

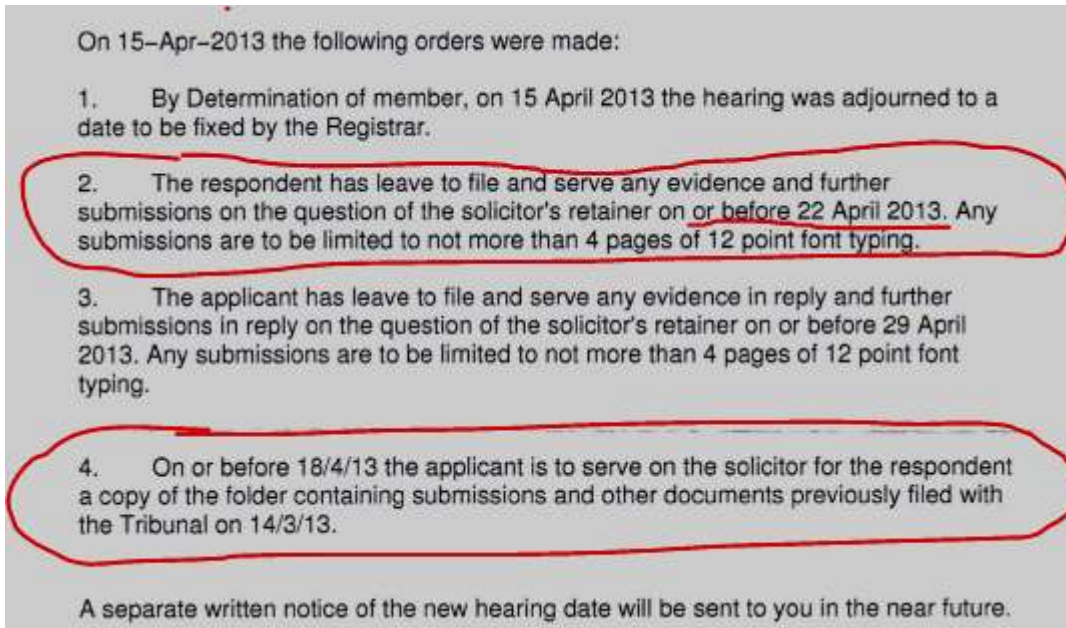
Executive Summary

- Raine and Horne Strata Sydney (BCS Strata Management acquired it in 2010) has been providing strata management services to Strata Plan 52948 since 26th of May 1999.
- Five attempts to bring BCS Strata Management to mediation and discussions at Department of Fair Trading were refused by the Strata Manager and the Executive Committee.
- Three cases were dismissed by CTTT on grounds of “too much evidence” provided by the owner, in spite of BCS Strata Management giving no proof of their actions and even preventing the owner from access to documents, in non-compliance with SSMA 1996 S108.
- In final attempt, the owner initiated a CTTT case on 30th of May 2012, highlighting problems with maintenance of the complex, lack of compliance with special by-laws, financial mismanagement, false statements by the Respondent in their prior submissions without any evidence, and Strata Manager’s professional misconduct.
- CTTT almost closed the appeal due to owner’s “application not lodged on time”, but the owner proved that the issue was entirely on CTTT’s side. CTTT tried to put the blame on courier company delivering mail to them.
- Solicitor Mr. Adrian Mueller, illegally representing BCS Strata Management and EC, failed to comply with CTTT’s orders three times before the Hearing. CTTT took no action.
- In reopened Hearing, (appeal by the Solicitor for indemnity costs) CTTT again failed to force the Solicitor Mr. Adrian Mueller to comply with their own directive to provide documents to the owner by 28th of January 2013. In the end, the owner was forced to pay for their own document viewing at CTTT.
- CTTT refused to issue summonses to access to documents on behalf of the owner to three EC members and Strata Manager two times, without providing any explanations.
- EC voted at paper meeting on 28th of March 2013 NOT to have a representative at the Hearing on 15th of April 2013. When an owner questioned the legal right for Solicitor Mr. Adrian Mueller to be at the beginning of the Hearing, and produced minutes of the EC meeting, Tribunal member Mr. Mak Harrowell refused to accept it, and at his discretion, decided that Strata Manager Mr. Peter Bone made an accidental error!
- For more than three months CTTT, under direct guidance by Mr. Harrowell, failed to verify illegal engagement of Solicitor Mr. Adrian Mueller, and refused to ask for documents confirming it from BCS Strata Management. When the owner successfully destroyed the defence of Solicitor Mr. Adrian Mueller about so-called EC meeting on 9th of July 2012 which allegedly approved his engagement, CTTT decided to allow him to organise Statutory Declaration through Strata Manager Mr. Peter Bone.
- Therefore, CTTT forced two adjournments of the Hearing allowing Solicitor and the Strata Manager to create forged evidence and even submit false statements in Statutory Declaration.

