

AFFIDAVIT OF Lot 158 4th of February 2014

COURT DETAILS

Court	District Court Civil Registry
#Division	General
#List	
Registry	Sydney
Case number	2013/360456

TITLE OF PROCEEDINGS

[First] plaintiff	Lot 158
#Second plaintiff #Number of plaintiffs (if more than two)	
[First] defendant	Owners Corporation SP 52948
#Second defendant #Number of defendants (if more than two)	

FILING DETAILS

Filed for	Lot 158 Plaintiff
#Filed in relation to	CTTT file SCS 12/32675 whole decision
#Legal representative	N/A
#Legal representative reference	N/A
Contact name and telephone	Lot 158 0412 041 715
Contact email	<Redacted>

AFFIDAVIT

Name Lot 158
Address 158/1-15 Fontenoy Road, Macquarie Park, NSW 2113
Occupation IT Architect/ Senior Instructor
Date 13 January 2014; with typing error corrections and inclusion of additional Annexures to help the Honourable Judge avoid search through voluminous CTTT evidence on 4 February 2014

I affirm:

1. I am the plaintiff.
2. The facts deposed in this affidavit are true based on my own knowledge, or alternatively I believe them to be true based on information I have obtained during the course of my proceedings to investigate management issues of the strata complex where I have lived with my family and own Lot 158 since 1997.

Background

3. I have been working in the IT industry for 28 years and 8 months. For my contributions to the profession and work experience, I have earned status of Senior Member of the Institute of Electrical and Electronic Engineers (IEEE), Senior Member of Association of Computing Machinery (ACM) and Senior Member of Australian Computer Society (ACS).
4. I have provided IT consulting (architecture, system builds, and security and performance audits) and teaching services in diverse industries: educational, corporate (including Fortune-100 companies), scientific organizations, State and Federal agencies, Internet Service Providers (ISPs), police and other law enforcement agencies, and military (including major defence projects). Some of my areas of expertise are computer fraud, IT security, clustering, cloud computing, Unix and Linux systems, and internet-based investigations.

5. Raine & Horne Strata Sydney has been providing strata management services to Strata Plan 52948 since 26th of May 1999.
6. Four years ago I raised serious concerns about the management of the Strata Plan 52948 and attempted to resolve them through free mediation at the Office of Fair Trading (declined by the Strata Manager and the Executive Committee four times), and then adjudication at the CTTT. Due to my lack of experience in legal matters and Respondent's persistent denial of access to evidence, I have not achieved significant results thus far.
7. An appeal to the Adjudicator's decisions in CTTT file SCS 12/05845 was initiated by me on 12th of June 2012 (CTTT file SCS 12/32675), highlighting problems with maintenance of the complex, lack of compliance with special by-laws, financial mismanagement, what I believed to be false statements by the Respondent in their prior submissions without any evidence, and strata manager's professional misconduct.
8. On 9th of July 2012, the Executive Committee had a meeting, which approved the engagement of the Solicitor Mr. Adrian Mueller. The meeting had the following characteristics:
 - a) Owners did not receive agenda for the meeting at least 72 hours earlier.
 - b) One out of nine members of the Executive Committee may not have received notice for the meeting (resolution 1 in the minutes, provided to the Tribunal nine months after the meeting, in Strata Manager Mr. Peter Bone's Statutory Declaration, annexure marked "B", page 15, dated 19th of April 2013). Copy is annexed and marked "DB27".

c) Owners and the members of the Executive Committee did not receive Standard Costs Agreement and Standard Costs Disclosure from the Solicitor before the meeting.

d) There were no submissions of quotes from other providers of legal services.

e) Owners were not given a copy of, or notified about, CTTT file SCS 12/32675, and the Respondent did not provide evidence to prove it at the Tribunal.

f) Owners did not receive minutes within seven days after the meeting (or at any time afterwards), and the Respondent did not provide evidence to prove it at the Tribunal.

g) Minutes of this meeting were not recorded in the Minutes Book or in any other form available to owners, and the Respondent did not provide evidence to prove it at the Tribunal.

9. Directions Hearing in file SCS 12/32675 was conducted on 8th of August 2012, followed by Hearing on 17th of October 2012. By the orders made on the day of the Directions Hearing:

a) I was to file my submissions by 15th of August 2012.

b) The Respondent was to file their submissions by 12th of September 2012.

Copy of the Directions Hearing is annexed and marked "DB1".

10. Solicitor Mr. Adrian Mueller, on behalf of the Respondent, filed two request for my appeal to be summarily dismissed because it was "*misconceived*" (the word quoted from his submissions):

a) 5th of September 2012, in Sleeve 3 in my Folder to CTTT dated 14th of March 2013, and also annexed and marked "DB2" in this Affidavit.

b) 13th of September 2013, in Sleeve 4 in my Folder to CTTT dated 14th of March 2013, and also annexed and marked "DB3" in this Affidavit.

In both cases, the CTTT did not approve the summarily dismissal.

11. Solicitor Mr. Adrian Mueller did not comply with the Tribunal's orders to provide submissions by the date of Hearing on 17th of October 2013.
12. Without being able to obtain access to evidence, and Solicitor failing to comply with the Tribunal's orders three times, the Tribunal dismissed my appeal in file SCS 12/32675 on 5th of December 2012. Copy of the Tribunal's decision is annexed and marked "DB4" in this Affidavit.
13. On 10th of December 2012, Solicitor Mr. Adrian Mueller commenced proceedings to reopen CTTT file SCS 12/32675. Copy of the Respondent's application is annexed and marked "DB5" in this Affidavit.
14. The decision to reopen the file SCS 12/32675 was not made at any Executive Committee meeting, and the Respondent did not provide evidence to prove it at the Tribunal.
15. In his statement in the submission dated 29th of January 2013 (annexed and marked "DB29"), justifying the appeal in relation to Section 192 of the Strata Act (case frivolous, vexatious, misconceived or lacking in substance). Mr. Mueller stated in paragraph 15:

"Even if these matters were not apparent from the Tribunal's Reasons, the Tribunal is able (and to the extent necessary is invited to) make findings to this effect for the purpose of determining the question of costs."

Copy of the Solicitor's submission is annexed and marked "DB6" in this Affidavit.

16. In application for costs, the Tribunal Member Mr. Harrowell's decision, dated 6th of November 2013 (annexed and marked "DB26"), in paragraph 69 states:

"The Owners Corporation says that the costs order which should be made should be an indemnity costs order in a lump sum amount. The effect of the submission is that costs should be in respect of the whole of the appeal. However, having regard to my comments regarding the settlement of the claim for access to documentation, I am not satisfied that an order for cost ought to be made on an indemnity basis. On the other hand, I am satisfied that by providing the voluminous and irrelevant material and having regard of the way the applicant chose to conduct his appeal that a cost order should be made in respect of the continuation and in respect of the respondent having to deal with claims that have never been the subject of a request for adjudication."

Justification for my fresh evidence

17. I submit six documents (marked "DB7" to "DB12") I could not have obtained with reasonable diligence at the time.

18. The Respondent did not disclose this evidence to the Tribunal or me before or during the proceedings.

19. Strata Manager Mr. Peter Bone provided Statutory Declaration on 19th of April 2013. It was referred to, and relied on, in Tribunal's final decisions dated 6th of November 2013 in paragraphs 78 and 82 (annexed and marked "DB26"). On page 19 of the Statutory Declaration, annexed was a letter sent by Solicitor Mr. Adrian Mueller to the Respondent on 2nd of July 2012. In his letter the Solicitor stated:

"I note that many strata insurance policies contain cover for legal defence expenses up to \$50,000. You should therefore consult with your insurer about whether or not

my legal costs would be covered by the insurer if the owners corporation decides to retain me in the appeal.”

