SCS 12/32675 Rehearing - Submission by the Applicant Lot 158 owner – 14th of March 2013

Executive Summary

The Applicant's strong position is that the application for legal costs by the Respondent in the amount of $15,580.00 in File SCS 12/32675 should be dismissed in its entirety because:

1. **The Respondent brought about the litigation and calculated to occasion unnecessary litigation and expense (ASC-v-Bell Fed-Ct, unreported 2/2/96). It is not unjust or unreasonable to reject the Respondent's request to award costs because the costs were incurred by them on purpose (Vithoulkas & Anor v Owners Corporation SP62254 & Anor [2004] NSWSC 540, 23 June 2004).**

   The persistent refusal by the Respondent to provide access to documents as requested by me ensured that the Applicant was denied procedural fairness and natural justice throughout the CTTT cases.

   The Applicant tried to conduct an orderly discussion and analysis of management of the complex at every possible level.

   The Tribunal has the discretionary power to award costs as set out in Consumer, Trader and Tenancy Tribunal 2001 Section 53 but they are not applied without a very good cause (Scotts Parts Plus v Dubbo land Rover & Ors (Motor Vehicles) [2010] NSWCTTT 601 (15 December 2010) and Latoudis v Casey (1990) 170 CLR 534, at 544.

   The Tribunal made the decision against awarding costs in their original statements after a long and careful deliberation on 5th of December 2012.

2. **The Respondent failed to offer any kind of settlement prior to litigation through the CTTT, DFT, or at meetings within the complex - instead, they resolved to engage in threats, ridicule, and denial of access to information.**

   Threats are not offers to negotiate but acts of denial through position of "power and "force" that the Applicant rejects without being given proofs and evidence.

3. **There are numerous procedural errors and non-compliance issues in relation to the engagement of the Solicitor and misinformation in their responses.**

   The decision to engage the Solicitor was reached at an unreported EC meeting on 9th of July 2012, one week before the Solicitor even issued the Standard Cost Agreement.

   The Solicitor's Standard Cost Agreement was never provided to owners.

   The Solicitor's Standard Cost Agreement contain clauses that were breached and even detrimental to owners corporation.

4. **The Solicitor's expenses are inaccurate, inconsistent, overinflated, unapproved, full details not reported to the owners corporation at any meeting, incomplete, and even include estimates of future costs.**

Detailed Response

The below points provide the necessary evidence and proof of the statements outlined in the Executive Summary. They have been enumerated according to their references on Page 1.

1. The Tribunal has the discretionary power to award costs as set out in Consumer, Trader and Tenancy Tribunal 2001 Section 53 but they are not applied without a very good cause.

1.1. The Solicitor submitted the request to dismiss the appeal to the CTTT twice: 5th of September and 13th of September. **In both cases, the CTTT did not act upon it in obvious belief that the case was worth proceeding with**.

If one party hires a lawyer for a CTTT case, they must pay their own legal fees even if they win. The only exception is if the opponent filed an appeal application that was frivolous, vexatious, misconceived, or not a CTTT matter.

To reiterate, in the Solicitor Mr. Adrian Mueller's submission to the CTTT Registrar on 5th of September 2012 (their reference number AM:DR:22012, refer to this Folder, Sleeve 3), they requested the case be relisted for the dismissal due to the Applicant's misconceived appeal. The same request was modified and resubmitted on 13th of September 2012 (this Folder, Sleeve 4).

The CTTT did not approve their request, clearly indicating there was a belief the case should proceed.

CTTT was of the opinion that the case was not frivolous or misconceived. Otherwise, a proper process would have been to grant the request to the Respondent. In CTTT's own opinion, it was appropriate for the case to be heard at the Hearing;

1.2. In **The Owners SP 63419 v Reece Projects Pty Ltd (Home Building) [2008] NSWCTTT 1011 (26 May 2008**), the nature of the cost awards is defined as follows:

> *It is submitted that the discretionary power to award costs as set out in Consumer, Trader and Tenancy Tribunal 2001 Section 53 is in the widest of terms*

The CTTT does have powers to award costs, but they are not used lightly - **IPM Pty Ltd v Consumer, Trader and Tenancy Tribunal [2008] NSWSC 130 :**

> *Associate Justice Malpass noted the CTTT has a discretionary power to award cost*

The "win" in the CTTT proceedings does not automatically grant any rights to reimbursements the legal costs. Each party is expected to bear their own expenses. It is at discretion of the Tribunal to make such orders and they are not applied lightly.

The following statements were taken from the **Law and Justice Foundation of NSW** on their web site:

http://www.lawfoundation.net.au/report/older/5BC134D0FB75ABD1CA25708100189175.html

> *The CTTT adopts a less formal, expedient approach to dispute resolution, thus making it a more accessible means of dispute resolution than the formal court litigation process. It is not bound by the rules of evidence, but is required to adhere to the principles of procedural fairness. The CTTT will usually not award costs against an unsuccessful party.*

1.3. Even the Solicitor Mr. Adrian Mueller expressed their doubts about recovering the costs in the letter to the Deputy Chairperson (Determinations) on 13th of September 2012 (this Folder, Sleeve 4):

> The respondent's evidence was due to be served yesterday. The applicant has served over 1,000 pages of documents on which he intends to rely in the appeal, and it will cost the respondent several thousand dollars to peruse and prepare evidence in response to those documents (which costs the respondent is not likely to recover).

1.4. The following case highlights the logic that should apply when awarding costs **: Vithoulkas & Anor v Owners Corporation SP62254 & Anor [2004] NSWSC 540, 23 June 2004**

In view of the CTTT's broad power to order costs and there being no denial of the opportunity to be heard, the Court said that in making a costs order:

> *"[t]he usual rationale … is that it is just and reasonable that a successful party should be reimbursed for costs incurred" if it would not be "unjust or unreasonable" to reimburse that party, and "[t]he test … is not whether, in the circumstances, the*
> *defendant or respondent should be compensated."*

The Applicant offers evidence that the Respondent made a deliberate decision to engage the Solicitor without proper processes being applied (Item 3. in this document).

1.5. In **ASC-v-Bell (Fed-Ct, unreported 2/2/96)** Nicholson J commented:

> "*The ordinary rule as to costs is that a successful defendant will be granted costs* "......"*unless there is evidence that the defendant has:*
> *1. brought about the litigation; or*
> *2. has done something connected with the institution or conduct of the suit calculated to occasion unnecessary litigation or expense; or*
> *3. has done some wrongful act in the course of the transaction of which the plaintiff complains*"

The Applicant offers evidence that the Respondent deliberately made a decision to engage the Solicitor without proper processes being applied (Item 3. in this document). To this day, they refuse access to information as per the Act, and therefore, deny the procedural fairness.

1.6. The Applicant also relies upon the judgment of McHugh J in **Re The Minister for Immigration & Ethnic affairs; ex parte Lai Quin(1997) 186 CLR 222 at 642** where it is stated:

> *If it appears that both parties have acted reasonably in commencing and defending proceedings and the conduct of the parties continued to be reasonable until the litigation was settled or its further prosecution became futile, the proper exercise of the cost discretion will usually mean that the court will make no order as to the cost of the proceedings.*

The Applicant has made every effort to provide evidence and avoid any litigation, and offered every possible opportunity to discuss problems within the complex – to no avail.

During the DFT and CTTT processes, the Applicant was forced to learn about the legal system in Australia, and that was a slow and painful process because his background and experience came from a very different field.

1.7. The Applicant literally pleaded with the Respondent to provide answers to questions that are of importance to proper management of the strata plan and never wanted the DFT and CTTT cases. Here is one example of the Applicant's efforts – an email to the Strata Manager on 21st of October 2011 (this Folder, Sleeve 6):

> *Make sure that nobody, under any circumstances, state that I want the DFT process. I really do not wish the complex to be exposed to more rubbish due to delays in simple actions by the committee. I want proper information be published, so if the committee provides it, there is no need for the DFT rulings!*

The Applicant submitted the same comments in DFT file SM11/1348DR (this Folder, Sleeve 7).

The Applicant also pleaded with the CTTT to help with the access to information (this Folder, Sleeve 24), as per **CTTT Act 2001, Section 28 (b):**

> (5) The Tribunal:
> …
> (b) is to ensure, as far as practicable, that all relevant material is disclosed to the Tribunal so as to enable it to determine all of the relevant facts in issue in any proceedings, and
> (c) may require evidence or argument to be presented in writing and decide on the matters on which it will hear oral evidence or argument,

In my three-page appeal (as per Directions Hearing orders made on 8th of August 2012) the Applicant stated the following:

> The Adjudicator has not exercised rights to order the evidence to be presented by the Respondents (sections 156 and 175 of the Act: Order to supply information or documents, and Adjudicator may inspect certain records).
> …
> The Adjudicator could have made an order referring a dispute to a hearing when a complex case like this one requires it (instead of dismissing it).

The persistent refusal by the Respondent to provide access to documents as requested by me ensured that the Applicant was denied procedural fairness and natural justice throughout the CTTT case.

