

Executive Summary

This is a document showing how BCS Strata Management (Raine & Horne Strata Sydney prior to 2010) manipulated Strata Schemes Management Act (SSMA) 1996 and caused excessive and unapproved expenses for building painting project in a large strata scheme at Macquarie Park, NSW in 2004/2005. All screenshots and scans of the official strata documents can be provided for verification to any authority or persons who express interest.

BCS Strata Management ran building painting tender where two companies had the exactly the same price up to a cent (\$446,380.00). Third quote was in amount of \$480,010.00. Strata Manager persuaded Executive Committee (EC) members to vote without general meeting and select the company he had preferred. The general meeting was scheduled only two weeks after the vote, without providing owners any details.

Note before the Annual General Meeting (AGM) 2004 stated that the winning contract was \$464,000.00, plus GST, whereas the real quote was \$446,380.00 INCLUSIVE of GST. BCS Strata Management never allowed the correction to be published.

The final expenses grew to \$556,640.00, of which \$43,160.00 is still unaccounted for (11 years later!), and BCS failed to provide any financial statements in spite of four requests as per SSMA 1996 S108.

The poor quality of the painting is proven through two additional facts:

- 1. Professional Dulux consultant resigned after several months as he was unhappy with the wall preparation before painting. He felt that his advice were ignored by painters and BCS Strata Management and pointless for him to continue, so without charging for his services, he left the assignment.**
- 2. Photos of the exterior of the buildings and garden beds taken over several years:**

<http://www.nswstratasleuth.id.au/Macquarie-Gardens-photos/gallery/>

The trick for the 24.7% cost “blowout” from the originally approved value of \$446.380.00 was to remove 10% limit on any single item in the budget as (as per SSMA 1996, Section 80A), which allowed the Strata Manager to keep increasing the costs without general meetings.

Details of "Tender" by BCS Strata Management


1. The first quote was from a company on 16th of June 2004. Their quote amounted to \$446,380.00, including GST. This company was "introduced" by the Strata Manager Mr. John Fry himself as he personally favored them:

5 STAR PAINTING SERVICES PTY LTD ACR 003 117 017 - ABN 36 083 172 157
Trading as

5 STAR

PAINTING SERVICE

PHONE: 9831 6629
FAX: 9877 6877
MOBILE: 0418 266 802



P.O. BOX285, HARRIS PARK 2150.
5-5-7 Terry Road, West Ryde 2114

Lic. No. R64525 Lic. No. 16511C
MEMBER OF THE MASTER PAINTERS ASSOCIATION

Date: 16th. June, 2004.

QUOTATION 4604

Mr. John Fry,
Raine & Horne Strata-Sydney,
54 Beecroft Road,
EPPING,

Dear Sir,

Re: Strata Scheme 52948,
1-15 Fontenoy Road, North Ryde.

PAGE TWO,

- * All work to be carried out in a tradesmanlike manner.
- * Paint brand to be selected, eg: Dulux, ~~EXITINK~~, ~~EXIENR~~, ~~FAKKEI~~, &
- * Dropsheets to be used in all areas.
- * All round insurance for accidents and public liability.
- * All work has 5 Year Guarantee.
- * Occupational Health & Safety Work Cover No C3524502 & C3524503.

All Exterior Surfaces will be accessed from a Swinging Stage and is Supplied by Licensed Scaffold Contractors in accordance with Work Cover regulations, therefore we do not need to have access at any Stage through the Units unless the enclosed Balconies need to be done.

Exclude any Colourbond, Powdercoated or Anadized Window Frames and Handrails.

Full price including all labour, materials and any Scaffolding, and erection & dismantling of Scaffolding for the Exterior.