In effect, CTTT accepted the false Statutory Declaration by Strata Manager Mr. Peter Bone, and allowed BCS Strata Management to prepare it through three delays of the Re-Hearing.

- CTTT ignored undisputable evidence about Solicitor’s false statements throughout the Hearings.
- CTTT was aware of fraudulent insurance claims for non-existent legal case and decided to ignore it.

- CTTT forced the owner to make two copies of the additional evidence at the Hearing on 15th of April 2013, in attempt to drain financial resources of the owner and force them to give up. At the same time, they refused to enforce the same rules to the Solicitor Mr. Adrian Mueller four times when counting the beginning of the original case:



- CTTT accepted time-warped paper EC meeting as valid (happened seven days ahead of scheduled time and without giving advance notice to owners as per SSMA 1996).
- CTTT was aware that Solicitor Mr. Adrian Mueller and BCS Strata Management prevented access to building report by Napier & Blakeley at the original Hearing in October 2012, thus not allowing CTTT to see the real status of the complex mismanagement, thus preventing Adjudicator in their duties as per SSMA 1996:
- After long battle, the owner lost the unwinnable battle not only against BCS Strata Management and the Executive Committee of Strata Plan 52948, but also against CTTT's determination not to allow them to conduct the case with equal rights and privileges.

Not only Mr Harrowell ignored all evidence, and conducted biased and unprofessional hearings, but also changed the original appeal as he saw fit. As per final comments in the Decision on 6th of November 2013:

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

- Even Solicitor Mr. Adrian Mueller was surprised by the “win” as shown in undisclosed letter to BCS Strata Management and EC on 8th of November 2013:

I congratulate the owners corporation on the successful outcome. The Tribunal is generally a “no costs” forum, meaning it does not normally order an unsuccessful party to pay the successful party’s costs. It is even more rare for the Tribunal to fix a lump sum amount of costs that are payable to the unsuccessful party. The making of a lump sum costs order means that the owners corporation avoids the additional expense, delay and aggravation associated with a costs assessment process which would involve an independent solicitor or barrister reviewing the legal costs incurred by the owners

It is even more interesting that the same Mr. Harrowell stayed the order for indemnity costs in Owners SP 69050 v Glenzeil Pty Ltd (Home Building) [2013] NSWCTTT 474 (20 September 2013). In that case, he avoided making a decision himself and left it to other courts to deal with it.

Total earnings by the Solicitor (undislosed in any accounting reports to owners corporation):

Creditor Name	Doc. Ref. No.	Doc. Date	Doc. Total	Chq. Date	Date Presented
J S MUELLER & CO SOLICITORS	69179	28/10/2014	\$742.50	30/10/2014	30/10/2014
J S MUELLER & CO SOLICITORS	67976	29/07/2014	\$484.00	31/07/2014	31/07/2014
J S MUELLER & CO SOLICITORS	65777	6/03/2014	\$242.00	25/03/2014	25/03/2014
J S MUELLER & CO SOLICITORS	65461	14/02/2014	\$20,624.75	05/03/2014	05/03/2014
J S MUELLER & CO SOLICITORS	65483	18/02/2014	\$6,980.28	04/03/2014	04/03/2014
J S MUELLER & CO SOLICITORS	64289	8/11/2013	\$484.00	19/11/2013	19/11/2013
J S MUELLER & CO SOLICITORS	61904	24/06/2013	\$1,452.00	04/07/2013	04/07/2013
J S MUELLER & CO SOLICITORS	61223	10/05/2013	\$11,568.72	20/05/2013	20/05/2013
J S MUELLER & CO SOLICITORS	60252	6/03/2013	\$1,452.00	22/03/2013	22/03/2013
J S MUELLER & CO SOLICITORS	58762	15/11/2012	\$13,986.12	27/11/2012	27/11/2012
J S MUELLER & CO SOLICITORS	57380	10/08/2012	\$1,504.40	22/08/2012	22/08/2012
J S MUELLER & CO SOLICITORS	56130	28/05/2012	\$198.00	31/05/2012	31/05/2012
J S MUELLER & CO SOLICITORS	55003	13/03/2012	\$2,500.00	27/03/2012	27/03/2012
		Total	\$62,218.77		

- After the decision by CTTT was made, an owner tried to lodge a complaint for biased Hearings. **CTTT never responded:**

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

Failure to exercise discretion to enforce procedural fairness for owner’s access to evidence and documents through issue of summonses on 27th of February 2013: is that an error in respect to matter of law?