20. Only through repeated efforts to enforce Section 108 of the Strata Act, I obtained rights to belated document viewing in the strata office on 1⁶ of September 2013 (one year after the Hearing in file SCS 12/32675). I was able to establish the matter of fact that the Respondent had received full payments for the legal costs through the Strata Plan 52948 insurance policy with CHU Underwriting Agencies Pty Ltd before file SCS 12/32675 was reopened for costs recovery on 1⁰ of December 2012.
21. The indemnity insurance Policy 9 for the Strata Plan 52948 was extended on 1st of August 2012, one week before the Directions Hearing, and not recorded as decision of the Executive Committee or owners corporation at any subsequent meetings. Annexed and marked “DB7” is a copy of the email exchange trail between Raine & Horne Strata Sydney, CHU Underwriting Agencies Pty Ltd (the Strata Plan 52948’s insurer in 2012), and Gallagher Australia (strata plan’s insurance broker in 2012).
22. Mr. Ron Sinclair, of Raine & Horne Strata Sydney, initiated the extension of the indemnity for Strata Plan 52948 under Policy 9, which was confirmed by Mr. Brian Turpin of CHU Underwriting Agencies Pty Ltd under Reference Number NH201212589 on 1st of August 2013 in email trail sent at 3:33 PM.
23. Mr. Brian Turpin of CHU Underwriting Agencies Pty Ltd stated that this insurance policy change was a large risk and refrained to refer this matter to their company’s lawyers at 4:22 PM on the same day.

24. Four weeks later, an insurance claim number NH201212589 for “CTTT defence for Lot 3” was submitted by Mr. Ron Sinclair of Raine & Horne Strata Sydney on 28th of August 2012. Copy is annexed and marked “DB8”.
25. Strata Manager Mr. Peter Bone confirmed the first insurance payment in claim number NH201212589 for “CTTT Defence for Lot 3” in his email to Branch Manager Mr. Paul Banoob and the long-standing Chairperson of the Executive Committee Mr. Bruce Copland on 4th of September 2012. Copy is annexed and marked “DB9”.
26. Total amount paid for legal cost claims incurred by Solicitor Mr. Adrian Mueller was \$24,919.31 until June 2013. Extract from insurance payments in claim number NH201212589 for “CTTT Defence for Lot 3” is annexed and marked “DB10”.
27. The first claim number NH201212589-1 was paid by CHU Underwriting Agencies Pty Ltd in amount of \$367.64 on 3rd of August 2012. Excess of \$1,000.00 was applied to the claim for Solicitor Mr. Adrian Mueller’s first invoice dated 10th of August 2012 for attendance at the Direction Hearing on 8th of August 2012.
28. The second claim number NH201212589-2 was paid by CHU Underwriting Agencies Pty Ltd in amount of \$12,714.65 on 7th of December 2012 – three days before Solicitor Mr. Adrian Mueller applied for reopening CTTT file SCS 12/32675 for costs that the Respondent had already recovered from the insurance company.
29. Two more insurance payments for legal costs were claimed from CHU Underwriting Agencies Pty Ltd during 2013, without Standard Costs Agreement and Standard Costs Disclosure being provided to the Respondent and owners. These insurance claims are in annexure “DB10”.

30. Owners have not received information about these insurance claims in any financial statements or minutes of meetings so far.
31. Upon receiving CTTT orders on 6th of November 2013 (annexed and marked "DB26"), I submitted my summary about these insurance claims that affected the Tribunal's decision and expressed intention to proceed with an appeal at District Court on grounds of error of law.
32. The Tribunal did not reply to me.
33. Extract of payments to Solicitor Mr. Adrian Mueller's and GST recovery by Strata Plan 52948, as recorded in financial statements in FY 2013. Copy is annexed and marked "DB11".
34. In email from Strata Manager Mr. Peter Bone to two members of the Executive Committee on 17th of June 2013 he confirmed the strata scheme's insurance company accepting the legal defence claim, as this insurance policy was not dependant on a successful court / CTTT action. Copy is annexed and marked "DB12".

Standing to Apply for Matter-of-Law Review

35.
 - a) Directions Hearing on 8th of August 2012 in paragraph 4 imposed an obligation on the Respondent to provide the Tribunal and me with a copy of all documents on which they intended to rely at the Hearing by 12th of September 2012. Solicitor Mr. Adrian Mueller did not comply with the Tribunal's orders.
 - b) Upon my complaint about not receiving documents from the Respondent on 10th of September 2012, the Tribunal issued notice of non-compliance with procedural directions on 17th of September 2012. Copy is annexed and marked "DB13". Solicitor Mr. Adrian Mueller did not comply with the Tribunal's notice.

c) On 19th of September 2012 Solicitor Mr. Adrian Mueller submitted a request for extension of time by 2.5 weeks to provide the Respondent's documents (to 28th of September 2012). Copy is annexed and marked "DB14".

d) His request was granted in Tribunal's notice issued on 28th of September 2012. Copy is annexed and marked "DB15". Solicitor Mr. Adrian Mueller did not comply with his own request for extension of time and the Tribunal's notice.

e) Upon my second complaint about not receiving documents from the Respondent on 29th of September 2012 (copy is annexed and marked "DB16"), the Tribunal issued second notice of non-compliance with procedural directions on 9th of October 2012. Copy is annexed and marked "DB 17". Solicitor Mr. Adrian Mueller did not comply with the Tribunal's notice.

f) The Respondent, through Solicitor Mr. Adrian Mueller, failed to comply with Tribunal's orders for production of submissions three times before the Hearing on 17th of October 2012.

Ground (i): Failure to exercise discretion to enforce procedural fairness for submissions before Hearing on 17th of October 2012, which allowed the Respondent to attend without any evidence or written responses provided to me beforehand: is that an error in respect to matter of law?

36. a) On 3rd of February 2013, based on my extensive expertise in IT forensic investigations, I sent the following request to Raine & Horne Strata Sydney in compliance with the Strata Act Section 108:

ACCESS TO INSPECT RECORDS REQUESTED: SP52948 correspondence by EC members and Solicitor from January 2012 to February 2013

b) This request was submitted in Sleeve 23 of my folder to CTTT dated 14th of March 2013 - as confirmed in Tribunal Member Mr. Harrowell's decision in paragraph 47 on 6th of November 2013 (annexed and marked "DB26"). Copy is part of annexure marked "DB18".

c) The request to access the correspondence was refused by the Strata Manager Mr. Peter Bone on 4th of February 2013, who stated that the information was privileged. In his response, he addressed Solicitor Mr. Adrian Mueller in carbon copy. Copy is part of annexure marked "DB18".

d) Due to lack of any submission from the Respondent, in spite of three complaints about Respondent's non-compliance with the Tribunal's directions made on 17th of December 2012, I was forced to submit an interim response.

e) Copy of my emails to CTTT, Solicitor, and Strata Manager complaining about not receiving Respondent's files on 28th and 29th of January 2013 is annexed and marked "DB46".

f) Copy of CTTT's notice extending deadline for my submissions by one day on 27th of February 2013 is annexed and marked "DB47".

g) In my interim folder to CTTT dated 25th of February 2013, in Sleeve 6 was a copy of my request to inspect correspondence of the EC members and the Strata Manager. Copy of the CTTT-stamped table of contents for this folder is annexed and marked "DB19".

h) In Sleeve 1 of my interim folder dated 25th of February 2013 I listed my request to the Strata Manager to obtain access to correspondence between the EC members and the Strata Manager. Copy is annexed and marked "DB20".

i) Based on Solicitor's invoice issued on 6th of March 2013 (provided to CTTT in folder in Sleeve 12 on 23rd of April 2012 - as confirmed in Tribunal Member Mr.