1.8. The Respondent quoted **Latoudis v Casey (1990) 170 CLR** at 556:

> An order for costs indemnifies the successful party in litigious proceedings in respect of liability for professional fees and out-of-pocket expenses reasonably incurred in connection with the litigation…

The Applicant emphasizes the phrase “reasonably incurred”, which demonstrates the need for the Respondent to take **reasonable steps** to minimize the costs by providing responses to many inquiries over the last two years, attempt mediation at internal meetings or the DFT in the first instance.

The Respondent made every effort to avoid mediation and did not even consult the owners before engaging the expensive and unnecessary legal advice.

1.9. The Respondent's conduct in relation to the investigation and conduct of proceedings is a factor to be considered when deciding whether it is "just and reasonable" to exercise the discretion to award costs. In the same case **Latoudis v Casey (1990) 170 CLR 534**, Mason CJ said at 544:

> However, there will be cases in which, when regard is had to the particular circumstances, it would not be just and reasonable to order costs against the prosecutor or to order payment of all the defendant's costs. If, for example, the defendant, by his or her conduct after the events constituting the commission of the alleged offence, brought the prosecution upon himself or herself, then it would not be just and reasonable to award costs against the prosecutor.
>
> I agree with Toohey J that, if a defendant has been given an opportunity of explaining his or her version of events before a charge is laid and declines to take up that opportunity, it may be just and reasonable to refuse costs. Likewise, if a defendant conducts his or her defence in such a way as to prolong the proceedings unreasonably, it would be just and reasonable to make an award for a proportion of the defendant's costs."

The comments in the above paragraph again confirm the legal grounds that justify not awarding the costs when the Respondent brought about the litigation and calculated to occasion unnecessary litigation and expense through poor conduct and refusal to allow access to files that deal with financial and procedural management of the complex.

1.10. In the **Scotts Parts Plus v Dubbo land Rover & Ors (Motor Vehicles) [2010] NSWCTTT 601 (15 December 2010)**, the following was stated:

> The principle which has been referred to the Tribunal relating to the award of costs in proceedings is as set out by Gleeson CJ in **Ohn v Walton (1995) 36 NSWLR 77 at 79** where he states:
>
> "The point of Latoudis v Casey is that the purpose of an order for costs is to indemnify or compensate the person in whose favour it is made, not to punish the person against whom it is made. When legislation confers a power to order costs it is in the absence of any contrary indication, to be understood as conferring a power to be exercised for that purpose two things follow:
>
> 1. The usual rationale of making a costs order is that it is just and reasonable that the successful party should be reimbursed for costs incurred, in the absence of grounds connected with the charge or the conduct of the proceedings which make it unjust or unreasonable that there should be such reimbursement.
>
> 2. The test of whether or not an order for costs should be made against an unsuccessful plaintiff or complainant is not whether he or she has done anything to warrant punishment. It is whether, in the circumstances, the defendant or respondent should be compensated.

The Applicant offers evidence that the Respondent entered into a contract with the Solicitor without proper processes being applied (Item 3. in this document), with one goal: to discourage the Applicant from further actions though threat of costs.

The Respondent deliberately avoided any mediation even though the proofs of mismanagement are irrefutable.

1.11. The Respondent offered absolutely no evidence to counter my claims, and continued to use phrases like "unsubstantiated allegations of fraud", "irrelevant", "frivolous", and similar. The evidence would help to back up their statements.

They relied on errors in form the Applicant used to present the case and his inexperience in the legal matters as the only vehicle to prove their "rightfulness".

1.12. Based on documentation provided before the final decision, the Tribunal (Mr. Harrowell) made their decision not to award the costs in their orders made on 5th of December 2012.

The Applicant is confident that Senior Member Harrowell made that decision after a long deliberation.

That was, in the Applicant's firm view, the right and just decision reached by the Tribunal.

1.13. The Applicant requests were largely misunderstood and misquoted. He never asked the Adjudicator or the Tribunal to assume a role of a member of the EC or "micromanage" the complex. His requests were for the Adjudicator and/or Tribunal to ORDER/ENFORCE the actions for the EC and the Managing Agent, issue compliance with the Act, and apply penalties against the Strata manager due to continuous breaches of the Act (as per prescribed penalty units):

Request 1: Section 22 and 108 of the Act;
Request 2: Section 167 of the Act;
Request 3: Section 136 of the Act;
Request 4: Schedule 2 Section 14 of the Act;
Request 5: Section 37 of the Act;
Request 6: Schedule 3 Section 6 of the Act;
Request 7: Schedule 2 Section 11 of the Act;
Request 8: Schedule 2 Section 10 of the Act;
Request 9: Section 18 of the Strata Schemes Management Regulation 2010;

If the Applicant's requests were constructed in a way that the Adjudicator or the Respondent "did not understand", or not in conformance with the "proper format", it was only a matter of asking me a question to clarify it further.

The form of the requests must not affect the substance of the requests. In other words, the formal observance of a legal manner or order is something the Applicant does not claim he is perfect at, as his professional background is very different.

1.14. The Applicant believes the CTTT was aware of my shortcomings and even the Solicitor Mr. Adrian Mueller admitted it in their "Submissions on Costs", Item 10(b):

> *… even though, in its judgment dismissing the appeal, it has not said that the appeal is dismissed because of one of the grounds set out in par (a) or par (b) of s 192: [37];*

The cost "recovery" by the Respondent is not planned to protect the owners, but to avoid further actions against the EC, the Strata Manager, and the Solicitor, and an attempt to deter the Applicant from future actions.

It is not unjust or unreasonable to reject the Respondent's request to award costs because the costs were incurred by them on purpose and in an unnecessary fashion, without the consultation with the owners in the complex (refer to Item 3. in this document). The costs were "self-inflicted" in the hope that by penalizing the Applicant in financial terms any future cases or inquiries would disappear.

2. **Lack of any offer of settlement prior to litigation through the CTTT is very relevant to the question of costs. Threats and refusals to attend mediations at internal meetings and the DFT are not offers of settlement.**

2.1 The Solicitor mixes the offer to negotiate with the request to withdraw in a threatening manner (refer to their comments in the Introduction for “Submissions on Costs”, Item 26, submitted to the CTTT on 29th of January 2013);

2.2 The information about the business affairs in the complex cannot be withheld by any member of the EC or the Strata Manager. The Solicitor conveniently ignored the fact that the Applicant was (and still is) repeatedly denied access to rightful information only because it was/is damaging the reputation of the EC and the Strata Manager;

2.3 At no time over the last two years the Respondent elected to resolve the matter by negotiation to help both parties avoid the cost of on-going, expensive and time-consuming litigation. The outcome of which is not predictable. The refusal to attend three mediations at the Department of Fair Trading speaks clearly enough:

SM10/1230PK
SM11/1348DR
SM12/1537JR

Instead, the Respondent favored a process that had the Applicant engaged in the work of identifying and rectifying many of the defects alone, without the help of any other owner or the Strata Manager. The minutes of the EC meetings enclosed herewith prove how little the owners were told about the Applicant’s efforts and attempts to improve the status in the complex.

2.4 Other attempts of abuse, vilification, intimidation, and bullying for simply highlighting the errors and management issues. For example: the comment that the Applicant came from a "Communist country which did not know what democracy was", which was submitted by a long-standing member of the EC Mrs. Betty Saulits two years ago. CTTT has it in evidence in file SCS 11/00711;

2.5 Another example of a more recent threat is the letter by the Solicitor themselves on 6th of September 2012 (this Folder, Sleeve 5).The comments about the professionalism and the duty of care displayed by the Solicitor are unnecessary. Not only the Applicant has comprehensive evidence to prove his claims, he also has the evidence that the Solicitor withheld some of it to the Tribunal (all the requests for information and access to files to the Strata Manager and the EC were received and viewed by the Solicitor during 2012 and 2013, although no action followed to serve the documents to the Applicant);

2.6 The life of the Applicant and his family have been endangered over the last two years:

- ✓ Anonymous threat delivered in the letterbox (police case reported to the Strata office two years ago with a plea to provide truthful information to owners, which was completely ignored). Raine & Horne Strata Epping and CTTT have details of this issue;
- ✓ The Applicant’s wife was attacked by a member of the EC – Mrs. Sandy Quins. The witness was another member of the EC – Mrs. Maureen McDonald, the caretaker at the time, and one other owner; Both EC members did not do anything to defuse the situation. It took police around two hours to calm the agitated EC member down on the phone;
- ✓ Screened phone death threat two years ago;

2.7 The Respondent ensured that access to evidence was denied to the Respondent during the case. One such fact is that the Applicant obtained access to financial statements and accounts ten months after he had requested them (and given to me under pressure two weeks after the Hearing on 17th of October 2012). That evidence arrived too late for the Hearing;

2.8 Other attempts of abuse, vilification, intimidation, and bullying for simply highlighting the errors and management issues, for example:

- ✓ Notes in the agenda for the AGM 2011 and 2012 are extreme evidence of vilification through false statements (provided in the SCS 12/32675 and 12/50460 and this Folder Sleeve 30 and 31);
- ✓ Comments by the Chairperson in files SCS 11/00711 and 12/05845;
- ✓ Letter by the ex-EC member Mr. Gerard Raichman delivered to owners in person (provided in file SCS 12/05845);
- ✓ Minutes of the latest EC meeting on 20th of February 2013 (this Folder Sleeve 32).