Block A:	\$ 96,500.00	+ G.S.T.	\$ 9,650.00	Total:	\$ 106,150.00
Block B:	\$ 96,500.00	+ G.S.T.	\$ 9,650.00	Total:	\$ 106,150.00
Block C:	\$ 96,500.00	+ G.S.T.	\$ 9,650.00	Total:	\$ 106,150.00
Block D:	\$ 96,500.00	+ G.S.T.	\$ 9,650.00	Total:	\$ 106,150.00

All Foundations, Planter Boxes, Fire Stairs, Meter Boxes, Swimming Pool, Barbeque area and all Concrete Borders not connected to any Strata Blocks A, B C or D.

\$ 19,800.00	+ G.S.T.	\$ 1,980.00	Total:	\$ 21,780.00
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2. At the EC meeting on 23rd of June 2004, the following was stated. There was ONLY one quote at the time, so the “decision” by the EC and the Strata Manager was based on misleading information to owners corporation - without any other competitive quotes in any period beforehand. The company listed in the minutes was close business associate of the Strata Manager (Item 1. above):

(d) Proposals are being sought for repainting/coating the exterior of the apartment buildings.

A quotation from 5 Star Painting was presented and it was agreed that the terms and amount of the proposal were the most favourable received to date. ~~Revised quote of \$100,000~~

The proposal obtained will enable the work to proceed without the need for a special levy to be raised. Whilst the quotation is in excess of \$100,000 over the longer term Sinking Fund Budget savings have been made in other categories.


A number of quotations have been obtained for the repainting/coating of the exterior of the apartment buildings and it was agreed that the Owners Corporation is now in a position to formally consider and resolve how to proceed in this matter.

In connection with this project it was noted that :

The work will take 12-18 months to complete.

All buildings are to be painted the same colour (cream). It was acknowledged that the pink colour that had been used originally on two of the buildings had not maintained its appearance as well as the cream colour used.

3. Second quote was obtained from a company recommended by the Caretaker on 2nd of August 2004. Their quote amounted to \$480,010.00, including GST:


	Advanced Programmed Maintenance
Quote:	160804
Project ID:	112582D
To:	Body Corporate Committee Macquarie Gardens 1-15 Fontenoy Road North Ryde
Date:	2nd August, 2004
Contact:	Bob Luka
We are please to submit our quotation to carry out the following works as specified by Dulux commercial sales.	
Scope of works:	
All works to be carried out in accordance with the Dulux Specification dated 2/06/2003 using option B (Acratex 501/2solvent based primer followed by 955 Acrashield topcoat.)	
To paint the existing exterior façade of the four high rise apartment towers and the ground floor retaining walls / pool / BBQ area etc:	
All surfaces to be high-pressure water cleaned to remove contaminates i.e. mould, industrial fall out etc.	
Repairs to the drummy render and blow holes to be carried out prior to the application of the primer / topcoat system.	
A programme of works and work method statements to be submitted on successful acceptance of our quotation	
All access to be supplied by APM.	
We have divided our price into 5 areas as follows.	
Cost:	
A Block.	\$115,680.00 incl GST
B Block.	\$114,240.00 incl GST
C Block.	\$115,180.00 incl GST
D Block.	\$116,620.00 incl GST
Ground floor retaining walls common area.	\$ 18,290.00 incl GST

4. At the EC meeting on 18th of August 2004, the following was listed in the minutes. Based on poor advice by the Strata Manager, the members of the EC were led to believe that they had the power to make a decision to spend almost half a million dollars without a general meeting:

(c) A quotation from 5 Star Painting to repaint the exterior of the tower buildings is deemed favorable with the terms of the contract to be negotiated with the contractors with the matter receiving further consideration by the committee. In connection with this matter a quotation was presented from a company named Advanced Programmed Maintenance for an amount of \$480,010.

It was agreed that the managing agent approach Five Star Painting and Advanced Programme Maintenance and seek their best tender price with references also being obtained from the later contractor.
This matter is to be referred to a paper committee meeting for final approval to enable the work to proceed.

5. The third quote was from a company that was submitted on 10th of August 2004. Their offer was in amount of \$446,380.00, inclusive of GST! This quote, as unbelievable as it sounds, was IDENTICAL TO A CENT to the quote by the company favored by the Strata Manager!