Harrowell's decision in paragraph 47 on 6th of November 2013, annexed and marked "DB26"), the Solicitor prevented my access to forensic analysis of email messages between him, Executive Committee and the Strata Manager, although I had relied on *Eastmark Holding Pty Ltd v Kabraji (No 3) 2012 NSWSC 1463*. Copy of the Solicitor's invoices is annexed and marked "DB21".

j) Still seeking access to crucial information, I submitted request for summonses to three members of the Executive Committee and the Strata Manager at CTTT on 25th of February 2013. Copy of two of them is annexed and marked "DB22".

k) I visited CTTT and spoke to Ms. Monette and Ms. Dianne D'Mello in person on 27th of February 2013. They rejected my first version of summonses and made corrections in accordance with what the CTTT required. I then submitted an updated version to Strata Manager Mr. Peter Bone, and members of the Executive Committee Mr. Bruce Copland, Mr. John Ward, and Mrs. Maureen McDonald on the same day. One of the many requests for crucial documents and evidence, as listed in my summonses:

Minutes of the EC meeting held on 9th of July 2012

Copy of requests for issues of summonses for two other EC members is annexed and marked "DB23".

l) Copy of questions in my request for issue of summons for one member of the EC – Mr. Bruce Copland is annexed and marked "DB24".

m) Tribunal denied my application on 5th of March 2013 without an explanation. A quote from their letter:

"2. The application for the issue of summonses dated 27/2/13 at the request of the applicant Lot 158 is refused."

Copy of Tribunal's decision to reject my request is annexed and marked "DB25".

n) At the first Hearing for costs recovery on 15th of April 2013, I was not allowed to view the minutes of the Executive Committee meeting on 9th of July 2012, and other evidence.

Ground (ii): Failure to exercise discretion to enforce procedural fairness for my access to evidence and documents through issue of summonses on 27th of February 2013: is that an error in respect to matter of law?

Ground (iii): Failure to give reasons for rejecting my application for the issue of summonses on 5th of March 2013: is that an error in respect to matter of law?

37. In his decision on 6th of November 2013 (annexed and marked "DB26"), in paragraph 20, Tribunal Member Mr. Harrowell stated the following:

"In relation to issue numbered 1, I concluded that the this has not been a matter about which the applicant had originally sought adjudication and therefore the applicant was unable to raise this issue on appeal. I declined to exercise any discretion under section 162 of the Act to appoint a compulsory strata managing agent as I was not satisfied the circumstances for such an appointment existed. Further, because there was an annual general meeting of the Owners Corporation to be held on the day of the hearing, I concluded that any issues arising from the management of the strata scheme should be dealt with by the Owners Corporation in general meeting."

a) In my written and oral submissions I argued that the order pursuant to the Strata Act Section 162 may be made even without the application when the management structure of a strata scheme is not functioning satisfactorily. Copy of my summary in the appeal provided in the submission to CTTT dated 14th of August 2012 is

annexed and marked "DB28".

b) My written submissions before the Hearing on 17th of October 2012 contained 40 pages sent for mediation at the Department of Fair Trading and 204 pages to the CTTT, with over 80 document scans or references to circumstantial evidence.

c) The Respondent did not provide any submissions or evidence before the Hearing on 17th of October 2012.

d) The Tribunal was aware of my attempt to apply interim orders to prevent general meeting called for 17th of October 2012 from going ahead on grounds of significant procedural errors. CTTT file SCS 12/50450 was initiated by me on 5th of October 2012, two weeks before the general meeting and the Hearing in file SCS 12/32675. Copy of my request for interim orders is annexed and marked "DB30".

e) The Tribunal was aware that, based on my submission in file SCS 12/50450, general meeting had strong potential to be run through misconduct.

Ground (iv): Tribunal denied procedural fairness by failing to canvass with the parties the matters referred to in this order and created a reasonable apprehension of bias by favoring its own pre-conceived views: is that an error in respect to matter of law?

Ground (v): The reasoning outlined in Tribunal's decision in paragraph 20 could be regarded as speculative at best, and unsubstantiated expectations of the outcome of the Annual General Meeting on the same night did not have any grounds: is that an error in respect to matter of law?

38. In his decision on 6th of November 2013 (annexed and marked "DB26"), in paragraph 22, Tribunal Member Mr. Harrowell stated the following:

"In relation to repairs and maintenance I concluded that while some

maintenance work may be required to be done, the circumstances as presented by the applicant did not warrant the intervention of the Tribunal where it appeared on the evidence that maintenance works were being carried out and prioritized by the Owners Corporation”.

a) The Respondent did not provide any evidence to prove status of repairs and maintenance in the strata complex. By the date of the Hearing on 17th of October 2012, the Respondent failed to submit their documents in spite of three notices with orders by the Tribunal.

b) In my submissions to the Tribunal, I provided photos of the garden beds and the exterior walls on the buildings that showed significant neglect in regards to maintenance (October 2011, June 2012, and October 2012). Examples of photos are annexed and marked “DB31”.

c) On the day of Hearing on 17th of October 2012, I provided additional photographs of the maintenance status in the strata complex taken in August 2012. At that point, the Tribunal Member Mr. Harrowell asked me if those photographs had been given to the Respondent, to which I replied that they had not. In his response Mr. Harrowell said words to the effect of (transcribed by me from the first CD-ROM at around 46th minute of the audio recording at that Hearing):

“I’ll return the photographs to you... and won’t receive the photographs in circumstances where the Tribunal’s directions were not complied with. I appreciate there is some narrative in there... but the Tribunal makes directions so that we can deal with this...”

d) Solicitor Mr. Adrian Mueller did not comply with the resolution in paragraph 7 of the minutes of the Executive Committee meeting held on 9th of July 2012, which the Tribunal accepted as valid meeting through ratification at several

consecutive meetings. The extract from the Strata Manager Mr. Peter Bone's Statutory Declaration, Annexure "B", page 15, dated 19th of April 2013:

"The building condition report (as soon as available) and the AGM minutes (1999) approving water and gas rebates are to be provided to solicitor for production at CTTT."

e) In my submission to the Tribunal on 23rd of April 2013, which consisted of a folder with 22 sleeves (annexed and marked "DB32"), I provided copy of a professional building report that was undisclosed by the Respondent at the Hearing on 17th of October 2012:

📁 Sleeve 7 Napier & Blakeley building report completed in July 2012, annexed and marked "DB33".

📁 Sleeve 8 Invoice issued by Napier & Blakeley on 30th of July 2012, annexed and marked "DB34".

f) Napier & Blakeley's building report contained listing of significant issues, including non-compliance with the Occupational Health and Safety regulations. To list a few:

📁 Main domestic water supply did not have a backflow prevention device installed as required by AS 3500:1 and Occupational Health and Safety Regulation 2001, Division 1 Classes 34 & 35.

📁 Flat concrete deck roof areas to Block A, B, C, and D contained large areas of standing water.

📁 Affected areas of paving rose in line with the construction joints to the basement car park causing trip hazard and should be repaired to prevent any future trip risks.

- Annual survey of fire safety measures did not exist as required by AS 1851.2005.
- Hazard and risk assessment of the lift installation did not exist.
- Annual lift registrations out of date (required by OH&S Act).
- Falls to the drainage on the roofs were insufficient.
- Tower buildings' roof top boiler plantrooms poorly illuminated as required by OH&S Act.
- Tower buildings' roof top plantrooms used for storage and redundant water storage tanks making the plantrooms unsafe for repairs and maintenance, as required by OH&S Act.
- Lift car and landing button panels did not comply with AS 1735 Part 12 'Facilities for Persons with Disabilities' which was a requirement in current regulations.
- Lifts did not have voice announces, as required by BCA Building Regulations 2011.
- Lift cars did not have hand rails in compliance with AS 1735 Part 12.
- Car button panels did not comply with AS 1735 Part 12.
- Dual acting brakes not provided on the hoist machines on lifts as required by AS 1735.2 2001.
- Upward runaway protection on lifts not provided as required by AS 1735.2 2001.
- Pit buffer switches on lifts not provided as required by AS 1735.2 2001.