Failure to give reasons for rejecting owner’s application for the issue of summonses on 5th of March 2013: is that an error in respect to matter of law?

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

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

Tribunal decided a question of fact when there was no evidence provided by Raine and Horne Strata Sydney and EC in support of the finding on maintenance and repairs of the strata complex: is that an error in respect to matter of law?

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

Failure to exercise discretion to enforce procedural fairness for owner's access to evidence through issue of summonses on 26th of April 2013: is that an error in respect to matter of law?

Failure to give reasons for rejecting owner's application for the issue of summonses for the second time on 29th of April 2013: is that an error in respect to matter of law?

Tribunal's reasoning declaring owner's application to issue summonses oppressive could be regarded as speculative without evidence: is that an error in respect to matter of law?

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

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

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

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

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

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

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

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

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

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

Brief Facts

- The owner raised an appeal for dismissed case on 30th of May 2012, also asking for document viewing. CTTT did not reply until the owner took other actions. CTTT pretended to have lost the documents and only determination of the owner proved that CTTT failed to act responsibly. Here is the note written by owner to CTTT on 23rd of August 2012, summarising CTTT's issues with handling the documents.

Due to very sensitive nature of my registered letter and a complex case which involves serious fraud in a strata complex, I investigated the missing registered letter further.

I would like to share my findings and events with you:

1. On 29th of May I phoned the CTTT office to inquire about the extension of my appeal in File SCS 12/05845 and the document viewing of the submissions by the respondents.

I was told that it would be sufficient to send a letter to CTTT, which I did, in registered mail on 30th of May 2012 at 09:01 hours EST, as confirmed by the Australia Post and receipts I still hold as proofs:

*Registered Letter Sent: 30 May 2012 09:01
Payment: \$3.70*

Registered Letter Delivered the next morning:

*Event Code: DD-ER13
Actual Date/Time: 31.05.2012 07:07:41 AUSNSW
Creation Date/Time: 31.05.2012 07:13:30 AUSNSW
Work Centre: GPO BOX CENTRE SYDNEY
Article Count: 1
Event Source: Blackbay
Device User: NGUYEA
Device ID: 0050BF7A60E21A869A01944A73C16800
Data Entry: Scanned
Article ID: 506664697018*

2. To ensure that my request did not go astray, I also sent a facsimile to CTTT phone number 1300 135 247 on 1st of June 2012.

3. No replies of any kind were received from CTTT until my phone call on 12th of June 2012, which was rather disappointing because two weeks passed by without any action (and that almost affected my 21-day deadline for lodging an appeal).

I spoke to Ms. Maria in the CTTT office at 13:26 hour EST. I asked about what happened with my request to view files and delay of an appeal (I sent registered letter on 30th of May 2012 and a facsimile on 1st of June 2012). According to her, registered letter was missing but she found the facsimile.

She promised that somebody would call me the next day (13th of June 2012).

Ms. Maria also stated that I still had to lodge an appeal firstly and then ask for an extension of time to gather documentation and prepare the case!

4. The CTTT phone call happened two days later on 14th of June 2012 at 12:19 hours EST. Ms. Shraddha (spelling?) called me. We agreed on document viewing document at 10:30 hours EST on 15th of June 2012.

5. The document viewing was completed on 15th of June 2012 in perfect order. When asked about the missing registered letter, Ms. Shraddha kindly stated that an internal investigation would be conducted within CTTT and I would get a reply as soon as possible.

6. Ms. Danielle from CTTT left a voice message on my phone on 29th of June 2012 at 12:24 hours EST.

Due to my business obligations (I actually traveled during May, June and July this year extensively), I managed to call back and speak to Ms. Susan, then another lady (I did not catch her name), and finally Ms. Danielle at 12:25 hours EST on the same day.

Ms. Danielle confirmed that my Tribunal appeal was received; She also confirmed that 21-day to lodge an appeal was compulsory but documents could be submitted later. Ms. Danielle also apologized for not responding to me sooner.

7. Ms. Susan from CTTT left a voice message on my phone on 1st of July 2012 at 15:53 hours EST. She inquired if I needed document viewing.

8. I managed to talk to Ms. Susan on 4th of July 2012 at 12:06 hours EST. We decided that there was no need for another document viewing because there was no new evidence.

9. At the Directions Hearing held on 8th of August 2012 (which was not attended by any member of the EC or the three Managing Agents involved), I again asked about the missing registered letter.

The Mediator was not aware of this problem and could not offer any advice.