The Respondent did not engage in any kind of reasonable settlement, but relied on threats, attempts to ridicule at the general meetings, rumors, and absolute denial of any wrongdoings without offering any evidence.

Section 11 of the Strata Schemes Management Act 1996 (“SSMA”) provides that the Corporations Act 2001 (“CA”) (which imposes fiduciary and other duties on company directors) does not apply to owners corporations and although the SSMA does not contain provisions corresponding to those in the CA, the cases suggest that office bearers in fact owe fiduciary duties under common law principles. For example, in **RE: Steel & Others and the Conveyancing (Strata Title) Act 1961 (1968) 88 WN (Part 1) NSW 467**, the reasoning which has been supported in later cases,Mitchell J stated

> the respondents have failed to appreciate the nature of the duties cast on them as members of the council of a body corporate... such persons are at least in a position analogous to company directors, they may even have a higher fiduciary duty

Threats are not offers to negotiate but acts of denial through position of “power and “force” that the Applicant rejects at any time without being given proofs and evidence.

3. **Procedural errors and non-compliance issues in relation to the engagement of the Solicitor.**

3.1 The minutes of the EC meeting held on 22 February 2012 (this Folder, Sleeve 12) confirm that the Managing Agent was instructed to seek a costs proposal from a strata lawyer to prepare a response to the CTTT case. At the same meeting the Strata Manager took the role of the Secretary of the Executive Committee too (after the sudden resignation from the office bearer’s role by Mrs. Betty Saulits).

3.2. In the Applicant’s email to the Strata Manager Mr. Garry Webb and Ms. Debbie Downes on 2 March 2012 at 16:55 (this Folder, Sleeve 14, highlighted in **bold red** font) the Applicant voiced strong opposition to wasting money on issues that should be discussed at internal meetings or through DFT mediation firstly.

The Subject of the Applicant’s email was: OWNERS OPPOSING WASTING MONEY ON LEGAL ADVICE AND DELAYS IN RESPONSES: SP52948 on 2nd March 2012

In the email, the Applicant represented seven owners through proxy votes given to me at AGM 2011. They gave him unconditional support over FY 2012 (so much so that their proxy votes were valid for the whole of 2012):

Unit 92 Edwin Vartazarian, Project Manager
Unit 102 Young Park and Kim Hoo, both CPAs
Unit 162 John Marshall, Retired Businessman
Unit 153 Ryan Kim, Lawyer
Unit 129 Murali Ramaswami, Project Director
Unit 111 Tammy Chan
Unit 188 Ronald Lee, Owner of several pharmacies on North Shore

The first one (Unit 92) was discarded by the managing agent Mr. Simon Wicks due to lack of signatures of both owners on the proxy form (mother of Mr. Edwin Vartazarian was overseas at the time). Whether that was a proper decision by the managing agent, time will tell.

The Executive Committee and the Strata Manager ignored the Applicant's message and never responded.

The details of the proxy votes that were against the legal engagement were submitted to the CTTT in the facsimile on 2nd of March 2012 too (this Folder, Sleeve 15).

3.3. The Applicant voiced the same opposition to using the Solicitor on two more occasions, which was documented in the CTTT case at the time.

Again, his comments and requests, and the proxy votes vested in him, were completely ignored by the Executive Committee and the Strata Manager.

3.4. The information about the incurred legal costs was not disclosed to the owners until the EC meeting in June 2012 (this Folder, Sleeve 13). In it, apart from listing the figure of around $2,500.00 without explaining on what exactly it was spent on, it also stated that the Applicant's correspondence and questions addressed to the committee were ignored and not responded to (direct breach of the Act, Section 37).

> The committee noted that the recent application for an order by the owner of lot 158 to CTTT has been dismissed. The Adjudicator agreed with the submissions made by the Owners corporation that lot 158 application was misconceived; that the adjudicator had no power to make a number of orders requested by the owner of lot 158 and that the adjudicator had no authority to micro manage the affairs of the scheme and that the other issues raised were dealt with and decided adversely to the owner of lot 158 in previous submissions made to CTTT. The committee also made note to date the additional direct costs (mainly legal fees) incurred in dealing with this vexatious correspondence have been approximately $2,500. Further correspondence from [illegible] was reviewed and determined to not require a reply.

Not only this was a misconceived but also a false statement without evidence. Owners, of which majority never attend meetings, accepted the Respondent's claims without proper information or investigation. That comment went unnoticed by owners, as it happened in so many cases before.

The Respondent spent close to $2,500.00 on Solicitor's fees (in March and May 2012) even before the decision to engage them was made in July 2012. The actual expenses charged by the Solicitor Mr. Adrian Mueller before the EC meeting on 9th of July approved their engagement were already significant.

The following were the figures obtained during document search after the Strata Manager finally provided them in early November 2012 (well after the Hearing and the AGM 2012):

Date	Who	Amount
3/27/2012	J.S. Mueller & Solicitors	$2,272.73
5/31/2012	J.S. Mueller & Solicitors	$180.00
8/22/2012	J.S. Mueller & Solicitors	$1,367.64
Total	J.S. Mueller & Solicitors	$3,820.37

Extract from the Cash Book Payment by Account Code is enclosed in this Folder, Sleeve 17.

3.5. The Solicitor's invoice in amount of $12,714.65 ($13,986.12 with the GST) was submitted to the Secretary of the owners corporation on 15th of November 2012. This invoice, with expenses reaching above $12,500.00 in a single invoice, was not announced to owners at any meeting too. That invoice, even without any other expenses, exceeded the Standard Cost Agreement issued on 16th of July 2012 and owners had to be notified about it!

3.6. The Respondent failed to notify the owners and the CTTT that the actual Solicitor's expenses so far are in vicinity of $18,000.00. They deliberately excluded expenses from March and May 2012 in the statements to the CTTT;

3.7. In the minutes of the Executive Committee meeting held on 22 August 2012 (this Folder, Sleeve 16), the following was sent to owners:

> 9. Appeal against CTTT decision by L
> As minuted on 9 July 2012 Mr. Adrian Mueller of J S Mueller & Co. had been engaged to represent the OC at the CTTT hearing held on 8 August 2012. DB is appealing against the decision by CTTT to dismiss his application for orders against the OC. The solicitor estimated the OC legal costs may reach $12,000. Arrangements to meet the actual costs incurred will be a matter for the budget for the next financial year and may affect levies adversely as the funds will require to be collected from all owners before final costs are known. The EC noted the CTTT hearing was adjourned pending submission of a concise written summary by as it was unclear to CTTT what orders were being sought. The OC has been put to further legal expense to prepare a submission by way of response to the voluminous paper file lodged by with CTTT. The solicitor has advised there is no additional information required from the OC and will file the 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 before the CTTT has determined the appeal.

Several important conclusions and comments can be drawn from this paragraph:

- The decision to engage the Solicitor was made at an unofficial and unreported EC meeting on 9th of July 2012, for which the minutes have never been provided to owners;
- The decision to engage the Solicitor was made on 9th of July 2012 – one week BEFORE the Standard Cost Agreement was issued by the Solicitor on 16th of July 2012;
- The Standard Cost Agreement, which was not available on 9th of July 2012, quoted the total estimated costs as $11,550.00, whilst the EC and the Strata Manager raised it to $12,000.00 in the minutes of the meeting on 22nd of August 2012.
- The NSW SSMA 1996 does not specify how often an Executive Committee must meet. However, an EC meeting may be requested by at least 1/3 of the Executive Committee members or by a previous resolution of the Executive Committee itself. There was no previous resolution for this meeting and it is unclear how many and which EC members convened it. The Strata Manager and the Executive Committee refuse to provide the minutes of their meeting held on 9th of July 2012 so far.
- The EC and the Strata Manager seemingly failed to seek or evaluate quotes from other legal service providers although they now seek multiple quotes for even much smaller expenses (this Folder, Sleeve 32).
- The owners never received full details of the Standard Cost Agreement, which, in accordance with the Act Section 230A, is a serious non-compliance issue.

3.8. The Applicant argues and has proof that the Solicitor made an advanced and carefully-planned decision not to provide any evidence to the CTTT straight after the orders had been made at the Directions Hearing on 8th of August 2012. The minutes of the Executive Committee meeting held on 22nd of August 2012 (this Folder, Sleeve 16), also confirm the following:

- Full disclosure in respect of the costs of legal services to be provided to the owners corporation was never given to owners (to this day – 13th of March 2013).