- Governor idle switches on lifts not provided as required by AS 1735.2 2001.
- Alarm/communications system not provided on top of lift car and in the pits as required by AS 1735.2 2001.

Ground (vi): Tribunal decided a question of fact when there was no evidence in support of the finding on maintenance and repairs of the strata complex: is that an error in respect to matter of law?

Ground (vii): Failure of the Tribunal to give attention in a decision to the evidence on the maintenance and repairs issue that was contrary to an assertion of fact made by the Respondent: is that an error in respect to matter of law?

39. a) At the Hearing on 15th of April 2013, in attempt to complain about lack of access to Respondent's documents, I said words to the effect of (transcribed by me from the first CD-ROM at around 26th minute of the audio recording at that Hearing):

“On 28th of February I provided questions and request for additional evidence to support my case to CTTT in person. Lady... ladies at the counter, reviewed my documents... they made suggestions for changes, and I issued request for summons against three members of the committee, and the member... and the strata manager. One week later, with one sentence, which is, I think provided in this evidence, CTTT denied me procedural fairness and declined to issue request to get access, among the other things, to minutes of the July meeting ... minutes where it was approved that he is engaged... and some other questions. So, CTTT, for some unknown reason, to me, declined to bring the people that I think are important to attend today...”

- b) After receiving Statutory Declaration from Strata Manager Mr. Peter Bone on 19th of April 2013, I detected number of discrepancies in his statements and decided to

verify them through summonses due to short timeframe before the next Hearing scheduled for 10th of May 2013. I attempted to obtain access to crucial documents and information through second application for the issue of summonses for the purpose of giving evidence before the Tribunal on 28th of April 2013. My application included five members of the Executive Committee and the Strata Manager Mr. Peter Bone. Copy is annexed and marked "DB35".

c) My second application for issue of summonses was rejected three days later, on 29th of April 2013:

"The application to issue summonses requiring the attendance at the hearing of an application for costs is refused. No relevant forensic purpose is demonstrated in the request and the issue of summons in present circumstances is therefore oppressive".

Copy of the Tribunal's decision is annexed and marked "DB36".

d) In my address to the Tribunal at Hearing on 10th of May 2013, in attempt to complain about rejection for issue of two summonses, I said words to the effect of (transcribed by me from the second CD-ROM at around 4th minute of the audio recording at that Hearing):

"Couple of things: number one: cost agreement was not given to owners, number two: the minutes of the previous meeting were... or should we call it gathering on 9th of July... were not given to owners... number three, which I tried to do through two requests for issue of summons of several members of the committee... the Respondent did not provide any evidence and cannot provide anything to the contrary that any member of the Executive Committee read the cost agreement and received it in the period between 16th of July 2012 and 25th of July 2012... I asked individual members and the strata manager if anybody got a copy of the cost agreement from the Solicitor... There is no evidence that any member of the

committee have read it, confirmed it, and also did not even attempt to renegotiate... which is part of the contract offering... and verify, maybe, another offer, from a different Solicitor... so there is no evidence put forward to the owners corporation that they even viewed the cost agreement. I have asked this through two... and twice I even tried to attempt to force it through issues of summons, which were declined... but I also asked individually, members of the committee and the Strata Manager – no response was received. Based on the lack of any positive or negative... we cannot assume that they read it or they got it... otherwise, your orders made on 15th of April 2013 clearly stated that the Respondent had a right to provide any evidence to support their case in any relation to the legal and engagement of the Solicitor... There is a big doubt that, at that time, nobody on the owners corporation side signed the agreement on 25th of July, because even in the evidence by the Respondent on 29th of January, the copy that was provided to the CTTT and myself did not contain the signature from the strata manager.”

e) Tribunal Member Mr. Harrowell, in response to my statements, said words to the effect of (transcribed by me from the second CD-ROM audio recording at that Hearing):

“Am I correct that those arguments about what occurred on 22nd of August 2012, which you say I should consider in rejecting the notion that there’s been a ratification of what occurred, on the 9th of July... and these same methods relied upon by you in relation to each of other meetings to which Mr. Mueller has referred?”

f) I replied affirmatively.

g) I then followed up by saying words to the effect of (transcribed by me from the second CD-ROM audio recording at that Hearing):

“A very important element which needs to be mentioned in regards to that one week earlier... a resolution made by the Executive Committee... and I would just like to quote a proper stance in that regard... to quote a Strata Management Act why that one is questioned at this point in time... and why one week earlier a request... resolution to approve it has denied owners the right to attend that meeting... to quote it from the Strata Management Act.... The scheduled EC meeting has to be convened in accordance with the SSMA 1996 Schedule 3 Part 2 Section 7 Clause 1 and 2.”

h) Tribunal Member Mr. Harrowell responded by saying words to the effect of (transcribed by me from the second CD-ROM audio recording at that Hearing):

“Why weren’t these submissions made before in writing?”

i) I replied it was because I had not known what the Solicitor was going to be relying on, at which point Tribunal Member Mr. Harrowell said the words to this effect (transcribed by me from the second CD-ROM audio recording at that Hearing):

“Mr. <redacted name>, are you seriously putting that proposition to me in circumstances where you are reading from a handwritten note?”

Ground (viii): Failure to exercise discretion to enforce procedural fairness for my access to evidence through issue of summonses on 26th of April 2013: is that an error in respect to matter of law?

Ground (ix): Failure to give reasons for rejecting my application for the issue of summonses for the second time on 29th of April 2013: is that an error in respect to matter of law?

Ground (x): Tribunal’s reasoning declaring my application to issue summonses oppressive could be regarded as speculative without evidence: is that an error in respect to matter of law?

Ground (xi): Failure to exercise discretion to enforce procedural fairness by not accepting my oral submissions in response to the Respondent's statements at Hearings on 15th of April and 10th of May 2013: is that an error in respect to matter of law?

40. a) In paragraph 52 of his decision, dated 6th of November 2013 (annexed and marked "DB26"), Tribunal Member Mr. Harrowell listed the Respondents claim that acts of ratification relied upon have occurred at the Executive Committee meetings on 5th of December 2012 (Statutory Declaration of Strata Manager Mr. Peter Bone – Exhibit G, items 3 and 6 of the minutes) and 20th of February 2013 (Statutory Declaration of Strata Manager Mr. Peter Bone – Exhibit G, page 48).
- b) In paragraph 89, dated 6th of November 2013 (annexed and marked "DB26"), Tribunal Member Mr. Harrowell concluded that Executive Committee meetings held on 22nd of August and 5th of December 2012 also constituted acts of ratification.
- c) Executive Committee meeting on 22nd of August is discussed separately in my paragraph 41 herewith.
- d) The notices for owners of Executive Committee meetings scheduled for 5th of December 2012 and 20th of February 2013 were not submitted in Strata Manager Mr. Peter Bone's Statutory Declaration on 19th of April 2013.
- e) The agenda for Executive Committee meetings scheduled for 5th of December 2012 and 20th of February 2013 were not submitted in Strata Manager Mr. Peter Bone's Statutory Declaration on 19th of April 2013. Information about details provided for owners in the agenda for the two meetings was missing in the Statutory Declaration of Strata Manager Mr. Peter Bone.

f) Owners did not get copies of Standard Costs Agreement and Standard Costs Disclosure from the Solicitor before the meetings scheduled for 5th of December 2012 and 20th of February 2013, and the Respondent did not provide any proof to Tribunal and me that the owners received them.