MASTER PAINTERS AUSTRALIA

CONTRACT FOR PAINTING AND DECORATING WORKS

Between The Owner/Client
(name/s of person/s responsible for payments)

Billing Address

Postcode

Ph work () home ()

and The Contractor
(name on Contractor licence)

GERT LAMBERT VAN DENSELAAR

Address (as on contractor licence)

*13 MADISON CV
ST CLAIR* Postcode *2759*

ACN No/ABN (if applicable) *84 255 740859*

Ph work () home ()

Contractor licence

No. *16511C* Expiry date *24.05.05*

Category of Work shown on licence

PAINTER

Address of works (the site)

*1-15 FOUNTAIN RD
NORTH RYDE* Postcode

1. Completion date

The contractor is entitled to reasonable extensions of time if the causes of delay to the work are beyond the contractor's control. The contractor and the owner/client must take all reasonable steps to minimise delays to the work. If extension of time is claimed, the contractor must notify the owner/client in writing of the extra time required and the cause(s) of the delay.

2. Total Contract Price *\$446 380.00*

All prices in this contract include GST.

2.1 Deposit \$

Must not be more than 5% for works costing more than \$20,000, nor more than 10% for works costing up to \$20,000.

2.2 Progress payments
payable within five (5) days of written notice from the contractor, on completion of:

\$

2.3. Prime Cost (PC) items
are those for which the contractor is unable to give a definite price. PC items included in the contract price and their estimated costs are listed below:

PC Item	Estimated Cost
	\$
	\$

2.3.1 Variations to PC item costs
If the actual cost to the contractor for PC items is greater than the estimate above, the excess amount, plus a contractor's margin of 20 per cent, will be added to the contract price.

3. Variations to scope of works or specification
The work to be performed and the materials to be used may be varied and the contract price adjusted accordingly ONLY IF agreement to the variation is recorded in writing and signed and dated by the owner/client and the contractor. Any consequent variation in the agreed completion date must also be agreed in writing, signed and dated by both parties.

4. Standard of work and materials
The contractor will carry out the work in a workmanlike manner complying with the requirements of relevant regulatory authorities and, where applicable, the requirements of the Building Code of Australia. All materials and components supplied will be of a quality fit for the purpose intended and, unless otherwise specified, new.

5. Damage to Property
The owner/client must remove any furniture or personal goods from the vicinity of the work to minimise the risk of damage.

6. Insurances

- 6.1 The contract will have current insurance cover for an amount not less than \$5 million for public liability to cover liabilities to third parties for death or personal injury or damage to property. If requested, the contractor will provide proof of currency of such insurance.
- 6.2 The contractor will also have employers' liability and workers' compensation insurance covering any employees and shall ensure that any sub-contractors and sub-contractors' workers are similarly insured. If requested, the contractor will provide proof of currency of such insurances.
- 6.3 The contractor will provide a certificate of warranty insurance to the owner/client if the total cost of the works is greater than \$12,000 (including the cost of any materials to be provided by the owner/client or any third party) and, should such an insurance certificate be required under the terms of this contract, no payment shall be made by the owner/client to the contractor until the required insurance certificate is provided.

There was a fine-print clause 2.3.1 of 20% increase in cost due to "wrong estimates", so, in the worst case, the total expense charged by this company might have been \$535,656.00. The quote did not itemize costs per each building. Instead, just a single-line summary of total expenses.

6. The Decision of the Executive Committee at Paper Meeting on 14th of September 2004, although the general meeting of the owners corporation was already scheduled for two weeks later, on 6th of October 2004, so there was neither need, nor it was compliant with SSMA 1996, to approve such expenditure without vote at general meeting.

The EC, without the involvement of the owners corporation at a general meeting, voted to approve the quote from company that the Strata Manager favored in the amount of \$446,380.00 (GST inclusive) on 14th of September 2004, but a different one was agreed by the EC member and the Strata Manager after the “renegotiations” alone (listed in the AGM notice on 13th of September 2004 - \$464,000.00 PLUS GST = \$510,400.00), which makes this quote the SECOND MOST EXPENSIVE OF THE THREE and the MOST EXPENSIVE IF TOTAL COST WAS INCLUDED.

