

## SP52948 Example of how BCS Strata Management ignored owners about legal costs

It has been proven, beyond any doubt, that the engagement of Solicitor Mr. Adrian Mueller in 2012 and 2013 was conducted in non-compliance with the law and at a significant (unnecessary) cost to owners. There are five types of conflict resolution and the BCS Strata Management, along with SP52948 Executive Committee always chose the worst options (avoiding the conflict and standing the ground without any evidence):

Avoiding the Conflict  
Giving In  
Standing your Ground  
Compromising  
Collaborating

In his letter sent by the Strata Manager Mr. Peter Bone (who carried out roles of Secretary, Treasurer, and the Chairperson of the Executive Committee since the AGM 2012 in October 2012), the following was stated on 8<sup>th</sup> of May 2013:

The executive committee recommends that the managing agent be instructed to sign the latest costs agreement submitted by the owners corporation's lawyer to enable the owners corporation to obtain legal representation to defend Mr [redacted]'s latest CTTT application as we have no intention of allowing one person's opinions to overrule the wishes of owners as a whole made at the last AGM.

You will shortly receive notice of a General Meeting to approve the appointment of a solicitor to deal with this new case.

The owners responded in significant numbers voicing their clear vote against any further legal costs and proposing the mediation at the general meeting.

The Extraordinary General Meeting never happened, and the Executive Committee, together with the Strata Manager, ignored owners' requests and incurred further costs by engaging Solicitor Mr. Adrian Mueller and making payment in amount of \$1,452.00 (GST exclusive) on 24<sup>th</sup> of June 2013:

| Cred. Code | Creditor Name               | Doc. Ref. No. | Doc. Date  | Doc. Total (GST inclusive) | Chq. Date  | Date Presented |
|------------|-----------------------------|---------------|------------|----------------------------|------------|----------------|
| 84446      | J S MUELLER & CO SOLICITORS | 61904         | 24/06/2013 | 1,452.00                   | 4/07/2013  | 4/07/2013      |
| 84446      | J S MUELLER & CO SOLICITORS | 61223         | 10/05/2013 | 11,568.72                  | 20/05/2013 | 20/05/2013     |
| 84446      | J S MUELLER & CO SOLICITORS | 60252         | 6/03/2013  | 1,452.00                   | 22/03/2013 | 22/03/2013     |
| 84446      | J S MUELLER & CO SOLICITORS | 58762         | 15/11/2012 | 13,986.12                  | 27/11/2012 | 27/11/2012     |
| 84446      | J S MUELLER & CO SOLICITORS | 57380         | 10/08/2012 | 1,504.40                   | 22/08/2012 | 22/08/2012     |
| 84446      | J S MUELLER & CO SOLICITORS | 56130         | 28/05/2012 | 198.00                     | 31/05/2012 | 31/05/2012     |
| 84446      | J S MUELLER & CO SOLICITORS | 55003         | 13/03/2012 | 2,500.00                   | 27/03/2012 | 27/03/2012     |
|            |                             |               |            | <b>\$32,661.24</b>         |            |                |

Because owners seldom know what other owners do or experience in the complex, it is worth summarizing some of the responses in regards to preventing unnecessary legal costs. This is not a complete listing of owners' requests but good enough to illustrate the point.

The below information has been obtained in compliance with the SSMA 1996 Section 108.

From:

Sent: Monday, 20 May 2013 5:19 PM

To: Paul Banoob (Paul.Banoob@picaust.com.au)

Cc: EC members; Peter Bone (PeterB@bcms.com.au)

Subject: MACQUARIE GARDENS : TIME FOR A 'CIRCUIT BREAKER'?

To all concerned,

I think the time has come to try a different approach to de-fuse the current impasse which has developed in dealing with the CTTT cases raised by this owner. It is important to look for some middle ground which will identify an acceptable future path.

I do not support the proposed motion for the owners corporation to engage solicitors to defend the application made by this owner. The figure of \$11,550 estimated by the solicitors is simply a base figure. It is quite likely that this will escalate to FAR HIGHER amounts as the case proceeds and without necessarily producing a positive outcome; and the motion does not put an upper limit on the amount.