  It is undeniable that the Solicitor did not work on behalf of the owners corporation, but solely to protect the interests of the Executive Committee and the Strata Manager alone;
- All subsequent correspondence and questions the Applicant had submitted to the Strata Manager were ignored and not acted upon as per Solicitor's request and approval. The Solicitor breached the contractual

agreement between the Strata Agency and the owners corporation, and the Act, that stipulate the duties of the members of the Executive Committee and the Strata Manager (amongst the others, the requirement to respond to ALL correspondence and act upon reports of faults in the complex);

The Solicitor acknowledged that he received all the Applicant's correspondence and knew very well that they contained serious evidence about many issues but withheld them from the CTTT.

It is worth listing some of the inquiries the Strata Manager and the Executive Committee refused to respond or attend to. Here are a few of the Applicant's emails sent to them before the EC meeting on 22 June 2012:

UPDATE_SP52948_Tribunal_Appeal_submitted

UPDATE_REQUIRED:_SP52948_Retaining_Garden_Walls_and_Block_A_Exterior_Painting_on_8_June_2012

Re_CTTT_Case__SCS_12_05845_on_28_May_2012

Re_OFFICAL_REQUEST_Secretary_to_provide_audit_details_of_townhouse_rebates_9_March_2012

PLEASE_CLARIFY_Proxy_votes_for_EGM_May_2012

The evidence of the Applicant's emails can be provided upon request (although they are already listed in the voluminous evidence in this case). For the sake of brevity, only their titles are listed herewith.

- The AGM 2012 did not contain any information about the Solicitor's costs and the budget plan did not contain any details about the need for additional expenses for the Solicitor (this Folder, Sleeve 30 and 31);

- The AGM 2012 did not even discuss the Solicitor's past or future engagement (this Folder, Sleeve 30 and 31);

- The Solicitor asked for the extension of the deadline by 2.5 weeks to 28th of September 2012 so that they could submit their evidence. Refer to their letter to the CTTT Registrar on 19th of September 2012.

  CTTT granted them the request, which they failed to satisfy by not providing any evidence at all.

Because the Solicitor FAILED to file the required response to the CTTT by or before the due date 12th of September 2012, they effectively breached the contractual agreement with the owners corporation, as stated in the minutes of the EC meeting held on 22nd of August 2012. This contractual agreement also applies to the Applicant and all proxy votes vested in him.

The Solicitor deliberately planned to be non-compliant with the Tribunal orders as per Directions Hearing on 8th of August 2012.

3.9. The Respondent failed to provide full or relevant information about these legal costs to owners at any general meeting once the Standard Cost Agreement was released on 16th of July 2012 (non-compliance with the SSMA 1996 Section 230A);

The Respondent exercised improper and incomplete disclosure of costs of legal services and without consultation with the owners at any EC or general meeting.

Section 230A of the Strata Act defines the conditions to disclosure of matters relating to legal costs:

230A Disclosure of matters relating to legal costs
If a disclosure under Division 3 of Part 3.2 of the Legal Profession Act 2004 is made to an owners corporation in respect of the costs of legal services to be provided to the owners corporation, the owners corporation must give a copy of the disclosure to each owner and executive committee member within 7 days of the disclosure being made.

- The copy of disclosure of costs was never given to owners;

- The Respondent failed to request a vote or proper consultation about these legal costs at any general or EC meeting;

  The engagement of the Solicitor was not discussed or approved by the owners corporation at any general meeting in 2012 or in 2013 so far. There were two general meetings:

  Extraordinary General Meeting on 7th of May and 14th of May (adjourned) 2012

  Annual General Meeting on 17th of October 2012

- The Respondent failed to seek alternative quotes from other Solicitors;

- The Respondent made a decision to engage the Solicitor at an unofficial and unreported EC meeting on 9th of July 2012 before the Standard Cost Agreement was issued on 16th of July 2012;

3.10. Once the legal costs exceeded or were estimated to exceed $12,500.00 (it was as early as 16th of July 2012 when the Standard Cost Agreement was issued by the Solicitor) , the Strata Manager and the Executive Committee, under the current legislation, had a duty to seek approval at a general meeting, which occurs in October of each year. That has never happened in our complex (non-compliance with the Act Section 15).

Section 15 of the Strata Act defines the exemptions from need for approval for certain legal actions:

15 Exemptions from need for approval for certain legal action:
(1) The seeking of legal advice, the provision of legal services or the taking of legal action is exempt from the operation of section 80D of the Act if the reasonably estimated cost of seeking the legal advice, having the legal services provided or taking the legal action would not exceed:

(a) an amount equal to the sum of $1,000 for each lot in the strata scheme concerned (excluding utility lots), or
(b) $12,500,

whichever is the lesser.

(2) In a case where the cost, or estimated cost, of seeking legal advice, having legal services provided or taking legal action has been:
(a) disclosed by the Australian legal practitioner concerned in accordance with the Legal Profession Act 2004 , or
(b) set out in a proposed costs agreement under that Act,

the reasonably estimated cost of seeking the legal advice, having the legal services provided or taking the legal action is taken, for the purpose of this clause, to be the cost or estimated cost so disclosed or set out.

(3) The seeking of legal advice, the provision of legal services or the taking of legal action is exempt from the operation of section 80D of the Act if its purpose is to recover unpaid contributions and interest under section 80 of the Act.

No owner has even approved or even viewed the legal costs at any general meeting, and the legal issues were never discussed in an open manner (including the AGM 2012 where they were supposed to be revealed in full detail).

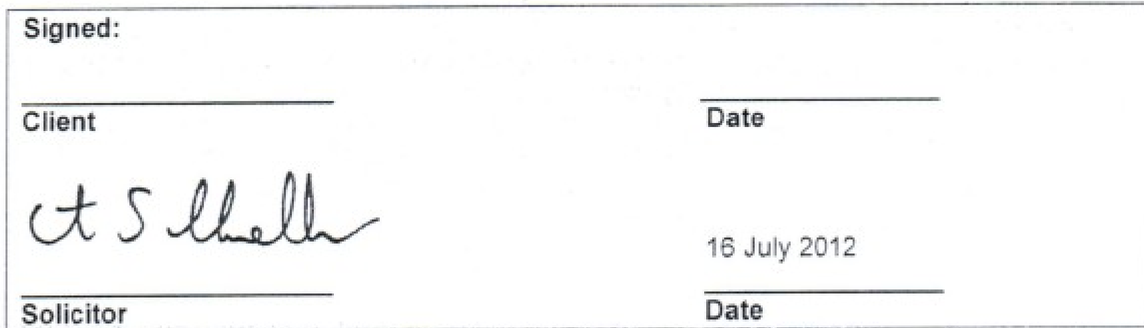
No owner is aware of the current legal expenses - that information is carefully guarded from them.

The transparency of the Respondent to notify owners about the Solicitor’s engagement did not and still does not exist.

The poor and strange management of the complex is evident in the Applicant’s email to the Strata Manager on 22nd of February 2013, whom the Applicant asked for the third time to provide details of the office bearers since the AGM

2012 (Refer to this Folder, Sleeve 22). The email contained the request to obtain access to names of the office bearers for FY 2013, full details of the water and gas reimbursements since 1st of September 2012, and copies of the registered Special By-Laws as approved at the AGM 2012. No response has been received.

3.11. The Standard Cost Agreement was not signed by the client. The copy of the agreement that the Solicitor provided to the CTTT and me has no signature from the Strata Manager or any other member of the EC.



Signed:

Client | Date

16 July 2012

Solicitor | Date

Although there is no legal requirement that the disclosure be signed by the client, it is questionable how valid the contract is because:

- Nobody signed it on behalf of the owners corporation;
- There is no submitted evidence that the contract was approved by any letter or email;

3.12. The Standard Cost Agreement contains the following questionable clause:

> **Privacy Protection**
>
> Personal information about you, provided by you and other sources, is protected under the *Privacy Amendment (Private Sector) Act 2000*. Disclosure of such information may be compelled by law (eg. under the *Social Security Act*). You also authorise us to disclose such information where necessary to others in furtherance of your claim/matter (eg. within the law practice, to the Court, the other party or parties to litigation, to valuers, experts, barristers etc).

The Solicitor failed to provide evidence to myself and the CTTT even though they were contractually and legally bound to do so.

Examples: they knew about the illegal water and gas reimbursements that were implemented in the complex for 12 years, they knew about the lack of public liability insurance from owners of Lot 3 as per Special By-Law 4, they knew about the strictness in regards to positive covenant, they knew and even instructed the Strata Manager not to respond to any of my inquiries and reports, and so on.

3.13. The Standard Cost Agreement contains the following questionable clause:

> **E1.** We will not continue to do the Work: if you fail to pay our bills; if you fail to provide us with adequate instructions within a reasonable time; if you give instructions that are deliberately false or intentionally misleading; if you fail to accept an offer of settlement which we think is reasonable; if you fail to accept advice we (or counsel) give you; if you engage another law practice to advise you on this matter without our consent; if we, on reasonable grounds, believe that we may have a conflict of interest, or if you indicate to us that we have lost your confidence; or for other just cause.

