spite of SIX REMINDERS and WARNINGS). He refuses to answer very valid questions that I have raised on behalf of owners...

He refused to provide details to owners why I raised motion to rescind special By-Law 8, and so on.

Just to give you some idea, I enclose herewith a document that all owners received from me this week (for the AGM on the 19th of October 2011).

It will be easy for us to get rid of him soon, but your company, I am sure, does not want to be involved with bad publicity.

If more details are needed, just ask. There is plenty to show. Of course, Simon Wicks is welcome to prove that he is right (which I know, he cannot).

Good business is based on openness and transparency.