More importantly the engagement of solicitors will not resolve most of the issues involved because they are not primarily of a legal nature.

For example, this owner has repeatedly raised the issue of gas and water rebates to some owners of townhouses in the complex. Clearly, an equitable formula is needed which will be applied to determine what the amount, if any, of any rebates should be. This is not something that solicitors can come up with; solicitors will adopt an adversarial approach. It is more the sort of problem that cost-accountants deal with on a regular basis, and not a difficult one at that. So the owners corporation's money would be much better spent on employing professionals in this field who will be tasked with developing such a formula to be used henceforth and without necessarily seeking to re-engineer the past and after having inputs from interested parties.

Similarly, as we have already discussed in earlier emails, it appears that the Strata Manager does not have any real objection to this owner putting motions on the agenda, and that any differences that exist about this are technicalities. Do we need solicitors to sort this out?

I still believe that most of the points raised by this owner can be trashed out by sitting round a table and negotiating actions such as those above. I shall be pleased to contribute my thoughts about such a process.

I am trying to keep an open mind about all this. I think that paying more money to solicitors is not wise. I have had a very bad experience in a similar situation in another strata plan where solicitors' fees quickly escalated to well over \$100,000 and there was little to show for it in the end!

Please feel free to circulate this to other interested owners.

Date: Mon, 20 May 2013 10:18 PM

From:

To: Paul Banoob <Paul.Banoob@picaust.com.au>; EC members

Subject: Item/suggestion for consideration at ExComm SP52948 meeting on 22/5/2013

Dear Peter and ExComm members of SP52948,

As mentioned to you in my telephone conversation with you last week, I managed to get in touch with this owner. I expressed to him what I presented to you at the following.

It is very clear to me that, by continuing the path we (all of us) have been taking, we **will not** reach any mutually acceptable resolutions. There are too many claims and counter claims which dated back for many years, and will continue further into the future at a cost which we may not afford to pay for.

May I put forward my simple suggestion for consideration at the forthcoming ExComm meeting on 22/5/2013.

That is:

the ExComm should unanimously agree to call for an extraordinary general meeting where all claims and counter claims could be tabled. Furthermore, at the EGM, we must agree to set a reasonable deadline to analyse those items raised and genuinely work hard to reach the desirable outcomes. I fully understand that this will not be an easy task. Nevertheless, we need to come to an agreement OURSELVES first and foremost. Only engage the service of a legal professional when we have all agreed that it is necessary to do so.

Therefore,

no decision should be made for item #6 on the agenda.

As this owner indicated below, he is willing to put on hold the CTTT hearing process if the ExComm decided to call for an extraordinary general meeting within an acceptable timeframe. Let's accept his offer as our goodwill gesture. I believe that both the owner and Owners Corporation wish to resolve and put an end to this long standing dispute.

Looking forward to receiving a favourable outcome from the ExComm meeting.

From:

To: "Peter Bone" <PeterB@bcms.com.au>, "Simon Wicks" <SimonW@bcms.com.au>

Subject: SP 52948. Please don't get lawyers involve in this matter.

Date: Mon, 20 May 2013 16:47:35 +1000

I wish to register my vote against the use of lawyers in this matter.

Hiding behind lawyers is not the solution. Lawyers should not be used to intimidate this owner against speaking out.

Date: Wed, 22 May 2013 14:22:49 +1000  
Subject: Vote against engagement of solicitor  
From:  
To: Peter Bone <peterb@bcms.com.au>

As the owners of Unit ??, we would like to make it clear we do not support, and vote against the engagement of legal representation. We believe this is an unnecessary expense and not a requirement for a successful outcome for all the concerned owners and the EC.

We do support mediation, and request clear and open discussions to allow the concerns of owners to be presented and reviewed. This owner has raised a number of questions in regard to past decisions and practices of the EC which require answers.

We would be happy to attend and participate in such a discussion.

Date: Mon, 20 May 2013 11:09:46 +1000

Subject: Legal

From:

Please note that I am against legal procedures as I believe that legal costs will escalate to at least 100k. We need to call for a special meeting. I am willing to mediate among parties. Please convey my message to all parties.