The EC and owners corporation did not approve the expenditure single EC member and the Strata Manager “negotiated” alone at any meeting.

The other two painting companies, provided on 2nd of August and 10th of August 2004, were seemingly not approached for an updated quote (neither the owners corporation nor the EC received any proof about them).

MOTION 2 That a quotation of \$446,380.00 from 5 Star Painting Services dated 16 June 2004 be approved - Carried.

7. Proof of what the EC member wrote on 13th of September (the day before the EC paper-voting was completed) but sent to owners corporation for AGM 2004 on 15th of September. In his note, the EC member falsely stated that the approval was given on amount of \$464,000.00 plus GST to the painting company.

The note in AGM 2004 agenda stated that other quotes were exceeding \$600,000.00! This was a statement without any evidence or facts with clear intention to justify the quote the approved without the proper process.

In addition, due to “new costs” later on, the final cost of the projects grew from \$446,000.00 to more than \$556,000.00 without any review or approval by the owners corporation at any meeting!

Last year at the AGM members were advised that quotes received for painting and external repairs exceeded \$600,000. With patient negotiation and re-tendering an appropriate scope of work and cost has recently been agreed. The committee has approved a contract to repaint all the tower blocks with the accompanying repairs to cracks, leaks etc for \$464,000 plus GST. All four blocks will be painted the one colour (the current yellow shade rather than the current pink hue). After painting is completed next year (it will take some months) repainting is not expected to be required for 8 to 10 years. The sinking fund balance at the next year end (31st August 2005) is expected to be approximately \$214,000 and consistent with the long term plan approved at the AGM in 2001. This is a very satisfactory outcome.

8. The Annual General Meeting held on 6th of October 2004 did not even mention the painting project of such large scale. Instead, as it will be proven later, very deceptive resolution for Motion 9 was “approved” to disregard 10% limit on any single item in the budget as (as per SSMA 1996, Section 80A). That gave absolute power to the EC and the Strata Manager to manipulate the painting contract without any transparency or duty of care:

MOTION 9:

That upon the Strata Schemes Management Amendment Bill 2003 being gazetted, under Division 3 (Restrictions on Spending), Section 80A (1) shall have no effect for the period until the next Annual General Meeting in 2005 at which time this matter will be reconsidered.

Division 3 Restrictions on Spending

80A Limit on Spending by Executive Committees of large strata schemes

(1) If a specific amount has been determined as referred to in section 75 (5) for expenditure on any item or matter, the executive committee of the owners corporation concerned must not, in the period until the annual general meeting next occurring after the determination was made, spend on the item or matter an amount greater than that determined amount for expenditure on the item or matter plus 10 per cent – Carried.

(2) The owners corporation of a large strata scheme may by resolution at a general meeting remove the limitation imposed by subsection (1) generally or in relation to any particular item or matter – Carried.

9. The painting work was supposed to be supervised by independent Dulux consultant, who, after serious disagreements about quality of services offered by painters, resigned six month later (see below).
10. The first increase in painting expenses above the approved quote was listed in the Minutes of the paper EC meeting held on 18th of July 2005 to add third coat of paint on exterior walls in Block D:

MOTION 2

That expenditure of \$23,540.00 be approved to apply a third coat of paint to building “D” - Carried.

11. The second increase in painting expenses above the approved quote was listed in Minutes of the “real” EC meeting held on 20th of July 2005 (two days after the paper EC meeting in Item 10.). This time, the “approved” additional coat of paint was for exterior walls on Block A:

ITEM 7

To consider a proposal to apply three coats of paint to Building A.

Resolved that a quotation of \$21,780.00 be approved to apply an additional coat of paint to Building “A” subject to advice from Dulux.

12. The same EC meeting held on 20th of July 2005 documented the resignation of the independent Dulux consultant who did not agree with painting processes and the quality of work done on the buildings:

c) Update on repainting of the buildings.