10. Finally, I sent another email to CTTT on 20th of August 2012, to which you replied kindly and quickly.

Here is the trace of the registered letter, based on my talks with the Australia Post and the subcontractor:

a) Australia Post delivered my registered letter to Snap Couriers on 31st of May 2012 at 07:07 hours EST.

b) The person who took the letter works for Snap Couriers and his name was Mr. D. Thornburn. So, we now know that he is not a member of your staff but Snap Couriers.

c) D. Thornburn delivered the letter at around 07:30 on Level 5 in the CTTT offices. That is the way Snap Couriers do it for CTTT every day. Apparently, registered letters delivered to CTTT at that time of the morning are never signed by any staff (probably nobody but a security guard would be there anyway).

d) I spoke to Snap Couriers today (23rd of August 2012) two times:

*at 12:03 hours EST
at 15:32 hours EST*

Mr. Paul was very certain that his courier Mr. D. Thornburn delivered the letter in the same manner as all other CTTT mail is delivered every day.

Mr. Paul also advised me that all floors that belong to CTTT are actually "open" (to at least couriers) at around 07:30 hours every day!

The other floors and businesses in the same building are locked down until 08:00 hours.

So, at this stage, it seems that my letter was delivered to CTTT in the same manner as all other letters. Mr. Paul stated that this procedure is followed precisely every day in the morning.

I spent lot of time investigating this issue because it is crucial that a government agency like yours has proper security policies.

The way I see it, Snap Couriers and CTTT must ensure that all registered letters are signed by a human at all times.

I do not know if Snap Couriers work for Australia Post or CTTT. If they are subcontractors of Australia Post, then they must adopt the signature process for all registered letters and parcels.

The simple alternative for CTTT is to make sure that these letters can only be delivered through special chutes (same like in public libraries or DVD rental shops) in after-hours situations...

In short, the Snap Couriers guarantee that the registered letters delivered to CTTT in accordance to every-day practice.

I deal with lot of security-related issues in my line of work and know how serious breaches of the processes can be. Sometimes, lives are lost!

I hope you will take my email seriously.

On Mon, 2012-08-20 at 08:34 +1000, SP52948 owner wrote:

- > Through this email I simply want to confirm that all obligations*
- > in regards to pending Hearing have been*
- > fulfilled on time and in accordance with the Mediator's orders.*
- >*
- > The reason why I am doing this again is due to the fact that*
- > your officer could not confirm that you had received my facsimile I*
- > sent on Sunday, 12th of August 2012.*
- >*
- > a) I sent a facsimile to CTTT on Sunday, 12th of August 2012*
- > (due to my business trip for a week).*
- >*
- > In accordance with the Directions Hearing Order No.3, I enclosed a*
- > document no longer than 3 pages in length setting out in succinct and*
- > summary terms the reasons for the appeal and the orders sought, by 15*
- > August 2012.*
- >*
- > b) On Monday, 13th of August 2012, my wife and son delivered the*
- > documentation for the Hearing in person to your office in the City.*
- >*
- > c) On Tuesday, 14th of August 2012, my wife delivered*
- > documentation to the Strata Manager (through Caretaker, as*
- > agreed with them).*
- >*
- > d) Regarding the missing registered letter that I sent to CTTT as*
- > stated by me before, it was delivered by a courier on 31st of May 2012*
- > at 07:07am and signed by Mr.D.Thornburn.*
- >*
- > I was promised that CTTT would conduct an investigation and let me know*
- > what really happened. It has been more than two months now that I have*
- > no updates on the matter.*
- >*
- > e) In my facsimile sent on 12th of August 2012, which I am repeating*
- > herewith, I stated:*
- >*
- > As long as enough ADVANCE NOTICE (at least three weeks) is given to me, I*
- > will ensure to attend the Hearing on any date.*
- >*
- > I will arrange my work schedules in such manner that it is not necessary*
- > for me to provide the dates when I will be unavailable over the next*
- > three months, from 17th of September 2012.*

- On 9th of July 2012, the Executive Committee had a meeting, which approved the engagement of the Solicitor Mr. Adrian Mueller. The meeting had the following characteristics:
 - a) Owners did not receive agenda for the meeting at least 72 hours earlier.
 - b) One out of nine members of the Executive Committee did not receive notice for the meeting (resolution 1 in the minutes, provided to the Tribunal nine months after the meeting, in Strata Manager Mr. Peter Bone's Statutory Declaration, page 15, dated 19th of April 2013).
 - c) Owners and the members of the Executive Committee did not receive Standard Costs Agreement and Standard Costs Disclosure from the Solicitor before the meeting.