The statement puts stringent obligation on the EC and the Strata Manager to follow the Solicitor's advice at all

costs. It means that all actions that followed were with the “blessing” of the Solicitor and their actions beg lot of questions in regards to their professionalism.

3.14. The Standard Cost Agreement contains interesting clauses:

10.1. If *court* proceedings are taken on your behalf, the court may order the other party to pay your costs of the proceedings. This sum will not necessarily cover the whole of your legal costs due to us. It is possible that the court may make an order that you pay the other party's costs (if, for instance, you lose the case). These costs are payable by you to the other party in addition to the costs payable to us.

10.2. If you are **successful** in the litigation you may anticipate recovering from the other party approximately 75% of the costs and disbursements which you are liable to pay to this firm (but only if the Tribunal makes a special costs order and it will only make this order if it believes that Mr Baljevic's appeal is frivolous, vexations, misconceived or lacking in substance or that a decision in Mr Baljevic's favour is not within the Tribunal's jurisdiction).

10.3. If you are **unsuccessful** in the litigation you will not be ordered to pay the other party's costs.

The Applicant challenges the statement about the 75% cost recovery figure. It is seemingly an arbitrary value without justification of the calculation for the given number, and means that the owners corporation was misled (even though the owners actually never received a copy or any details of this contract).

3.15. The Applicant made the following request to the Strata Agency on 4th of February 2013 and they failed to respond in a prescribed timeframe (this Folder, Sleeve 23):

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

That evidence is crucial for several reasons and the Applicant provided full information to the Strata Manager. The Branch Manager Mr. Paul Banoob and the Solicitor Mr. Adrian Mueller were also made aware of this request. They stayed silent so far and provided no evidence or any responses.

3.16. In the Introduction for “Submissions on Costs”, submitted to the CTTT on 29th of January 2013, the Solicitor Provided misleading statements in Item 5.

The Applicant was denied access to documents by the Strata Manager and the Executive Committee for many months.

The Applicant provided more than 1,500 pages of copies of documents and their extracts, and responses. The Applicant also asked the CTTT to request any other evidence they might require. The Adjudicator did not exercise rights to order the evidence to be presented by the Respondents (Sections 156 and 175 of the Act).

Significant evidence was available in the appeal that was not reasonably available at the time of my original request.

Section 181 of the Act provides that at the Hearing of the appeal the Tribunal may admit new evidence.
In **Owners Corporation Strata Plan 7596 v Risidore & Ors [2003] NSWSC 966 ,** the following was decided by Master Malpass:

> *The Tribunal has a discretionary power to admit new evidence. This is a power exercised having regard to the issues that are before it and the other particular circumstances of the case.*

In **Owners SP 56911 v Stricke (Strata and Community Schemes) [2012] NSWCTTT 392 (3 October 2012)**, the following was documented:

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I should digress to mention that the Tribunal has a discretion under s181 of
the Act to receive new evidence in an appeal. The discretion is to be exercised
having regard to its statutory context. It is a weapon provided to facilitate
the hearing of an appeal. It was not intended to have the function of
converting an appeal into a fresh hearing.
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3.17. In the Introduction for "Submissions on Costs", submitted to the CTTT on 29th of January 2013, the Solicitor provided false and misleading statements in Item 3.

- There were not eight issues The Applicant desired to be determined at the Hearing, but seven (refer to this Folder, Sleeve 24) – they are highlighted in **bold red** font on the last page.
- The Applicant did not abandon six of these issues. At the Hearing on 17th of October 2012, the Applicant was **forced** to select only four of them. That was an unexpected request that significantly changed his opening statements and detracted me from the planned activities.

  These were the four orders the Applicant selected on the day:

  ✓ To supply information and documents pursuant to section 156 of the Act, that the owners corporation, strata managing agent or office holder has wrongfully withheld from the applicant (myself) and to which the applicant is entitled under the Act.

  ✓ To invalidate Special By-Law 4 (Exclusive Rights to Common Property by Owners of Lot 3) pursuant to section 159 of the Act due to invalid count and record of proxy votes and refusal to disclose public liability insurance by the owners of Lot 3 over many years.

  ✓ To comply with an obligation imposed by a positive covenant and relating to the maintenance and repair of property in the strata scheme pursuant to section 160 of the Act.

  ✓ To appoint a compulsory strata managing agent pursuant to section 162 (3) of the Act due to continuous and deliberate breaches of the duties delegated by the owners corporation. The Order may be made even without the application when the management structure of a strata scheme is not functioning satisfactorily.

- One of the four remaining orders had to be abandoned (Special By-Law 4) due to the Solicitor's false statement that it could not have been made in their absence (the owners were supposedly overseas). By coincidence, the same evening was the Annual General Meeting and one of the owners of Lot 3 was present in person. The Applicant documented his findings to the CTTT in the facsimile on 19th of October 2013 (this Folder, Sleeve 8).

  This Solicitor's false statement had a grave consequence that we were forced to agree not to proceed with it due to owners' absence.

  As a matter of fact, the Applicant's request to obtain access to the public insurance details had been outstanding for the last five months and the notice about the Hearing was released by the CTTT as early as 5th of September 2012.

  The Respondent had a duty to prepare their evidence, or reasons for adjournment on this matter but failed to do so.

  The Applicant would like that CTTT acknowledges and investigate implications of the fact that the Order 4 at the Hearing was canceled due to FALSE statement by the Solicitor on behalf of the Respondents (CTTT Act Section 71).

  It will be left to the CTTT to make an assessment of the consequences of such serious error (reference case: **R vs. Samuel Faraj Cohen, 2011**).

Later on, as the Applicant was determined to learn more about why he was failing in his CTTT cases when he had evidence, he found out that the dismissal of the hearing for that order was incorrect:

In **Kraljevo Building Construction Company v Duckworth & Anor [2003] NSWSC 920**, the following was reported:

> *Master Malpass noted that the Tribunal has the power to hear a matter in the absence of a party who has failed to attend the hearing if it is satisfied that the notice of the hearing was duly served on the party in accordance with clause 29 of the Consumer, Trader and Tenancy Regulation 2002.*

The Applicant dully notified the Solicitor and the Strata Manager about the presence of the owner of Lot 3 at the AGM in email on 17th of October 2012 (this Folder, Sleeve 9). The response from them has never been received and is a significant proof of their lack of duty of care.

The Applicant also, yet again, requested the Strata Manager to provide public liability insurance details for Lot 3 (this Folder, Sleeve 9). The relevant lines are highlighted in **bold red** font. Due to the fact that all his correspondence was forwarded to the Solicitor, there is no doubt that Mr. Adrian Mueller was aware of the Respondent's request and decided not to act upon it. Again, breach of their contractual duties as per their own Standard Cost Agreement.

- The only issue that was "resolved" by agreement with the Respondent was that they provided me with the missing evidence 14 days after the Hearing (this Folder, Sleeve 10). It was still missing some pages, but that is the issue for another CTTT case. The lack of that evidence at the time of the Hearing and beforehand greatly affected my ability to provide additional proofs in a timely manner, which, in the end, helped the Respondent achieve their ultimate goal – get the case dismissed. That evidence arrived 10 months after the Applicant had requested it!

- In regards to positive covenant order, the Solicitor provided misleading and inaccurate information to the Tribunal.

  The Solicitor was wrong at the Hearing that the Applicant was not "equipped" to talk about structural status of the buildings. His opinion, accepted by the Tribunal, was that there was no issue of maintenance. The photos of the garden beds and the exterior walls on the buildings show the neglect in regards to proactive maintenance (taken in October 2011, June 2012, and October 2012). Failure and delays to maintain them is in direct breach of SSMA 1996, Part 2, Section 62 3(b).

  The Solicitor poorly researched the positive covenant issue and "helped" the Tribunal to form a wrong opinion on the matter.

  Owners corporation has an absolute duty to recognize and rectify problems associated with common property. The Supreme Court found that it had an obligation to rectify the problem associated with the common property, rather than merely showing that it had acted reasonably (**Mabel Dorothea Fligg v The Owners Strata Plan 53457 [2012] NSWSC 230**).

  The mandatory and absolute duty to properly and promptly maintain and repair common property and any property vested in the owners corporation was highlighted in this case.
  Making reasonable steps is not sufficient and will not save the owners corporation from being required to perhaps ultimately part with a significant amount of damages.

  The case Nicita v Owners of Strata Plan 64837 [2010] NSWSC 68 is a timely reminder of how rigorously the Courts are applying the strict duty to repair and maintain common property by the owners corporation.

- Finally, the Applicant's order to appoint a compulsory strata managing agent was rejected due to lack of evidence. The Applicant offered what he had available to him at the time (more than 1,500 pages in total

versus absolutely no documentation by the Respondent). Since October 2012, the events unrolled further and we now have to deal with file SCS 12/50460, which has evidence that will be very difficult to deny or refute.