g) Owners did not receive minutes of the Executive Committee meeting held on 9th of July 2012 before the meetings scheduled for 5th of December 2012 and 20th of February 2013, and the Respondent did not provide any proof to Tribunal and me that the owners received them.

h) Minutes of the Executive Committee meeting held on 9th of July 2012 were not recorded in the Minutes Book or in any other form available to owners before the meetings scheduled for 5th of December 2012 and 20th of February 2013, and the Respondent did not provide any proof to Tribunal and me to confirm it.

i) Before the Executive Committee meetings scheduled for 5th of December 2012 and 20th of February 2013 owners did not receive any information about Solicitor's expenses reaching \$15,490.52 as early as 15th of November 2013 (details of the Solicitor's expenses were submitted in my main document to the Tribunal and the Respondent on 14th of March 2013, in paragraph 3.5, of which copy is annexed and marked "DB37" in this Affidavit), and the Respondent did not provide any proof to Tribunal and me to confirm it.

j) Before the Executive Committee meetings scheduled for 5th of December 2012 and 20th of February 2013 owners did not receive any information that once the legal costs exceeded \$12,500.00, or the reasonable estimate for Solicitor's expenses exceeded, general meeting was required.

k) Before the Executive Committee meetings scheduled for 5th of December 2012 and 20th of February 2013 owners did not receive any information that I applied for orders to repeal several motions, invalidate resolutions, issue compliance for

special by-law 4, and orders in relation to misconduct of strata agency in CTTT file SCS 12/50460, and the Respondent did not provide any proof to Tribunal and me that the owners received it.

l) Before the Executive Committee meetings scheduled for 5th of December 2012 and 20th of February 2013 owners did not receive any information that all roles of office bearers – Secretary, Treasurer, and Chairperson, normally held by members of the Executive Committee, were automatically delegated to the Strata Manager since the Annual General Meeting on 17th of October 2012, making the Strata Manager's role an omnipotent one. The Respondent did not provide any proof to the Tribunal and me that such notice was given to owners before these meetings.

This was highlighted in my submission in Sleeve 2 in folder dated 14th of March 2013 in paragraph 3.10. Copy is annexed and marked "DB37".

In Sleeve 22 of folder dated 14th of March 2013, I submitted three questions, including the names of office bearers. Copy is annexed and marked "DB38".

m) Before the Executive Committee meetings scheduled for 5th of December 2012 and 20th of February 2013 owners were not notified about special change in the strata plan's insurance policy that was initiated by Strata Agency on 9th of August 2013 and the insurance claims for legal costs under name "CTTT defence for Lot 3" (that crucial information was withheld by the Respondent in all CTTT proceedings – reference in paragraphs 17 to 34 in this Affidavit). The Respondent did not provide any proof to the Tribunal and me that such notice was given to owners before these meetings.

n) Strata Manager Mr. Peter Bone's Statutory Declaration in Annexure "G" on pages 41 and 42 submitted the following notes for owners in the minutes of the Executive Committee meeting on 5th of December 2012 that relate to the CTTT file

and my attempts to obtain evidence and corrections for minutes of the previous meetings:

“ITEM 3: Matters arising from the last ECM minutes:

CTTT Hearing – outcome The EC noted that the CTTT had not handed down its decision in relation to the appeal lodged by D <redacted name>. (NB. Two days after the ECM a decision was received from CTTT dated 5/12/2012 ordering the appeal be dismissed in its entirety – copy attached)”

And

“ITEM 6: To consider correspondence The EC noted that no other correspondence requiring the attention of the EC has been received. Any correspondence from D <redacted name> has been forwarded to the solicitor.”

o) Strata Manager Mr. Peter Bone’s Statutory Declaration in Annexure “G” on page 48 only lists reference to CTTT file as part of inquiry from an owner in “Motion 7: General Business” of the minutes of the Executive Committee meeting on 20th of February 2013. No other information for owners was presented.

p) Minutes of the Executive Committee meeting held on 8th of July 2012 list that the committee resolved to appoint the Solicitor at directions hearing, not at any other type of hearing. That resolution was not amended at the Executive Committee meeting on 5th of December 2012 and 20th of February 2013.

q) Implied ratification was carried without full knowledge of all the material circumstances.

r) Agenda for the meeting on 5th of December 2012 did not contain any information that I applied for orders to repeal several motions, invalidate resolutions, issue compliance for special by-law 4, and orders in relation to misconduct of strata agency in CTTT file SCS 12/50460 that was opened two weeks before the Annual

General Meeting on 5th of October 2012, and the Respondent did not provide any proof to Tribunal and me that the owners received it.

s) Agenda for the meeting on 5th of December 2012 did not contain any information that all roles of office bearers – Secretary, Treasurer, and Chairperson, normally held by members of the Executive Committee, were delegated to the Strata Manager since the Annual General Meeting on 17th of October 2012, making the Strata Manager's role an omnipotent one. The Respondent did not provide any proof to the Tribunal and me that such notice was given to owners before the meeting on 5th of December 2012.

t) Owners were not notified about special change in the strata plan's insurance policy that was initiated by Strata Agency on 1st of August 2013 and the insurance claims for legal costs under name "CTTT defence for Lot 3" (that crucial information was withheld by the Respondent in all CTTT proceedings – reference in my paragraphs 17 to 34).

Ground (xii): Finding about ratification of Executive Committee's decisions and acts at meetings on 5th of December 2012 and 20th of February 2013 was inconsistent with the facts when the facts will only admit of one conclusion: is that an error in respect to matter of law?

41. In his decision in paragraph 79, and reaffirmed in paragraph 89, dated 8 of November 2013 (annexed and marked "DB26"), in reference to the Executive Committee meeting held on 22nd of August 2012, Tribunal Member Mr. Harrowell concluded that the Executive Committee intended by its actions on 9 of July 2012 at "*not a conforming executive committee meeting*" to engage the lawyer to represent the Owners Corporation.

a) The minutes of the Executive Committee meeting on 9th of July 2012, in paragraph 4 contain the following statement:

“It was unanimously resolved to appoint Adrian Mueller to represent the Owners Corporation at direction hearing and to enter into an appropriate costs agreement noting that this may incur costs up to \$12,000.”

b) Minutes of the Executive Committee meeting held on 9th of July 2012 list that the committee resolved to appoint the Solicitor at **directions hearing**, not at any other type of hearing. That resolution was not amended at the Executive Committee meeting on 22nd of August 2012.

c) Owners did not receive detailed agenda for the meeting (provided in Strata Manager’s Statutory Declaration dated 19th of April 2013 as Annexure “F” on page 36).

d) Owners did not get copies of Standard Costs Agreement and Standard Costs Disclosure from the Solicitor before the meeting, and the Respondent did not provide any proof to Tribunal and me that the owners received them.

e) Owners did not receive minutes of the Executive Committee meeting held on 9th of July 2012 before the meeting on 22nd of August 2012, and the Respondent did not provide any proof to Tribunal and me that the owners received them.

f) Minutes of the Executive Committee meeting held on 9th of July 2012 were not recorded in the Minutes Book or in any other form available to owners before the meeting on 22nd of August 2012, and the Respondent did not provide any proof to Tribunal and me to confirm it.

g) Minutes of the meeting held on 22nd of August 2012 contained the following statement in paragraph 9:

“The solicitor has advised there is no additional information required from the OC and will file required response before the due date of 12 September 2012 The solicitor also advised the OC that neither the MA or EC are required to consider any further correspondence from DB before the CTTT has determined the appeal.”

h) Minutes confirmed I was denied access to information and unable to present it to the Tribunal at the Hearing on 17th of October 2012.

i) Minutes confirmed the Solicitor’s commitment to file his submission by the due date (which never eventuated).

j) Implied ratification was carried without full knowledge of all the material circumstances.