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

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

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

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

- Directions Hearing was conducted on 8th of August 2012, followed by Hearing on 17th of October 2012. By the orders made on the day of the Directions Hearing, owners was to file their submissions by 15th of August 2012 (which was complied with), and the Respondent was to file their submissions by 12th of September 2012 (not complied with).

1. On 08 August 2012 the hearing was adjourned to a date to be fixed by the Registrar.

2. The applicant shall provide to the respondent and the Tribunal, a copy of all documents on which the applicant intends to rely at the hearing by 15 August 2012.

3. The applicant shall provide to the respondent and the Tribunal, a document no longer than 3 pages in length setting out in succinct and summary terms the reasons for the appeal and the orders sought, by 15 August 2012

4. The respondent shall provide to the applicant and the Tribunal, a copy of all documents on which the respondent intends to rely at the hearing by 12 September 2012.

5. Both parties are to advise each other and the Tribunal of their UNavailable dates for a period of 3 months from 17 September 2012.

A separate written notice of the new hearing date will be sent to you in the near future.

G Meadows
Tribunal Member

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

5th of September 2012

13th of September 2013

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


- Directions Hearing on 8th of August 2012 in paragraph 4 imposed an obligation on the Respondent to provide the Tribunal and the owner with a copy of all documents on which they intended to rely at the Hearing by 12th of September 2012. Solicitor Mr. Adrian Mueller did not comply with the Tribunal's orders.

- Upon owner's complaint about not receiving documents from the Respondent on 10th of September 2012, the Tribunal issued notice of non-compliance with procedural directions on 17th of September 2012. Solicitor Mr. Adrian Mueller did not comply with the Tribunal's notice.

Correspondence has been received from the Applicant on 10/9/12 concerning the matter and the non-compliance with procedural directions made on 8/8/12. It is in the interest of all parties to comply with procedural directions. A party to proceedings must endeavour to comply with procedural directions despite the non-compliance of the other party.

Failure to comply may result in an adjournment of the matter and/or any submissions received after the compliance date not being admitted into evidence.

The correspondence has been placed on file and a copy sent to all parties. Any outstanding issues should be raised at the next hearing.



E Dziwniel
Team Leader
17/09/12

- On 19th of September 2012 Solicitor Mr. Adrian Mueller submitted a request for extension of time by 2.5 weeks to provide the documents to the Tribunal and the Respondent (to 28th of September 2012).

On 8 August 2012 the Tribunal ordered the respondent to lodge a copy of all documents on which it relies by 12 September 2012. The respondent has not met that deadline and we are writing to ask that it be extended by 2.5 weeks to 28 September 2012.

There are two reasons why we ask for the deadline to be extended.

First, the applicant has submitted a voluminous amount of material on which he intends to rely which comprises over 1,000 pages of documents, some of which are double sided and typed in a small, closely spaced font. It has taken the respondent longer than anticipated to read and comprehend that material due to its sheer size.

Second, on 5 September 2012 the respondent applied to the Tribunal to have the matter relisted to hear an application to summarily dismiss the appeal. The respondent did not receive a response to that request from the Tribunal until 14 September 2012. Up until that time the respondent refrained from preparing its evidence because to do so would have defeated the purpose of its summary dismissal application. Further on 13 September 2012 we wrote to the Deputy Chairperson (Determinations) to press the respondent's claim for a summary dismissal hearing and we are still awaiting a reply.

We do not believe the applicant will be significantly prejudiced if the extension of time is granted. If the matter needs to be relisted to enable us to apply for the extension of time on behalf of the respondent, then we ask that the matter be relisted as soon as possible for that purpose.


Yours faithfully
J.S. MUELLER & CO

- His request was granted in Tribunal's notice issued on 26th of September 2012. Solicitor Mr. Adrian Mueller did not comply with his own request for extension of time and the Tribunal's notice.

The request by Owners Corporation SP – 52948 to extend time to comply with procedural directions made on 08/08/12 has been considered.

On 24/09/12 the following procedural directions were made:

1. Timetable made by the Tribunal on 08/08/12 is amended.
2. Time for compliance with direction 4 is extended to 28/09/12.




N Mahmoud
for the Registrar
26/09/12

- Upon owner's second complaint about not receiving documents from the Respondent on 29th of September 2012, the Tribunal issued second notice of non-compliance with procedural directions on 9th of October 2012. Solicitor Mr. Adrian Mueller did not comply with the Tribunal's notice.

Correspondence has been received from the Applicant on 2/10/12 concerning the non-compliance with procedural directions. It is in the interest of all parties to comply with procedural directions. A party to proceedings must endeavour to comply with procedural directions despite the non-compliance of the other party.