From:

Sent: Thursday, 30 May 2013 6:37 PM

Subject: Re: MACQUARIE GARDENS : TIME FOR A 'CIRCUIT BREAKER'?

I have been away so sorry for the late reply. Do you think we could have a public meeting to explain both sides of the argument. This owner's emails are long and drawn out and far too much and too often to comprehend. Couldn't some common sense prevail in this argument? I am willing to have an open forum without solicitors, what about you?

From:

Sent: Saturday, 25 May 2013 1:08 PM

Subject: Re: FW: MACQUARIE GARDENS : TIME FOR A 'CIRCUIT BREAKER'?

I am interested and agree with your suggestions. I too would be happy to "sit at a round table" but will be away in July, August and September.



From:

To: "Peter Bone" <PeterB@bcms.com.au>

Subject: RE: Macquarie Garden, 1-15 Fontenoy Road - legal fee

Date: Tue, 21 May 2013 23:26:30 +1000

Just in case my point was not clear....

I do not support the proposed motion to review fee proposal to engage solicitors as well as engaging solicitors to defend the CTTT application made by this owner.

I do not think the engagement of solicitors would resolve the issues raised by the owner as majority of them are not primarily of a legal nature. Instead, engagement of solicitors would aggravate the situation in all aspects.

I think all parties coming to the round table and negotiating the best action forward is the way to resolve the issue for owners of Macquarie Garden.

Date: Mon, 20 May 2013 18:43:04 -0700 (PDT)

From:

Subject: VOTES AGAINST THE ENGAGEMENT OF SOLICITOR AND NOTIFICATION FOR OWNERS ABOUT PENDING CTTT CASE: 20 May 2013

Thank you for those people who voice the concern about the solicitor's fee.

I totally agree with those units owners who oppose the legal procedures about this particular issue. The fee will well be above the estimated figures which no one is willing to pay I suppose.

Please let me know if there is another special meeting in the coming days I will be there for sure.

From:

Sent: Monday, May 20, 2013 9:13 PM

To: 'Peter Bone'

Subject: Macquarie Garden, 1-15 Fontenoy Road - legal fee

This is ???, the co-owner of unit ??? of Macquarie Garden on 1-15 Fontenoy Road Macquarie Park.

I have CC'ed my husband in this email to show that this is not my opinion but rather this is the opinion of the owners of unit ???.

I'm currently holding the office of treasurer of a strata of 215 units and a community area of 6 strata of over 1500 units.

My position is - I continue the work of EC member (1) if I can AND (2) I have trusts from owners AND (3) residents of the strata appreciate my work.

What is required for Macquarie Garden is not engaging lawyers. What is required is the EXIT point to close this matter for the benefit of Macquarie Garden and its owners.

I believe this can be done without engaging any lawyers and there are ways available to come to the agreeable resolution for Macquarie Garden and its owners.

Therefore we, the owners of unit ???, are against spending any legal fee from our strata levy. We are seriously considering not paying any portion of legal fee in our strata levy, if any lawyers are engaged to defend any EC members at our cost.

If required, I offer to make myself available as one of mediator(s) between parties to bring this matter to exit point for Macquarie garden and its owners.

From:

To: "Peter Bone" <PeterB@bcms.com.au>

Subject: RE: FOR FINANCIAL ANALYSIS AT EC MEETING TONIGHT: Solicitor Costs now \$31,209.24

Date: Wed, 22 May 2013 17:58:57 +1000

Peter

As one of the owners at 1-15 Fontenoy Road, we want you to know we will not be approving the solicitors fees incurred so far and going forward.

We agree with owner's email dated 20 May 2013 5.19pm.

We still believe that most of the points raised by this owner can be trashed out by sitting round a table and negotiating actions such as those above. One of us should be pleased to contribute thoughts in such a process.

The whole situation is quite out of hand and could have been "nipped in the bud" via honest and frank communication a long time ago between the EC and this owner (and any other interested parties).

From:

Sent: Tuesday, 21 May 2013 12:05 PM

To: EC members; peter@bcms.com.au

Subject: Re: MACQUARIE GARDENS : TIME FOR A 'CIRCUIT BREAKER'?