Ground (xiii): Finding about ratification of Executive Committee’s decisions and acts at meeting held on 22nd of August 2012 was inconsistent with the facts when the facts will only admit of one conclusion: is that an error in respect to matter of law?

42. In his decision in paragraphs 84 to 87, dated 6th of November 2013 (annexed and marked “DB26”), Tribunal Member Mr. Harrowell concluded that resolution of the Executive Committee passed on 26th of April 2013 constituted a ratification of the acts of its appointed strata managing agent.

a) In Sleeves 13 and 14 in my folder sent to CTTT on 29th of April 2013 - as confirmed in Tribunal Member Mr. Harrowell’s decisions in paragraph 47 on 6th of November 2013 (annexed and marked “DB26”) , I documented why Executive Committee’s meeting scheduled for 26th of April 2013 was in non-compliance with the Strata Act.

Copy of the original agenda for this paper meeting is annexed and marked “DB39”.

Copy of my summary in Sleeve 14 of the folder dated 29th of April 2013 is annexed and marked "DB40".

b) The agenda for paper Executive Committee meeting scheduled for 26th of April 2013, submitted in Strata Manager Mr. Peter Bone's Statutory Declaration in Annexure "1" on page 50 on 19th of April 2013, was not detailed.

c) Owners did not get copies of Standard Costs Agreement and Standard Costs Disclosure from the Solicitor before the meeting, and the Respondent did not provide any proof to Tribunal and me that the owners received them.

d) Owners did not receive minutes of the Executive Committee meeting held on 9th of July 2012 before the paper meeting on 26th of April 2013, and the Respondent did not provide any proof to Tribunal and me that the owners received them.

e) Minutes of the Executive Committee meeting held on 9th of July 2012 were not recorded in the Minutes Book or in any other form available to owners before the paper meeting on 26th of April 2013, and the Respondent did not provide any proof to Tribunal and me to confirm it.

f) Agenda for the paper meeting on 26th of April 2013 did not contain any information about Solicitor's expenses reaching \$16,942.52 as early as 6th of March 2013. This was submitted in my master document to the Tribunal and the Respondent on 14th of March 2013, in paragraph 3.5.

g) Agenda for the paper meeting on 26th of April 2013 did not contain any information that once the legal costs exceeded \$12,500.00, or the reasonable estimate for Solicitor's expenses exceeded, general meeting was required.

h) Agenda for the paper meeting on 26th of April 2013 did not contain any information that I applied for orders to repeal several motions, invalidate resolutions, issue compliance for special by-law 4, and orders in relation to

misconduct of strata agency in CTTT file SCS 12/50460, and the Respondent did not provide any proof to Tribunal and me that the owners received it.

i) Agenda for the paper meeting on 26th of April 2013 did not contain any information that all roles of office bearers – Secretary, Treasurer, and Chairperson, normally held by members of the Executive Committee, were delegated to the Strata Manager since the Annual General Meeting on 17th of October 2012, making the Strata Manager's role an omnipotent one. The Respondent did not provide any proof to the Tribunal and me that such notice was given to owners before the meeting on 26th of April 2013.

j) Strata Manager Mr. Peter Bone's Statutory Declaration in Annexure "L" on pages 66 and 70 submitted that the member of staff at Raine & Horne Strata Sydney – Ms Debbie Downes, on 16th of April 2013 sent an email to members of the Executive Committee with agenda for the forthcoming paper Executive Committee meeting scheduled for 26th of April 2013.

k) The email headers in this message contain no proof of recipients.

l) The minutes of paper Executive Committee meeting scheduled for 26th of April 2013 were not provided in Strata Manager Mr. Peter Bone's Statutory Declaration dated 19th of April 2013.

m) Instead of minutes of meeting on 26th of April 2013 (as referred to in Tribunal Member Mr. Harrowell's decision), the minutes of paper Executive Committee meeting held on 19th of April 2013 were submitted in Strata Manager Mr. Peter Bone's Statutory Declaration in Annexure "K" on page 63 on 19th of April 2013. These minutes exhibit the following characteristics:

n) Notice for the paper Executive Committee minutes on 19th of April 2013 was not provided to owners at least 72 hours beforehand.

o) Detailed agenda for the paper Executive Committee meeting on 19th of April 2013 was not provided to owners.

p) Lack of agenda for paper Executive Committee meeting on 19th of April 2013 prevented owners from attending, as address of the meeting not provided.

q) Lack of agenda for paper Executive Committee meeting on 19th of April 2013 prevented owners to exercise their rights through giving notice in writing to the secretary of the executive committee, the sum of whose unit entitlements exceeds one-third of the aggregate unit entitlement, that the making of the decision is opposed by those owners.

r) Strata Manager Mr. Peter Bone's Statutory Declaration was submitted on 19th of April 2013, one week before the paper Executive Committee meeting scheduled for 26th of April 2013.

s) Minutes of paper EC meeting on 19th of April 2013 are not the minutes of paper EC meeting scheduled for 26th of April 2013 upon which the Tribunal made their decision.

t) Minutes of paper EC meeting on 19th of April 2013 do not contain any details of the venue of the meeting and time when it happened.

u) Owners were not notified about special change in the strata plan's insurance policy that was initiated by Strata Agency on 1st of August 2013 and the insurance claims for legal costs under name "CTTT defence for Lot 3" (that crucial information was withheld by the Respondent in all CTTT proceedings – reference in my paragraphs 17 to 34).

Ground (xiv): Finding about ratification of Executive Committee's decisions and acts on 26th of April 2013 was inconsistent with the facts and finding of fact is not supported by evidence: is that an error in respect to matter of law?

43. a) At Hearing on 17th of October 2012, Tribunal Member Mr. Harrowell said words to the effect of (transcribed by me from the first CD-ROM at around 50th minute of audio recording at that Hearing):

"If you wish to give oral evidence when we deal with each of the issues, please tell me and flag that as a fact. We will deal with the issue of oral evidence when we get to that, and if it's necessary. I will then ask Mr. Mueller to respond and tell me, so that you know, what his evidence will be on those matters. Having dealt with each of them we will have then a catalogue of the material that's relevant to each of those issues, and then, subject to whether there is a need to take any oral evidence, I am hoping that there is not, I am hoping that... because I would have expected if people wanted to call oral evidence today they would have already had provided... any statements to me... because I think directions were made previously for the service of all evidence, if I am correct... that would include statements and any witnesses, including myself. So I am not expecting to hear oral evidence. What I am expecting is that people will identify the documents they rely upon to make the assertions. By collecting that material identifying then each person will be given an opportunity to make submission in relation to each item, and then I can make a ruling..."

- b) Several minutes later, I said words to the effect of (transcribed by me from the audio recording at that Hearing):

"Mr. Harrowell I would also like to emphasize...for now more than 60 days the owners corporation acted in spite of the orders made by the Adjudicator and to this day did not provide any evidence. As you probably know on the 8th of August 2012

we had Directions Hearing. The Solicitor was the only person present, apart from me, on behalf of the respondents.”

c) After correcting me about orders not being made by the Adjudicator but the members of the Tribunal, Tribunal Member Mr. Harrowell said words to the effect of:

“We will get to that... If there is evidence that’s not been provided to you and Mr. Mueller now wants to rely on their evidence...then we can deal with that debate when we have it. If, on the other hand, people have received the evidence, and had a chance to look at it, and consider what it means... you can expect that I will not spend a lot of time arguing about whether or not it was served two days late, or two weeks late... If you had a chance to read it, and consider it, and respond to it, then, notwithstanding it’s late, I do not propose to waste a lot of time debating whether or not somebody was naughty or failed to comply with their obligations. I am not condoning it. Non-in-compliance - obviously that is not acceptable to the Tribunal... But for the purpose of today we want to help to resolve this dispute... and then to work out when the evidence is to be served and... what evidence people now rely upon...”

d) The following 12 points were attempted to be elicited orally by me at the Hearing in support for my orders. Due to lack of time, a complete statement was not provided, it was enclosed in my final submission onth24th of October 2012 in the Annexure, and reference to the most important documents in Appendix C:

1. Painting of four towers in 2004/2005
2. Maintenance of the complex
3. Unreported transaction and cashbook logs for owners for 16 years
4. 10-year financial planning missing half-period review and no capital project work schedule

5. Project works (non-emergency related) without OC approval at GMs
6. Optus mobile antennae proposal
7. Undocumented water and gas rebates for SELECTIVE townhouse owners
8. Special By-Law 4 for Lot owner 3
9. Special By-Law 8
10. Special By-Law 10
11. Contract Management
12. False, missing, or incomplete information in minutes of EC and GMs

Copy of my submission is annexed and marked "DB41".

e) Due to lengthy proceedings, near the end of the Hearing on the day, Solicitor Mr.