Failure to comply may result in an adjournment of the matter and/or any submissions received after the compliance date not being admitted into evidence.

The correspondence has been placed on file and a copy sent to all parties. Any outstanding issues as to non-compliance with procedural directions should be raised at the next hearing.



E Dziwniel
Team Leader
09/10/12

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

At the Hearing, the Solicitor brought no evidence and relied on empty talks and even engaged in providing false statements, which, by pure coincidence were proven to CTTT the same evening at the Annual General meeting in the complex.

The owner sent facsimile to CTTT two days later with the following contents:

Dear Mr Harrowell,

Thank you for the efforts to help in this complex case so far.

I acknowledge the lack of legal skills and the learning curve is more complex than I thought. Nevertheless, I have enough evidence to argue the validity of my orders and claims.

As agreed at the Hearing on 17th of October, I will submit my final response to the Solicitor's statements by Wednesday next week.

I sent a similar facsimile earlier today but I believe use of word "invalid statement" should be replaced with "false statement".

I wish to make the following amended submission to the CTTT:

Before the Hearing, Your Honor clearly warned about importance of presenting the FACTS and legal obligations in that regard.

At the Hearing on 17th of October 2012, the Solicitor Mr. Mueller, on behalf of Respondents, wrongly stated that owners of Lot 3 were absent and not able to attend the Hearing in regards to Order 4 as listed in my request (I believe he made a claim of them being overseas on holidays - the audio recording can confirm it). As a reminder, my Order 4 was:

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.

I would be satisfied to revoke order to invalidate Special By-Law 4 if the owners of Lot 3 indemnify, and keep indemnified, the Owners Corporation in respect of all claims, action, costs, and expenses whether for injury to persons, or damage to property, arising in any way out of carrying out the works and future maintenance and the owner shall at all times keep in effect a public risk insurance policy in the sum of not less than \$5,000,000 to cover the owners obligations hereunder (as per registered By-Law, or enforced pursuant section 147 of the Act).

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

By pure coincidence, the Annual General Meeting (AGM) of SP52948 was held on the same day as our Hearing (just three hours later). To my surprise, one of the owners of Lot 3 (for whom the Special By-Law 4 applies) was PRESENT at the meeting and he claimed two things:

- That nobody told him about the Hearing;*
- That his wife provided insurance details to the managing agent.*

There are more than 40 witnesses to confirm it, including the managing agent himself and all nine members of the executive committee.

Based on that statement, I sent an email to the Solicitor Mr. Mueller (on 18th of October) and the Managing Agent (on 17th of October) to provide me with the insurance details by this morning (Friday, 19th of October). I would have been happy with any reply but got nothing at all. I very clearly stated that I need a response by today so that I can either leave it as is, or contact the CTTT.

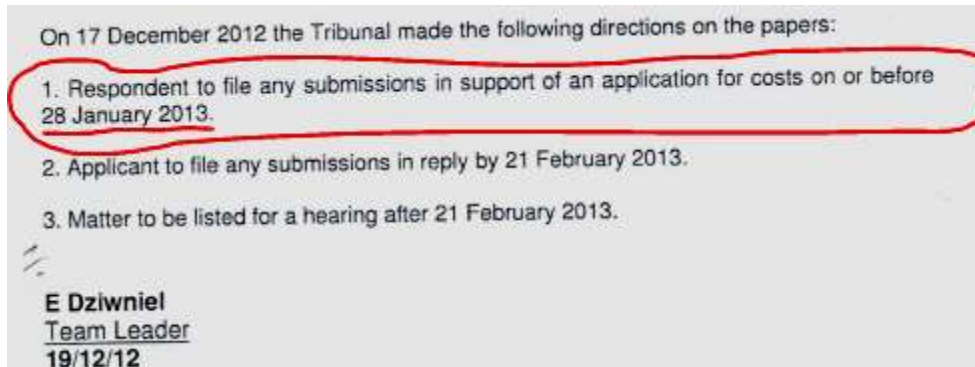
I would like that CTTT acknowledges and investigate implications of the fact that the Order 4 at the Hearing was cancelled due to FALSE statement by the Solicitor on behalf of the Respondents (CTTT Act Section 71). I will leave it to the CTTT to make an assessment of the consequences of such serious error and I will verify my options too (I know I can submit details to the Chairperson of the CTTT (reference case: R vs Samuel Faraj Cohen, 2011)).

CTTT did not reply or even acknowledge this report about false statements by the Solicitor.