A letter was presented from the paint consultant engaged to supervise the current external painting underway tendering his resignation.

There have been difference of opinion between the contractor and the consultant resulting in a recent lack of communication between the parties.

The main dispute has been in respect of the preparation work and the extent of washing down to be done which involved advice also being obtained from Dulux the supplier of paint being used.

The members are generally satisfied with the painting that has been undertaken to date and that there will be a 10 year product warranty supplied by Dulux and it was agreed not to appoint another consultant at this time.

A matter of concern was raised that cracks in the exterior render are suitably filled which is a matter that will be taken up with the painter and the licensed builder assisting him.

It is important to note another statement about 10-year warranty by Dulux, which was proven wrong in subsequent years when repairs were paid by owners corporation, and not Dulux.

13. The Annual General meeting (AGM) held on 19th of October 2005 ensured that the Strata manager and the Executive Committee do not need to consult owners corporation on any expenditure above 10% of the budgeted value:

MOTION 8: That under Division 3 (Restrictions on Spending), Section 80A (1) shall be deleted.

Division 3 Restrictions on Spending

80A Limit on Spending by Executive Committees of large strata schemes

(1) If a specific amount has been determined as referred to in section 75 (5) for expenditure on any item or matter, the executive committee of the owners corporation concerned must not, in the period until the annual general meeting next occurring after the determination was made, spend on the item or matter an amount greater than that determined amount for expenditure on the item or matter plus 10 per cent.

(2) The owner's corporation of a large strata scheme may by resolution at a general meeting remove the limitation imposed by subsection (1) generally or in relation to any particular item or matter.

Carried.

14. The minutes of EC meeting held on 19th of April 2006 document the full cost of the painting project and the third coat of paint for the third building in amount of \$21,780.00:

- (b) Update on repainting of the building.
- The contractor is currently painting the final building which the committee has agreed will receive three coats of paint to ensure that there is a suitable covering. The cost for the additional coat is \$21,780.
 - To date an amount of \$363,770 has been paid to the contractor with \$192,870 due to be settled by completion date.
 - Discussion took place regarding the colour to be used for the final stage of the painting being mainly the garden walls. It was decided to request the contractor to paint sample areas with various colours for consideration by the Committee.

Final Expenses

In the end, the total cost of the painting was \$556,640.00 as reported by the Strata Manager, who even provided different value of the contract to the one that EC stated at AGM 2004. Without access to financial statements (that is one of the main issues over many years as expense transaction reports have never been provided), it is difficult to confirm which version is correct – the one from the EC member or the one from the Strata Manager. In both cases, it is undeniable that the contract for the painting project was not approved by the EC or owners corporation in full.

The EC is claiming that the project was conducted in “legal and compliant manner”. The EC “officially” approved only:

\$446,380.00 (initial contract value)
\$23,540.00 (Block D extra coat of paint)
\$21,780.00 (Block A extra coat of paint)
\$21,780.00 (Block B extra coat of paint)
Total: \$513,480.00 (GST inclusive)

The cost “blowout” from the originally approved value of \$446,380.00 was 24.7%!

Where is other \$43,160.00 (if we take into account EC-“approved” extra coats of paint), who took it and why was it spent from common funds? That has not been disclosed for 11 years, in spite of numerous SSMA 1196 S108 paid document searches and request for information!