Adrian Mueller said words to the effect of (transcribed by me from the third CD-ROM at around 56th minute of the audio recording at that Hearing):

"I really do not have time to respond to Points 1 to 12 that Mr. <redacted name> made in any greater detail.... If I am required, I can do so in writing. For the sake of brevity I won't do it now."

f) Solicitor's submission on 26th of October 2012 did not address any of these issues and did not provide evidence to support his claims. Copy is annexed and marked "DB42".

g) In his determination on 6th of November 2013 (annexed and marked "DB26"), Tribunal Member Mr. Harrowell listed in paragraphs 64 to 68 his views why he considered my persistence to continue with the proceedings after I had obtained positive outcome to one order (access to financial information), notwithstanding my repeated efforts to obtain access to evidence that was denied to me before and after the Hearing on 17th of October 2012. The Tribunal established opinion that my attempts to deal with other issues were frivolous, vexatious, misconceived, or lacking in substance.

Ground (xv): Failure to exercise discretion to enforce procedural fairness due to lack of any evidence from the Respondent at Hearing on 17th of October 2012 and in their submission on 26th of October 2013: is that an error in respect to matter of law?

44. In reopening the file for costs recovery, the Tribunal sent notice on 19th of December 2012, in which direction 1 was related to the Respondent being required to provide any submissions in support of an application costs on or before 28th of January 2013. Copy is annexed and marked "DB43".

a) In his submission on 29th of January 2013, the Solicitor provided schedule of legal costs of the Respondent and memorandum of fees (tax invoices) for two dates:

■ 10th of August 2012,

■ 15th of November 2012.

b) In his decision in paragraph 88, dated 6th of November 2013 (annexed and marked "DB26") , Tribunal Member Mr. Harrowell referred to total costs incurred, as presented to him in invoices dated 10th of August 2012 and 15th of November 2012).

c) Proof of payments for these invoices by the owners corporation was not provided or included in the Respondent's evidence. Copy of Income and Expenditure Statement prepared by Strata Manager Mr. Peter Bone for Strata Plan 52948 for six-month period September 2012 to March 2013, annexed and marked "DB44", confirm that the owners corporation did not have any details of these payments.

d) Solicitor's copies of invoices were not proof that all parts, or some parts, of legal costs were paid by the owners corporation. Respondent offered no evidence that any, or which, items on the invoices were paid, set aside, renegotiated, reassessed, or claimed through strata plan's insurance policy (as suggested by the Solicitor in

his letter dated 2nd of July 2012, annexed in Strata Manager Mr. Peter Bone's Statutory Declaration dated 19th of April 2013).

Ground (xvi): Finding of fact about legal expenses incurred by the owners corporation is not supported by evidence: is that an error in respect to matter of law?

45. Strata Manager Mr. Peter Bone provided Statutory Declaration on 19th of April 2013. It was referred to, and relied on, in Tribunal's final decisions dated 6th of November 2013 in paragraphs 78 and 82 (annexed and marked "DB26").

a) On page 19, annexed was a letter sent by Solicitor Mr. Adrian Mueller on 2nd of July 2012.

b) This letter was attached to the email sent by Solicitor Mr. Adrian Mueller on 5th of July 2013 at 4:41 PM (on page 17 of Strata Manager's Statutory Declaration), and forwarded through Branch Manager Mr. Paul Banoob the same day at 4:57 PM to Strata Manager Mr. Gary Webb (on page 16 and 17 of Strata Manager's Statutory Declaration), who, in return, forwarded it to seven (out of nine existing) members of the Executive Committee on 6th of July 2012 at 08:32 AM.

c) These emails do not comply with the IT standards for attachments (for example, RFC 2183, MIME in six linked RFC memoranda RFC 2045, RFC 2046, RFC 2047, RFC 4288, RFC 4289 and RFC 2049):

- As real attachments, with "Attachments:" line in the email header, requiring separate action to open them,

- In-line (embedded),

- Quoted (embedded).

d) Annexed and marked "DB45" is a copy of all three typical examples of valid ways how the attachments are displayed in email messages. None of them are met in the Statutory Declaration provided by Strata Manager Mr. Peter Bone.

e) Strata Manager Mr. Peter Bone in his Statutory Declaration on 19th of April 2013 on page 17 annexed an email sent by Solicitor Mr. Adrian Mueller to Branch Manager Mr. Paul Banoob on 5th of July 2012 at 4:41 PM. Page 18 of the same Statutory Declaration showed server signature for an email message that passed through Toga company. The only member of Executive Committee who had relation with Toga was long-standing Executive Committee member Mr. Bruce Copland, who was not the recipient of this email. Toga had no affiliation with Raine & Horne Strata Sydney, or J S Mueller & Co. The server signature appended to the email by Solicitor Mr. Adrian Mueller to Raine & Horne Strata Sydney could not have passed through Toga's mail gateways.

f) Strata Manager Mr. Peter Bone's Statutory Declaration in Annexure "L" on pages 66 and 70 submitted that the member of staff at Raine & Horne Strata Sydney – Ms Debbie Downes, on 16th of April 2013 sent an email to members of the Executive Committee with agenda for the forthcoming paper Executive Committee meeting scheduled for 26th of April 2013. The email headers in this message contain no proof of recipients.

g) In paragraph 5 of his Statutory Declaration, Strata Manager Mr. Peter Bone stated that annexed and marked "D" was copy of an email sent by Solicitor Mr. Adrian Mueller to Mr. Peter Bone on 16th of July 2012 at 6:52 PM. On page 22 of the Statutory Declaration, that email message was listed.

h) The attachment name was "Cost Agreement" in PDF format. In the body of the message (and all other correspondence from the Solicitor), word "Cost" was never used. Rather, plural version of the word is used - "Costs", as all legal practitioners do.

i) The "Subject:" header line in the email was "Re: SP 52948", whereas in all other email messages enclosed in the Statutory Declaration there was no space between "SP" and "52948".

j) Annexure "D" in the Statutory Declaration of Strata Manager Mr. Peter Bone was printed in the Solicitor's office, not in the office of the Strata Manager.

k) In paragraph 7 of his Statutory Declaration, Strata Manager Mr. Peter Bone's Statutory Declaration stated that annexed and marked "E" on page 29 was a copy of his email to Solicitor Mr. Adrian Mueller dated 25th of July 2012 with a copy of the Standard Costs Agreement signed by Mr. Gary Webb attached to his email.

l) The "From:" email header had the following contents:

From: Peter Bone [PeterB@bcms.com.au]

This format does not comply with the RFCs (standards) under the circumstances presented in the Statutory Declaration.

m) RFC-2822 (and older standards) allows email addresses to be specified by:

■ A pure email-style address, called an "addr-spec", for example:

user@mydomain.dom

■ Or, by using a nickname ("phrase") with the email-style address (the "addr-spec") enclosed in angle brackets, for example:

Firstname Lastname <user@mydomain.dom>

n) Examples of email addresses and summary of their validity:

"user@[mydomain.dom]" is a valid email address.