- Without being able to obtain access to evidence, and Solicitor failing to comply with the Tribunal's orders three times, the Tribunal dismissed owner's case on 5th of December 2012.
- On 10th of December 2012, Solicitor Mr. Adrian Mueller commenced proceedings to reopen CTTT case. The decision to reopen the file was not made at any Executive Committee meeting, and the Respondent did not provide evidence to prove it at the Tribunal. In his statement in the submission dated 29th of January 2013, justifying the appeal in relation to Section 192 of the Strata Act (case frivolous, vexatious, misconceived or lacking in substance). Mr. Mueller stated in paragraph 15:

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

- The Respondent, through Solicitor Mr. Adrian Mueller, did not disclose evidence to the Tribunal about secret insurance for legal expenses already claimed before or during the proceedings.
- CTTT made the following orders for rehearing for costs:



- Yet again, for the FOURTH TIME, Solicitor Mr. Adrian Mueller, failed to provide documents by the due date of 28th of January 2013. Three attempts by an owner to ask CTTT to enforce its own directions upon the Respondent failed. In the end, CTTT advised the owner that if they wanted the files, they had to come to CTTT office and pay for them, which owner did on 25th of February 2013:



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

I note that many strata insurance policies contain cover for legal defence expenses up to \$50,000. You should therefore consult with your insurer about whether or not my legal costs would be covered by the insurer if the owners corporation decides to retain me in the appeal.

- Only through repeated efforts to enforce Section 108 of the Strata Act, owner obtained rights to belated document viewing in the strata office on 16th of September 2013 (one year after the Hearing). Owner was able to establish the matter of fact that the Respondent had received full payments for the legal costs through the Strata Plan 52948 insurance policy with CHU Underwriting Agencies Pty Ltd before CTTT case was reopened for costs recovery on 10th of December 2012.

The indemnity insurance Policy 9 for the Strata Plan 52948 was extended on 1st of August 2012, one week before the Directions Hearing, and not recorded as decision of the Executive Committee or owners corporation at any subsequent meetings. Involved in this fraud were Raine and Horne Strata Sydney, CHU Underwriting Agencies Pty Ltd (the Strata Plan 52948's insurer in 2012), and Gallagher Australia (strata plan's insurance broker in 2012).

Mr. Ron Sinclair, of Raine and Horne Strata Sydney, initiated the extension of the indemnity for Strata Plan 52948 under Policy 9, which was confirmed by Mr. Brian Turpin of CHU Underwriting Agencies Pty Ltd under Reference Number NH201212589 on 1st of August 2013 in email trail sent at 3:33 PM.

Mr. Brian Turpin of CHU Underwriting Agencies Pty Ltd stated that this insurance policy change was a large risk and refrained to refer this matter to their company's lawyers at 4:22 PM on the same day.

Four weeks later, an insurance claim number NH201212589 for "CTTT defence for Lot 3" was submitted by Mr. Ron Sinclair of Raine and Horne Strata Sydney on 28th of August 2012.

Strata Manager Mr. Peter Bone confirmed the first insurance payment in claim number NH201212589 for "CTTT Defence for Lot 3" in his email to Branch Manager Mr. Paul Banoob and the Executive Committee on 4th of September 2012.

Total amount paid for legal cost claims incurred by Solicitor Mr. Adrian Mueller was \$24,919.31 until June 2013.

The first claim number NH201212589-1 was paid by CHU Underwriting Agencies Pty Ltd in amount of \$367.64 on 31st of August 2012. Excess of \$1,000.00 was applied to the claim for Solicitor Mr. Adrian Mueller's first invoice dated 10th of August 2012 for attendance at the Direction Hearing on 8th of August 2012.

The second claim number NH201212589-2 was paid by CHU Underwriting Agencies Pty Ltd in amount of \$12,714.65 on 7th of December 2012 – three days before Solicitor Mr. Adrian Mueller applied for reopening CTTT case for costs that the Respondent had already recovered from the insurance company.

Two more insurance payments for legal costs were claimed from CHU Underwriting Agencies Pty Ltd during 2013, without Standard Costs Agreement and Standard Costs Disclosure being provided to the Respondent and owners.

In email from Strata Manager Mr. Peter Bone to two members of the Executive Committee on 17th of June 2013 (eight months after the CTT case) he confirmed the strata scheme's insurance company accepting the legal defence claims, as the insurance policy was allegedly not dependant on a successful court / CTTT action.

- Upon receiving CTTT orders on 6th of November 2013, the owner submitted their summary about these insurance claims and procedural unfairness that affected the Tribunal's decision and expressed intention to proceed with an appeal at District Court on grounds of error of law.

The Tribunal did not even reply.