In the Introduction for “Submissions on Costs”, submitted to the CTTT on 29th of January 2013, the Solicitor provided misleading statements in Item 4.

The order to appoint a compulsory strata manage can be introduced in the proceedings at any time or not at all, and the CTTT has the right to make a decision even without the order if circumstances require it.

- The “new” matters” are, in fact, not new, just reformatted ones to make it easier for the Tribunal to deal with. It was obvious that the Adjudicator accidentally misunderstood the Applicant’s original requests and there was a need to “rebalance” them.

3.18. The Solicitor, in their submission, also proved that they continued to act on behalf of the EC and the Strata Manager even though they had no owners corporation approval to do so (refer to the email sent from the Strata Manager to Mr. Adrian Mueller on 15th of January 2013 in regards to DFT mediation SM12/1537JR).

The Strata Manager contacted the Solicitor in desperation because the deadline to respond to the DFT was expiring on 16th of January 2013.

During the engagement with Mr. Jim Robertson at the DFT, the Applicant proved that the Respondent was not forthcoming in their responses and that they tried to find loopholes again (this Folder, Sleeve 20).

3.19. In the previous documents, the Solicitor quoted Case **Emilie Zouk v The Owners Strata Plan 4521 [2005] NSWSC 845** as part of the Respondent’s request to impose costs due to my “application and appeal being frivolous, vexatious, misconceived or lacking in substance”.

In keeping with the intent to have Tribunal applications kept affordable, Tribunal hearings in which the amount claimed or in dispute does not exceed $30,000.00 (CTTT Act Section 53), the parties will normally meet their own costs and only in exceptional circumstances will the Tribunal order otherwise, though it has the power to do so.

SCS 12/32675 cannot be viewed in the same light as **Zouk v Owners Strata Plan 4521**, and its complexity justifies serious investigation.

On the other hand, Emilie Zouk v The Owners Strata Plan 4521 [2005] NSWSC 845 dealt with the plaintiff’s application regarding repairs to her garage (a personal issue). In that case his Honor held that the power to make an order for costs when the appeal is lacking in substance is a discretionary power, to be exercised according to the relevant provisions and the circumstances before the Tribunal.

For the record, at that time, the Solicitor did not even read the voluminous evidence at all. He concentrated on the procedural errors, avoiding any reference to disproving my statements through evidence.

3.20. In his own statement at the Hearing on 17 October 2012, the Solicitor admitted that he spend "day and a half" analyzing my "voluminous" documentation. It is IMPOSSIBLE for anyone to even briefly scan or read more than 1,500 pages at such short notice. His schedule of expenses shows that he even miscalculated the time “spent” on analysis the Applicant’s documents and proves discrepancy between his statements at the Hearing and the evidence in his submission for the rehearing.

3.21. Whilst it is understandable that we all have different writing style, and that the Applicant’s technical mind operates very differently from other people, it is certain that his DFT and CTTT cases are not frivolous or insignificant. On the contrary.

The Applicant believes the CTTT was aware of his shortcomings in composing my evidence in formal manner and even the Solicitor admitted it in their “Submissions on Costs”, Item 10(b):

*… even though, in its judgment dismissing the appeal, it has not said that the appeal is dismissed because of one of the grounds set out in par (a) or par (b) of
s 192: [37];*

and Item 15:

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

3.22. In their response in "Submissions on Costs", Item 26, the Solicitor provided the following false and misleading statement:

*The appellant chose to ignore those warnings, he refused to withdraw his appeal (unreasaonbly - **spelling error by the Solicitor!**), and he consequently put the owners corporation to the considerable expense of having its legal representative prepare for and attend the hearing of the appeal.*

The Applicant's response is simple: when did the owners approve the engagement of the Solicitor, when were they notified of the full extent of the legal costs, and when were they notified that two CTTT and one DFT cases are currently opened? On what legal and moral ground was decision made to withhold the important information that the Solicitor, the EC and the Strata Manager can offer to justify their actions? What responses can they provide in regards to pending CTTT case SCS 12/50460 which, finally, seem to be in the format that satisfies everybody's "taste"?

3.23. The Applicant questions "Submissions on Costs", Item 31 where the Solicitor describes the Applicant's evidence (which he did not read at the time when the original case was opened, and maybe read some pages in the appeal) as irrelevant, prolix, unintelligible, oppressive, repetitive, and so on.

The Applicant questions their ability to read his large submission in the timeframe they listed it in the expense schedule (Item 4.4 in this document).

There is also the question of style and background knowledge. To the Applicant, as a technical person with world-wide reputation in IT and computing business, the evidence he provided seemed logical.

It is a matter of difference in opinions and experience: it does not mean the Solicitor is right or wrong – it means we are different, with different set of skills.

3.24. The Solicitor provided number of quotes from the Applicant's original documents that were not disproved through any evidence but simply submitted to, seemingly and presumably, show how wrong the Applicant was. This evades the common practice of any legal system.

The Solicitor's submission with the Applicant's quotes has no substance and it is, therefore, suggested to be inadmissible as it carries little weight.

The Applicant, again, has a simple answer to the Respondent: provide ANY evidence.

3.25. The Solicitor used every possible excuse. To list a few:

- CTTT Registrar denied the Applicant's access to view **Unreported File No. SCS 11/49212 (Owners Corporation v Zouk), Adjudicator K Rosser, 6 January 2012**. Consequently, the Applicant was not afforded the opportunity to respond. The reason to request access to the File was simple: Solicitor Mr. Mueller quoted it in their submission and the Applicant had legal right to access the same evidence (Refer to **Mattiussi v Owners Corporation 53945 [2001] NSWSSB 5 (6 June 2001)**).

- Lack of understanding the evidence and the documentation that the Applicant provided.

- False statements at and after the Hearing.
- Failing to provide any evidence repeatedly.
- Complaint about the font size and even the writing style the Applicant used (it is recommended to the Solicitor to attend some engineering course and learn how proper documents in different scientific fields are written).

  It is utterly unreasonable to expect a purely technical person to act and behave like a legal person. For the record, the Applicant recently obtained prestige status of Senior Member of the Institute of Electrical and Electronics Engineers, which only around 8% of the membership can achieve (from around 416,000 members worldwide). That is the most important technical organization in the world and my status was obtained through technical presentations, research and teaching.
  If, as the Solicitor states, the Applicant cannot write legal documents that they can understand, he can certainly write excellent technical documents.

  The Applicant is also a Senior Member of Australian Computer Society and Association for Computing Machinery.

3.25. The Strata Manager prevented a Motion submitted by the Applicant well in advance to be tabled at the AGM 2012, which ensured that unnecessary involvement of the Solicitor continued unabated and without the approval of the owners corporation. The issue of abysmal preparation of the AGM 2012 is now pending in CTTT File 12/50460.

The Motion in question that the Applicant proposed was titled:

Improved Dispute Resolution Process

The Motion was denied in the agenda on 2nd of October 2012 (this Folder, Sleeve 30), and the supplement for the agenda on 9th of October 2012 (this Folder, Sleeve 31).

By preventing to include this Motion at the AGM 2012, the Executive Committee and the Strata Manager, together with the Solicitor Mr. Adrian Mueller, effectively worked together to incur additional expenses unnecessarily and then put the blame on the Applicant, hoping that it would deter him from future actions.

The Solicitor actually acknowledged that he was aware of this problem when they charged $132.00 for perusing emails from the Applicant concerning failure to include motions on agenda for upcoming AGM on 10th of October 2012.

The Applicant raised CTTT Files 12/50450 and 12/50460 on 5th of October 2012, two weeks before the AGM, advising the CTTT about issues in relation to the general meeting. In spite of the Respondent being fully aware of them, they decided to proceed with the fraudulent activities (now part of CTTT File 12/50460).

The copy of the Applicant’s Motion is enclosed in this Folder, Sleeve 18. By acknowledging the viewing of the motion and then denying the Applicant’s right to include this Motion in the agenda for AGM 2012, the Solicitor is directly responsible for attempting to increase their earnings from the owners corporation through dubious and unprofessional action.

The Strata Manager even attempted to lie by stating that the Applicant’s motions arrived too late. Refer to the Applicant’s response on 3rd of October 2012 in this Folder, Sleeve 19. As per strict orders in the Solicitor’s contract, he forwarded the Applicant’s email to the Solicitor too. Both of them stayed silent since then.

By denying the Applicant procedural fairness, the EC and the Strata Manager effectively achieved the opposite: Solicitor’s involvement with the CTTT cases after the AGM 2012 is invalid and illegal (although the whole engagement of his legal advice was already against the law from the start).

3.26. The Solicitor provided no evidence to refute the Applicant’s claims - due to experience in strata law, they simply concentrated on procedural errors.

Their involvement in the case did not take much time, nor it required them to take many actions. Hence, their fees are unjustified, not earned, and to emphasize it again, not approved or discussed by the owners corporation at any general meeting.