PROGRESS PAYMENTS FOR PAINTING

VALUE OF CONTRACT	487,780
ADDITIONAL APPROVAL FOR EXTRA COATS	68,860
TOTAL	556,640

23.05.05	30,000
07.06.05	16,500
13.07.05	59,650
30.08.05	55,000
28.10.05	74,690
13.02.06	55,000
27.03.06	72,930

TOTAL PAID	363,770
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AMOUNT OUTSTANDING	192,870
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THE CONTRACTOR IS CURRENTLY
WORKING ON THE LAST BUILDING AND HAS THE GARDEN
WALLS AND POOL BUILDING TO COMPLETE

But that is not the end of the expenses for the painting of the exteriors of the four building - other strange invoices that do not match any figures related to official statements by the Strata Manager related to this project later on, as listed in the cashbook statements (obtained through document search eight years later and never originally approved by owners corporation, or disclosed in financial reports at general meetings):

FY 2006/2007

22/09		& MAIN	2873	12642.00	INV 6341		115	11492.80
13/02		& MAIN	3011	55000.00	6397		115	50000.00
12/04		& MAIN	3095	13420.00	06397		115	12200.00

		115 PAINTING - EXTERIOR			A/C TOT	\$		73692.80 ✓

FY 2007/2008

27/03			3409	1980.00	6659		115	1800.00
15/04			3433	154.00	6672		115	140.00
						Painting - Exte		-----
		115 PAINTING - EXTERIOR			A/C TOT	\$		1940.00

FY 2008/2009

12/09			3599	1276.00	6766	#4 PNT BALC 67/68	57	1160.00

		57 MAINTENANCE - PAINTING			A/C TOT	\$		1160.00

These figures do not match any proper accounting balances, and to this day, 11 years later, BCS Strata Management does not allow this project to be investigated (with full support from members of the Executive Committee).

Proof that BCS Strata Management Does not Change “Successful Business Plan” for Tenders

These are the Motions “approved” through dormant proxy votes and with support from a group of owners with dubious interest (who even formally approved that an owner be disallowed from access to financial documents in spite of non-compliance with SSMA 1996 S108) held on 26th of November 2014:

MOTION 14: That the removal of the restriction in respect of any Administration Fund expenditure, imposed on large strata schemes under Section 80A of the Act (the restriction prohibits expenditure in excess of ten percent of the budget for that item without holding a General Meeting) be confirmed. – **Carried.**

MOTION 16: That the Executive Committee, in addition to its existing authority, be authorised to proceed with expenditure from the Sinking Fund in excess of \$30,000 per contract in any one year without reference to a General Meeting where that expenditure is on building or roof repairs, external or internal painting and any services or plant and equipment replacements provided that, at least two quotes have been obtained and the lower quote accepted and that the expenditure will not give rise to the need for an increase in the sinking fund levy in excess of a 5% increase on the prior year or give rise to a special levy in the current or following year.

An amendment to the motion was received from the floor regarding accepting quotes other than the lowest other factors considered. The motion was amended to read:

That the Executive Committee, in addition to its existing authority, be authorised to proceed with expenditure from the Sinking Fund in excess of \$30,000 per contract in any one year without reference to a General Meeting where that expenditure is on building or roof repairs, external or internal painting and any services or plant and equipment replacements provided that, at least two quotes have been obtained and the quote, which in the opinion of the Executive Committee offers the best result considering all relevant factors is accepted, and that the expenditure will not give rise to the need for an increase in the sinking fund levy in excess of a 5% increase on the prior year or give rise to a special levy in the current or following year. – **Carried.**

Important is to note that another building painting tender was due in 2015 and, in spite of 12-month advance notice, the Strata Manager failed to obtain at least two quotes before the general meeting. One quote, undisclosed to owners, is in amount above \$660,000.00 (GST inclusive). The other one was above \$800,000.00.

Minutes of the EC meeting held on 4th of March 2015 confirm further delays on the painting work and prove that owners were not shown photos of the exteriors that the concerned owner presented in a timely manner before the meeting:

<http://www.nswstratasleuth.id.au/Macquarie-Gardens-photos/gallery/index.php?/category/1>

Building painting

Building painting decisions have been deferred until the roof repairs and ground floor structure repairs are resolved as they both will cause work to be redone if painted before.

The work is still delayed, without valid reasons, as confirmed in the agenda for EC meeting in October 2015:

<http://www.nswstratasleuth.id.au/SP52948-BCS-Strata-management-Issues-to-be-dealt-with-at-next-EC-Meeting-public-version-Oct2015.pdf>