- While waiting for Re-Hearing on costs, the owner sent the following request to Raine and Horne Strata Sydney in compliance with the Strata Act Section 108 on 3rd of February 2013:

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

The request to access the correspondence was refused by the Strata Manager Mr. Peter Bone on 4th of February 2013.

- Due to lack of any submission from the Respondent, in spite of three complaints about Respondent's non-compliance with the Tribunal's directions made on 17th of December 2012, the owner was forced to submit an interim response. Copy of their emails to CTTT, Solicitor, and Strata Manager complaining about not receiving Respondent's files on 28th and 29th of January 2013 were given to all parties.

Yet, CTTT took no notice to owner's complaints.

- Based on Solicitor's invoice issued on 6th of March 2013 (provided to CTTT in folder in Sleeve 12 on 23rd of April 2012 - as confirmed in Tribunal Member Mr. Harrowell's decision in paragraph 47 on 6th of November 2013), the Solicitor prevented the owner's access to forensic analysis of email messages between him, Executive Committee and the Strata Manager, although there was a valid case to support owner's request - Eastmark Holding Pty Ltd v Kabraji (No 3) 2012 NSWSC 1463.

- Still seeking access to crucial information, the owner submitted request for summonses to three members of the Executive Committee and the Strata Manager at CTTT on 25th of February 2013. The owner even visited CTTT and spoke to Ms. Monette and Ms. Dianne D'Mello in person on 27th of February 2013. They rejected the first version of summonses and made corrections in accordance with what the CTTT required. The owner then submitted an updated version to Strata Manager Mr. Peter Bone, and members of the Executive Committee on the same day. One of the many requests for crucial documents and evidence, as listed in their summonses:

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

- Tribunal, under direct orders by Mr. Mak Harrowell, denied the owner's application for summonses on 5th of March 2013 without any explanation. A quote from their brief letter:

On the 5/3/13 the following procedural directions are made on the papers:

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

- EC voted at paper meeting on 28th of March 2013 NOT to have a representative at the Hearing on 15th of April 2013. When an owner questioned the legal right for Solicitor Mr. Adrian Mueller to be at the beginning of the Hearing, and produced minutes of the EC meeting, Tribunal member Mr. Mak Harrowell refused to accept it, and at his discretion, decided that Strata Manager Mr. Peter Bone made an accidental error!

MINUTES OF A PAPER EXECUTIVE COMMITTEE MEETING OF STRATA SCHEME NO. 52948 HELD IN THE OFFICES OF RAINE & HORNE STRATA-SYDNEY, LEVEL 2, 51 RAWSON STREET, EPPING HELD ON 28TH MARCH 2013 at 10.00 am.

VOTING PAPERS WERE RECEIVED FROM:

E Saulits
 J Ward
 S Quick
 M Levitt
 M McDonald
 S Pogorelsky

MOTION 1 That the minutes of the last Committee Meeting be confirmed.

Carried

MOTION 2 That the Owners Corporation agree to appoint a representative/s to represent the Owners Corporation and attend Mediation at the Consumer, Trader & Tenancy Tribunal (CTTT) on 15th April 2013, in relation to an application lodged by the owner of

Defeated

- At the Re-Hearing on 15th of April 2013, in attempt to complain about lack of access to Respondent's documents, the owner said:

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

- After receiving Statutory Declaration from Strata Manager Mr. Peter Bone on 19th of April 2013, the owner detected number of discrepancies in his statements and decided to verify them through summonses due to short timeframe before the Re-Hearing scheduled for 10th of May 2013. The owner attempted to obtain access to crucial documents and information through second application for the issue of summonses for the purpose of giving evidence before the Tribunal on 26th of April 2013. Their application included five members of the Executive Committee and the Strata Manager Mr. Peter Bone. By that time, over 3,000 pages of other evidence was provided by the owner with enough proofs to convince anyone, whilst the Solicitor submitted NO EVIDENCE AT ALL.
- The second application for issue of summonses was rejected three days later, on 29th of April 2013:

On 29/4/13 the following directions were made on the papers:

The application to issue summonses requiring the attendance at the hearing of an application for costs is refused.

No relevant forensic purpose is demonstrated in the request and the issue of summons in the present circumstances is therefore oppressive.

M Harrowell
Tribunal Member
29/04/13

- At the first Hearing for costs recovery on 15th of April 2013, the owner was prevented from access to any Respondent's files.

CTTT Wins

At every possible step, CTTT (now NCAT) was determined to help BCS Strata Management. At Re-Hearing on 10th of May 2013, Mr. Harrowell even stepped outside the Tribunal room to talk to BCS Manager in private!