On the Applicant's side, he provided more than 1,500 pages of evidence and documentation (when everything is included), and yet, it seems it was not enough to convince the Tribunal to make decisions as requested by him.

The CTTT claimed there was not enough evidence, and on the other hand the Solicitor stated there was too much of it.

3.27. The Respondent is guilty for preventing access to many documents that the Applicant had requested over many months in 2011 and 2012. Only at the Hearing on 17 October 2012, the Solicitor "got approval" to provide the Applicant with the financial documents that were requested by ten months earlier. By that time, the AGM 2012 was already complete (held on the same night as the Hearing).

By delaying and denying access to the documentation, the Respondent prevented the Applicant from providing additional evidence.

3.28. The Tribunal is not bound by the rules of evidence but may inform itself of any matter as it thinks fit, subject to the rules of procedural fairness: **S.28 Consumer, Trader and Tenancy Tribunal Act 2001**.

Seven items were listed for the Hearing on 17th of October 2012. To the Applicant's surprise, and totally unexpectedly, he was requested to eliminate three of them at his own choice. Therefore, many things that he had planned to discuss were not even put on the agenda on the day.

Due to false and poorly investigated evidence, the statements by the Solicitor helped that two more orders had to be discarded or not properly discussed (Special By-Law 4 and the positive covenant).

The procedural fairness can be argued but it is outside the scope of this rehearing.

3.29. For the fourth time in just last six months, the Respondent failed to comply with the Tribunal orders. This has become a common practice, not an exception to the rule:

CTTT Directions Hearing on 8 of August 2012
CTTT non-compliance note on 19 of September 2012
CTTT non-compliance note on 9 October 2012
CTTT order about rehearing on 17 December 2012 (late submission)

Four times cannot be considered a coincidence or an accidental mistake.

In spite of plenty of time given to the Respondent, in each of those four times, the Respondent found no valid justification for the delay. Based on the fact that the Respondent failed to file their responses by 28 January 2013, any written submission received after the closing date may or may not be accepted.

The Applicant firmly believe that repeated failures to comply with the CTTT orders should be viewed as "contempt of court".

3.30. No owner received any information that the Respondent failed to comply with CTTT orders in SCS 12/32675 four times.

3.31. The covert nature of the Executive Committee and the Strata Manager is confirmed by the following fact: the owners at Macquarie Gardens are not advised about the current DFT and CTTT cases that relate to issues in the complex.

- No owner received any notification that CTTT SCS 12/32675 was re-opened and pending action;
- No owner received any notification that CTTT SCS 12/50460 was pending the DFT mediation;

In fact, 12-Folder evidence was already delivered to CTTT on 18 December 2012 and the Respondent was notified by me immediately. They did not pass that notice to other owners.

- No owner received any information that the DFT SM12/1537JR was opened and, after deliberate delays from the Respondent, the mediation was declared unsuccessful since the Respondent declined to attend on 20th of February 2013.

- Then, very strangely, the Respondent decided to reconsider the mediation and the DFT case was reopened under mysterious conditions on 5th of March 2013 (this Folder, Sleeve 33). The Solicitor claimed he represented the owners corporation in his letter on 6th of March 2013 (this Folder, Sleeve 34).

  In my response (this Folder, Sleeve 35), the Applicant asked for proof that the Solicitor had legal right to represent the owners corporation, which was declined, as per DFT Director General's letter on 13th of March 2013 (this Folder, Sleeve 36). The Solicitor and the Respondent continue to manage the affairs in the complex without knowledge and approval of the owners.

  Again, the owners are not notified about it either.

The Executive Committee and the Strata Manager never attempted to provide sufficient information about the status of the DFT and CTTT cases to the owners corporation.

3.32. In their responses the Respondent keeps using the phrase that the Applicant's actions are putting the owners corporation to "significant expenses" (In the Introduction for "Submissions on Costs", Item 8(v) submitted to the CTTT on 29th of January 2013).

There is a problem with this statement:

Owners did not approve them;

Owners do not know about them;

Majority of owners do not attend meetings and that opens a loophole for the EC and the Strata Manager to run the business without any transparency or duty of care.

In practice, we do not have an owners corporation in practice. We simply have 218 owners who share the same space and some rules. There is no community spirit and the attendance at the ordinary EC meetings and lack of interest in affairs in the complex is a clear proof of it.

Our complex is an ideal base for unscrupulous actions since there is no auditing by owners. The Applicant is not dealing with the owners corporation, but with the rogue Executive Committee and the Strata Manager, currently even supported by the Solicitor Mr. Adrian Mueller.

3.33. The Solicitor was involved in preparation and events around the AGM 2012 and received several documents they decided not to respond to, effectively denying the evidence to be presented to the CTTT in a timely manner and also contributing to the creation of case SCS 12/50460.

This Folder, Sleeve 21 contains errata for the AGM 2012, including the many issues that the Applicant tried to convey in SCS 12/32675. The Applicant sent it on 3rd of February 2013. So far, the Strata Manager and the Executive Committee declined to respond.

3.34. The EC and the Strata Manager continued to forward the Applicant's inquiries and questions to the Solicitor even in December 2012, two months after the AGM 2012. Not only they were engaging the Solicitor without any approval by the owners, but also failed to respond to the inquiries and questions that relate to the management of the complex. All that was done with the full approval of the Solicitor, who is not the legal representative of our strata plan.

The minutes of the EC meeting held on 5th of December 2012 (this Folder, Sleeve 25) confirms it.

ITEM 6: To consider correspondence

The EC noted that no other correspondence requiring the attention of the EC had been received. Any correspondence from [illegible] has been forwarded to the solicitor.

3.35. The Chairperson, on his own and without the owners' approval, requested the advice of the Solicitor as late as 7th of December 2012, which the Solicitor confirmed in their schedule of legal costs:

07/12/12	Perusing email from chairperson requesting advice on circulation of CTTT decision to owners	$44.00	1	ASM

That is another expense that was unauthorized and unnecessary.

The Applicant requested the proof that the other EC members approved such action and was denied the response so far.

At this time, it is even suggested that the Chairperson engaged the Solicitor on their own on 7th of December 2013.

3.36. The Solicitor quoted several cases where the parties successfully claimed legal cost recovery but they have no bearing to our case which it is much more complex, and based on the fact that the owners were not involved in making any decision in regards to the engagement of the legal advice and the costs associated with it.

3.37. The Applicant submitted a request to issue a summons against the Strata Manager Mr. Peter Bone (this Folder, Sleeve 26), and EC members like Mr. John Ward, and Mrs. Maureen McDonald (this Folder, Sleeves 27, 28 and 29 respectively) to produce documents for number of important issues in regards to SCS 12/32675 in the week starting 25th of February 2013.

The questions for Mr. Peter Bone were reviewed by Mrs. Monette Ermitano on 27th of February 2013, and upon her suggestions, final version submitted to Mrs Dianne D'Mello the same day. Unfortunately, these four requests were denied by the CTTT several days later, without any reasons provided.

Some of the crucial documents requested by me are:

- ✓ Minutes of the EC meeting held on 9th of July 2012, which apparently decided to engage the Solicitor;
- ✓ Evidence that all members of the EC actually read and understood the Standard Cost Agreement;
- ✓ Statements why the owners never received details of the Standard Cost Agreement and why the AGM did not disclose any information about it when the costs went above $12,500.00;
- ✓ Statements why the owners never received any information about the current CTTT and DFT cases.
- ✓ Correspondence between the Strata Manager, EC members and the Solicitor in period February 2012 and March 2013 (also sent in separate request on 4th of February 2013, this Folder, Sleeve 23);
- ✓ Proof that the EC, not just the Chairperson, engaged the Solicitor to reopen SCS 12/32657 for award of costs.

By denying the right to have such crucial evidence, the Respondent is denied the natural justice and procedural fairness and the CTTT should apply the provisions of the Regulation to these proceedings.

Since access to those and many other documents is being constantly denied, the Respondent would like to quote **NSW Consumer Trading and Tenancy Tribunal by Philip Bambagiotti, Barrister Released March 2002:**

Documents and other evidence might be obtained by use of a summons (sec 40) et al.

Nevertheless, the Respondent sent the same questions to the three members of the EC and the Strata Manager via email on 6th of March 2013. As of now, they failed to provide any responses.

4. Brief Legal Costs Analysis (Solicitor's expenses are inaccurate, overinflated, and unapproved).

A few comments about the validity of costs.

Without discussing each expense in detail, the schedule of legal costs of the respondent fails in many areas:

4.1. The first charges are listed for 2nd of July 2012, which is ONE week before the EC supposedly approved the Solicitor's engagement at an undocumented meeting on 9th of July 2012, or two weeks before the Standard Cost Agreement was issued by the Solicitor on 16th of July 2012.

Hence, these two charges in amount of $176.00 are worthless and invalid as far as owners corporation is concerned.