"[user@mydomain.dom]" is not a valid email address.

"user@mydomain.dom" is a valid email address.

"<user@mydomain.dom>" is a valid email address.

"firstname lastname <user@mydomain.dom>" is a valid email address.

"firstname lastname [user@mydomain.dom]" is not a valid email address.

"firstname lastname [mailto:user@mydomain.dom]" is not a valid email address.

o) At the Hearing on 15th of April 2013, Solicitor Mr. Adrian Mueller said words to the effect of (transcribed by me from the third CD-ROM at around 12th minute of the audio recording at that Hearing):

"What I wish to do is... continue with the Hearing today on proviso that I am able to tender some evidence on this issue. Evidence which I've only discovered... having perused my file in the last five minutes. Material... There's two documents: first is a letter from me to the owners corporation dated the 2^d of July 2012 in which I did an estimate of my costs to act in owners corporation's appeal. Second document is email from the Strata Manager to me on the 6th of August 2012 returning the signed copy of my costs agreement... and the costs agreement... signed by the strata manager on behalf of the owners corporation.... And... I apply...to leave.. tender of these documents today on the basis that I've only been informed of the challenge..."

p) The dates of when the Solicitor received the signed Standard Costs Agreement significantly differ between versions submitted by the Strata Manager Mr. Peter Bone's in his Statutory Declaration on 19th of April 2013 and an authoritative oral submission under oath by the Solicitor Mr. Adrian Mueller at Hearing on 15th of April 2013.

q) I attempted to issue summonses to obtain access to these emails (and other documents) to forensically analyze them (listed in paragraph 36 and 39 in this

Affidavit). I was refused the opportunity to verify validity of emails, in spite of my expertise in the area.

r) In his submission on 29th of January 2013, the Solicitor provided copy of his Standard Costs Agreement that was not signed by the Executive Committee or the Strata Manager.

s) At no time during the Hearing on 15th of April 2013, or earlier, Solicitor Mr. Adrian Mueller provided statement that he received version of the Standard Costs Agreement that was signed by the Strata Manager Mr. Gary Webb on 25th of July 2012.

Ground (xvii): Finding of fact relying on Statutory Declaration of Strata Manager Mr. Peter Bone when validity of its crucial parts was not supported by evidence - is that an error in respect to matter of law?

Ground (xviii): Making of a finding that the Standard Costs Agreement was signed by the Strata Manager and sent to the Solicitor Mr. Adrian Mueller on 25th of July 2012 is unsupported by evidence - is that an error in respect to matter of law?

46. a) In my address to the Tribunal at Hearing on 10th of May 2013, when arguing that the ratification of the meeting held on 9th of July 2012 and acts of the Strata Manager were not valid, I attempted to highlight the fact that the financial reports withheld true state of the legal costs from the owners. I said words to the effect of (transcribed by me from the second CD-ROM at around 36th minute of the audio recording at that Hearing):

“Strata Manager provided, and his signature is in Folder Sleeve 21 of 29 of April, which was submitted to the Respondent, and in the Folder 23, something called “Report Under Regulation 39”, in accordance with Property, Stock and Business

Agents Regulation 2003, in the first report for six-monthly period 1st of September 2012 – 28th of February 2013, they put to the owners that the total legal cost was \$200.00. This is in Folder 21. I questioned this, officially, in Folder 22...

Copy of Income and Expenditure Statement prepared by Strata Manager Mr. Peter Bone for Strata Plan 52948 for six-month period September 2012 to March 2013 is annexed and marked "DB44".

b) I was interrupted by Tribunal Member Mr. Harrowell, who said words to the effect of:

"What do you wish to say to me as a matter of law is the reason why... you contend the actual cost exceeding the reasonable estimate, invalidate the resolution?"

c) After a brief comment about the owners' right to know the scope and amount of money being spent on legal costs, I said words to the effect of:

"Because the figure about the cost was never provided in any Executive Committee meeting... And even worse, the six-monthly report contained, against the Property, Stock and Business Agents Regulation 2003 forged figure of \$200.00 for six-monthly period..."

d) In his response, Tribunal Member Mr. Harrowell said words to the effect of:

"Please do not make allegations of fraud in the Tribunal... I am dealing with issue of cost, I am not about to embark on some hearing in connection with some fraud in relation to accounting. If there is any matter to be educated about that at later time, you can deal whatever you wish, that you are allowed to under the Strata Schemes Act in connection with the adjudications or applications of the Tribunal... what I am interested in at the moment is whether or not I am making an order for costs against you and in regards to the submissions made that your conduct constitutes

conduct with Section 192 applies, and I ought to order you pay all of the cost of the proceedings and I order you pay all of those costs on indemnity basis... That's the application I am determining now. Not whether somebody, an agent or somebody else, has done something in some fraudulent manner..."

Ground (xix): Failure to exercise discretion to enforce procedural fairness by not accepting my submission on errors in financial reporting for legal costs which prevented owners to exercise test of reasonable: is that an error in respect to matter of law?

47. In his determination on 6th of November 2013 (annexed and marked "DB26"), in paragraph 90 Tribunal Member Mr. Harrowell listed his statement that he did not accept the lawyer had not been validly appointed or that the Owners Corporation had, by its actions, contravened the provisions of section 80D of the Act.

a) In my oral submission on 10th of May 2013 I said words to the effect of (transcribed by me from the first CD-ROM at around 1st hour 8th minute of the audio recording at that Hearing):

"By not providing any information to the owners corporation... when the cost around about \$12,500.00... and the cost agreement... and then waiting till 22nd of August, which is month and one week later... what they presented to the owners at the EC meeting, which is unfortunately, very poorly attended, was the decision as already made and there was no action on the side of the owners corporation to deal with it. So, by not having a properly convened meeting, not presenting information about the costs, and then retrospectively trying to, what the Solicitor calls, ratify it – it meant, it actually was not a validly approved retrospectively... decision of the meeting on the 9th of July... What I actually want to say is that... first of all, in the evidence provided to you in Folder 17 on 29th of April, I mentioned four cases in regards to ratification, including the one that the Solicitor mentioned himself, and

there was one common word about all ratifications... The proposition is very simple including the case that the Solicitor quotes... ratification is only done either by approval as a special resolution, or general meeting...

b) In reviewing the evidence, Tribunal Member Mr. Harrowell stated at Hearing on 10th of May 2013:

"That simply says that for an act to be ratified... full circumstances, as to what is being ratified, need to be understood in order for the act of ratification to occur."

Ground (xx): Finding of fact about ratification at four Executive Committee meetings on 22nd of August 2012, 5th of December 2012, 20th of February 2013, and 26th of April 2013, conducted without full disclosure to members of the owners corporation and resolutions not being made at general meetings, was not supported by evidence: is that an error in respect to matter of law?

#SWORN #AFFIRMED at

Signature of deponent _____

Name of witness

Address of witness

Capacity of witness [#Justice of the peace #Solicitor #Barrister #Commissioner
for affidavits #Notary public]

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 #I saw the face of the deponent. [OR, delete whichever option is inapplicable]
 #I did not see the face of the deponent because the deponent was wearing a
 face covering, but I am satisfied that the deponent had a special justification for
 not removing the covering.*
- 2 #I have known the deponent for at least 12 months. [OR, delete whichever option
 is inapplicable]
 #I have confirmed the deponent's identity using the following identification
 document:

Identification document relied on (may be original or certified
copy)[†]

Signature of witness _____

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]
[†] "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see [Oaths Regulation 2011](#) or [JP Ruling 003 - Confirming identity for NSW statutory declarations and affidavits](#), footnote 3.]