I agree, in the main, with the content of the e-mail below circulated by the owner of lot 98. The never ending issues put forwarded by this owner appear to have got out of hand particularly regarding the involvement of solicitors on a fee-for-service basis. I share the view that this is not a legal issue. As such the proposal to spend \$11,550 of owners funds should be immediately reviewed and a different approach taken as the current no progress approach isn't working.

To support this view I draw your attention to the Executive Committee (EC) memo dated 7 September 2012 where owners were advised (quote) ...." This owner was dissatisfied with the Adjudicator's decision and lodged an appeal on 15 June 2012 to the CTTT, the appeal is still pending before the CTTT. It went on to say "the appeal has not been successful and the EC is confident that the appeal will be dismissed and the decision of the Adjudicator upheld".

As the CTTT were not prepared to dismiss the owner's appeal they are obviously of a different opinion. An increasing number of owners are now becoming concerned about this.

On the issue of gas and water usage rebates, the point that is being missed is the owners of townhouses are still subsidizing the tower unit owners maintenance expenses via a corporate levy scheme which is based on unit allocations (size) and not actual recurring maintenance costs. The falacy with this arrangement is as townhouses don't have lifts, stairwells or common foyers they are lower strata maintenance properties and should therefore incur lower corporate levies. The body corporate levy scheme still does not recognize this. If anything needs to change it should be aimed at reimbursing the townhouse owners to offset this anomaly.

As an alternative, a prior strata manager said this could be achieved by recognizing that SP 52948 effectively contains two different property classifications, namely, stand-alone townhouses and shared common property apartments. Both have different maintenance needs and expenses.

By sub dividing the SP a two levy structure would then be a relatively simple process and the continuation of the gas/water usage rebate arrangement for all owners would not need to change.

Subject: Three Units also against the solicitor's engagement  
From: To: Peter Bone <PeterB@bcms.com.au>  
Cc: EC members, Paul Banoob <Paul.Banoob@bcssm.com.au>  
Date: Wed, 22 May 2013 06:50:30 +1000

In private email last night, Mr. ??? from Unit ?? confirmed that he would attend the EC meeting with his father tonight and submit his voice against the engagement of the solicitor.

Just in case he does not attend it, or does not send an email to you this morning (as I suggested to him), I am doing it on his behalf. I have proof of his email if anyone wants to challenge my statement.

As well, Mr. ??? from Unit ?? gave me unconditional support to continue with efforts as listed before, which now includes the vote against the engagement of the solicitor.

Finally, Mr. ?? from Unit ?? also voiced his firm commitment to vote against any legal costs in a phone conversation two days ago and his email to you should have been received by now.

When I use word "vote", it means to express the owners' wish for the members of the EC to vote against the solicitor's engagement as it is clear that the EC and the Strata Manager did not have the courtesy to ask for it at a general meeting.

By the way, note several additional things for errata for tonight's meeting:

a) Paper EC meeting on 19 May 2013 cannot be approved because it was illegal. It failed to notify all owners at least 72 hours earlier about it (read the SSMA 1996 very carefully).

Hence, the resolutions made at that meeting are void and invalid. Same issue applied to that famous EC meeting on 9 July 2012 which took me nine months to prove it was INVALID and ILLEGAL. Even with the Solicitor's extreme efforts, he had to concede that 9 July 2012 was not an EC meeting but a private gathering of a six people in unit of Mr. Stan Pogorelski.

b) The decision to "amend" the minutes of the paper EC meeting held on 28 March 2013 (to change the Motion about attending the Mediation at the DFT) cannot be approved because only four out of eight EC members voted for it.

Plus, there was no Mediation at the DFT on 15 April 2013, so the Strata Manager and the EC created a fictive meeting that did not exist and then "voted" not to attend it!?

c) The names of the office bearers have not been published since the AGM 2012.

d) The full costs of the Solicitor in case SCS 12/??? have not been published, in spite of many requests. It does not matter how much of his expenses were claimed from the insurance (which the owners were not told in exact detail too)!

e) The invoices of the Solicitor are full of overcharges and illegal claims (for example, for "work" done in case SCS 12/??? which he has not even been approved to engage in).

f) Many issues not attended to from the previous EC meetings and not responded to.