4.2. The attendance at the Directions Hearing on 8th of August 2012 was overcharged and based on invalid and unethical calculation. Based on Mr. Adrian Mueller's statement, Mr. James Moir attended the Directions Hearing for 60 minutes, for which the owners corporation was charged $400.00. That is an absolutely inflated figure because Mr. James Moir was present on the same day in the same hearing slot for another case. CTTT can easily confirm that Mr. James Moir had another case in the same room before attending to our directions hearing.

And indeed, our case was second for him on that day. In total, due to delays with another case, SCS 12/32675 took only about 10-12 minutes! There was no evidence to be presented, apart from my short document that the Tribunal member read and then reached a decision to make orders.

Therefore, the charges for 60 minutes at the Directions Hearing on 8th of August 2012 are based on a negligent calculation of the time spent by Mr. James Moir.

4.3. The charges of $660.00 for perusing my notice of appeal and supporting documents on 4th of September 2012 are also questionable because it is impossible to go through several hundred pages in just 90 minutes. In addition, the result of such "research" was no evidence produced to the CTTT as per compliance orders and reminders issued three times.

These expenses are made up through an arbitrary figure and have no justification.

4.4. The charges of $1,980.00 for perusing my evidence and submissions on 28th of September 2012 are also questionable because it is impossible for an ordinary person like him to go through around 500 pages in just 4 ½ hours.

Some statistics, for example from **http://www.execuread.com/facts/**:

> The average reading speed is 200 250 words a minute in non-technical material roughly 2 minutes per page. If you doubt this, test your reading speed – there is a reading speed test elsewhere in this site.
>
> In technical material, the average reading rate is approx 50 75 words a minute roughly 5 6 minutes per page.

Or, the other reference, which mentions one page per minute -

http://www.guardian.co.uk/books/booksblog/2009/dec/14/you-can-t-speed-read-literature.

So, if we assume that my documentation was "seemingly" difficult for the Solicitor to read and understand (and he confirmed it in many statements), and use the simplest-case scenario of, say, two minutes per page, it would take the reader around 16.6 hours to cover them.

The Applicant, therefore, submits that the Solicitor's quote for this expense is false, irrelevant, and not earned.

In addition, the result of such Solicitor's "research" was no evidence produced to the CTTT as per compliance orders and reminders issued three times.

The description of the expense also uses an arbitrary phrase "say 1st 500 pages" like it is a bargaining figure that was negotiated at a flea market.

4.5. The charges of $880.00 for perusing my evidence and submissions on 29th of September 2012 are also questionable because it is impossible to go through around 500 pages in just 2 hours. This time the Solicitor was twice as fast as on the previous day. Impressive physical and mental capabilities offered by the Solicitor.

In addition, the result of such "research" was no evidence produced to the CTTT by the Solicitor as per compliance orders and reminders issued three times.

The description of the expense also uses an arbitrary phrase "say 2nd 500 pages" like it is a bargaining figure that was negotiated at a flea market.

4.6. On 10th of October 2012 the Solicitor charged $132.00 for perusing emails from the Applicant concerning failure to include motions on agenda for upcoming AGM.

This is an excellent example of the lack of Solicitor's duty of care:

- ✓ The Solicitor was aware that the Applicant had evidence about wrongful rejection of two motions in the agenda for AGM 2012 and instructed the Strata Manager not to take any action;
- ✓ The Solicitor failed to disclose this information as proof of wrongdoings at the Hearing on 17th of October 2012. In essence, he denied evidence to be presented to the CTTT;
- ✓ The Solicitor showed that he did not work for the owners corporation but AGAINST it because one of the critical motions that was excluded from the agenda was related to better mediation processes within the complex;

This expense was self-serving and not justified.

4.7. Any expense after the final submission by the Solicitor in file SCS 12/32675 on 26th of October 2012 is invalid, unapproved by the owners corporation and unauthorized. As documented, these costs and the Solicitor's engagement were not on the agenda for AGM 2012, and not discussed or reported at any other EC meeting afterwards.

4.8. The expenses "predicted" for perusing my submissions on 21st of February 2013 (in amount of $440.00) and attending the rehearing in March 2013 (in amount of $1,320.00) are baseless because the Solicitor's engagement was/is not approved at the general meeting and the prediction about future costs are dubious and grossly inaccurate.

21st of February passed by and the Solicitor certainly did not work on reading any Applicant's submissions.

The Rehearing will certainly not happen in March 2013 too. And its length of time is not dictated by the Solicitor's personal wishes.

4.9. The expense in amount of $2,420.00 to appear at the Hearing on 17th of October 2012 includes the travel. That is 5 ½ hours.

Firstly, the Hearing itself was around 3 ½ hours long (including forced breaks due to Tribunal's requests).

Secondly, the travel calculations were not listed in the cost schedule for the Directions Hearing on 8th of August 2012.

There is an obvious discrepancy in the method used to calculate the expenses for the two hearings. The cost schedule must be based on precise and documented calculations.

Thirdly, the claim for travel time is difficult to justify and prove. The Solicitor did not offer any evidence to back up the claim or provide calculation for travel time.

In another cost schedule (advanced expense in March 2013 that did not eventuate yet!) the Solicitor claims travel time of one hour. By using the same principle, the Solicitor seemingly calculated 4 ½ hours for the Hearing on 17th of October 2012, and one hour for travel on that day. His quote is impossible because we did not have 4 ½ hour hearing on 17th of October 2012. The Solicitor's claim is refuted.

4.10. The expenses for perusing the Applicant's emails typically quote times of 6, 12, or 18 minutes (at the cost of $44.00, $88.00, and $132.00 respectively). Most of my emails were one to maximum four pages. It means the Solicitor needed, for example, 18 minutes to read four pages.

These costs sharply contradict the Solicitor's claim to read around 500 pages in several hours.

These expenses are not calculated properly.

4.11. The Solicitor claims expenses of $1,320.00 for the preparation for the Hearing on 16th and 17th of October 2012. In total, he claims he spent three hours preparing the response and oral submission at the Hearing.

Based on the fact that he did not give much evidence at the Hearing, and repeatedly quoted the same statements that were well known from his past submissions, the Applicant questions his calculation and rejects them as unfair, unjustified, and overinflated.

4.12. The Solicitor's invoice on 15th of November 2012 also shows the parking fee of $42.65.That is another cost that is unfair and unreasonable, and not listed in the Standard Cost Agreement. It is assumed that these fees are for Solicitor's car parking in the city. By the same token, in the other invoice dated 10th of August 2012, the cost of travel was $7.64.

The Applicant challenges these costs as non-consistent. Also there are good alternatives for travel to the city:

- ✓ The Solicitor is advised to use public transport (cheap and saves the planet); or
- ✓ Park at a free location such as the Broadway Shopping Centre and walk to the city.

Conclusion

- **Because the Standard Cost Agreement was never provided to owners, the expenses never approved at any general meeting, the owners never notified about the current CTTT and DFT cases, the Solicitor still withholding significant information from the owners and the CTTT, and the fact that the Applicant attempted everything possible to avoid the litigation (including the requests to issue summons), the Applicant declares that the expenses are overinflated, unapproved, and invalid, and reject their validity in their entirety.**
- **The Strata Manager and the Executive Committee incurred these expenses through bringing about the litigation and the calculated approach to occasion unnecessary litigation and expense as a deterrent to the Applicant.**
- **There are no "exceptional circumstances" as referred to in Section 192 in the Act to warrant the award of costs.**

- **It is not unjust or unreasonable to reject the Respondent’s request to award costs because the costs were incurred by the Respondent on purpose.**

- **The persistent refusal by the Respondent to provide access to documents as requested by the Applicant ensured that he was denied procedural fairness and natural justice throughout the CTTT case.**

- **The Solicitor failed to perform their services with due care and as per their contractual agreement:**

    - **The common law, equity and statutory law impose a number of obligations on lawyers when they carry out legal work.**
    - **The law of tort and the law of contract impose on a lawyer an obligation to exercise reasonable care.**

    - **The law of equity imposes fiduciary obligations.**

- **The Solicitor engaged in misconduct, provided questionable advice, overcharged the owners corporation, through inaccurate, inconsistent, overinflated, and unapproved expenses, which even include estimates of future costs.**

- **The Respondent was given ample opportunities to provide evidence. That evidence was not forthcoming and this statement still applies. This stands unrefuted.**

- **The Applicant does not believe that ordinary owners have to engage legal teams and spend money chasing issues in strata complexes. The strata schemes are supposed to be community-based organizations. Sadly, democracy does not work when the money and power is involved. Many fail the basic tests of ethics and decency, and even break law in such circumstances.**

- **The Applicant was submitting his documents not to ask for favors, but to get what the CTTT's web site claims:**

    At the CTTT you will be encouraged to conduct your own case without representation. Although this may seem daunting, you can expect to have your matter heard and determined fairly and according to law.

Section 181 of the SSMA stipulates the Tribunal may admit new evidence at the Hearing of the appeal: the Applicant reserves the right to provide that evidence when, and if, it becomes available to him.

Thank you for the opportunity to discuss these issues at the pending Hearing.

Respectfully,
The Applicant   Lot 158