



## O'BRIEN CRIMINAL & CIVIL SOLICITORS

24 April 2020

Mrs. Marianna Paltikian  
Secretary of Executive Committee  
Owners Corporation of Strata Plan 92548

By email: [Marianna.Paltikian@rr.com.au](mailto:Marianna.Paltikian@rr.com.au)

*Without Prejudice Save as to Costs*

Dear Madam,

### **SP52948 Lot 158**

We act for Lot 158.

Lot 158 has provided us with material that raises serious questions as to the workings and legality of the Executive Committee (the committee) of the Owners Corporation of Strata Plan 92548.

We have been instructed by Lot 158 to commence proceedings in the NSW Civil & Administrative Tribunal (NCAT) aimed at questioning the legality of various decisions of the committee and at obtaining orders that the committee fulfill certain obligations where it has been negligent.

It would be in the best interests of all parties to resolve this situation without the need to escalate matters into the NCAT.

### **Legality of Committee**

We are instructed that there has only ever been a maximum of 11 candidates for the committee each year since its inception. Our client has been one of those candidates on several occasions, including the last three years.



We are further instructed that during the last three years at least two of those candidates have not been legally elected to the committee as they have not been financial.

As you are aware, in order for a candidate to be legally elected they must not be liable for any outstanding levies or unpaid interest on invoices. Further, in order for a candidate to legally vote on committee decisions they must not be liable for any outstanding levies or unpaid interest on invoices at time of vote.

We are instructed that over the last three years, certain persons have voted on committee decisions when they have not been in required financial position. This would have the effect of making those decisions invalid.

Further, pursuant to the combined effect of the *SSMA 2005* and Section 76(1)(b) of the *Interpretation Act 1987*, in order for the committee meetings to be lawful, all owners must receive advanced written notice of the meetings and the agenda. We are instructed that this has not occurred.

This legality of any contracts that have been entered into by the committee is also questionable if they have been signed by non-financial members.

If you disagree with the above then please provide evidence that all of the committee members were financial throughout 2017, 2018 and 2019 and that all owners received advanced written notice of meetings and the agenda of those meetings.

Please also provide evidence that the current contracts with Waratah Strata Management Pty Ltd and Uniqueco Pty Ltd have been signed by legally elected members of the committee.

### **Lot 158 a Member of The Committee**

As there have only ever been a maximum of eleven candidates for the ExCo and as the committee requires there to be nine financial members, it stands to reason that if two members are not legally elected due to their financial status then non-elected candidates must, by default, be members of the committee.

This means that if there were two or more persons not legally elected to the committee in 2017-2019 then Lot 158, as a voluntary candidate, would have become a member of the committee in those years by default.

Please advise us if you disagree with this position.

## **Defamation**

We are aware of previous and recent threats to sue Lot 158 for defamation. Our client does not believe he has defamed anyone; however, he is prepared to address any concerns if proper particulars are provided.

We invite you to provide us with the particulars of who on the committee you allege has been defamed, how they have been defamed and where have been defamed. Lot 158 is prepared to amend his website, [nswstratasleuth.id.au](http://nswstratasleuth.id.au), to delete any material that we are advised is defamatory of a particular person.

## **Mediation**

As you are aware, Lot 158 has many concerns about the management of the unit complex. These concerns are valid and relate to safety and comfort of his premises and the complex as a whole, and the welfare of himself/his family.

Lot 158 has tried to have these matters resolved in several ways. Throughout 2019 and 2020 there have been opportunities for the committee to participate in mediation with Lot 158 and resolve the issues that he has without further escalation.

Can you please explain why committee members, Uniqueco Pty Ltd, and Waratah Strata Management Pty Ltd have refused to participate in mediation with Lot 158 to this point, and whether there is any prospect of resolving concerns through such a forum.

## **Access to Documents**

Lot 158 has lawfully and properly made repeated requests to access committee documents that he is entitled to inspect. These requests have been wrongfully denied.

We attach a list of the documents requested. Can you please allow Lot 158 to inspect these documents at your earliest convenience or provide valid reason for each document as to why it cannot be inspected?

We look forward to your urgent response to the matters raised in this letter.

If we have not heard from you within 14 days, then we are instructed to move forward with an application to NCAT.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'S. J. O'Connell', written in a cursive style.

**O'BRIEN CRIMINAL & CIVIL SOLICITORS**  
Stewart J O'Connell  
Solicitor Advocate

## **DOCUMENTS REQUIRED TO BE AVAILABLE FOR INSPECTION**

Unredacted Email from Solicitor Adrian Mueller to Branch Manager Paul Banoob dated 5<sup>th</sup> of July 2012 at 04:41 pm (listed in Statutory Declaration to CTTT by strata manager Peter Bone dated 19<sup>th</sup> of April 2013)

Unredacted Email from Branch Manager Paul Banoob to Strata Manager Garry Webb dated 5<sup>th</sup> of July 2012 at 04:57 pm (listed in Statutory Declaration to CTTT by strata manager Peter Bone dated 19<sup>th</sup> of April 2013)

Unredacted Email to EC members from BCS Strata Management Garry Webb dated 6<sup>th</sup> of July 2012 at 08:32 am (listed in Statutory Declaration to CTTT by strata manager Peter Bone dated 19<sup>th</sup> of April 2013)

Unredacted Email to EC members and two staff members at BCS Strata Management from SP52948 Chairperson dated 6<sup>th</sup> of July 2012 at 12:48 pm (listed in Statutory Declaration to CTTT by strata manager Peter Bone dated 19<sup>th</sup> of April 2013)

Unredacted Email to EC members and two staff members at BCS Strata Management from SP52948 Chairperson dated 9<sup>th</sup> of July 2012 at 10:18 pm (listed in Statutory Declaration to CTTT by strata manager Peter Bone dated 19<sup>th</sup> of April 2013)

Unredacted Email from Solicitor Adrian Mueller to BCS Strata Management Peter Bone dated 16<sup>th</sup> of July 2012 at 6:52 pm (listed in Statutory Declaration to CTTT by strata manager Peter Bone dated 19<sup>th</sup> of April 2013)

Unredacted Email from BCS Strata Management Peter Bone to Solicitor Adrian Mueller dated 25<sup>th</sup> of July 2012 at 2:13 pm (listed in Statutory Declaration to CTTT by strata manager Peter Bone dated 19<sup>th</sup> of April 2013)

Unredacted Email from BCS Strata Management Debbie Downes to EC members dated 16<sup>th</sup> of April 2013 at 1:52 pm (listed in Statutory Declaration to CTTT by strata manager Peter Bone dated 19<sup>th</sup> of April 2013)

Cash Book Receipts By Receipt Date for FY 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and FY 2020 up to 24 April 2020

Cash Book Payments By Account Code for FY 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and FY 2020 up to 24 April 2020

Income Tax Returns for FY 2012, 2013, 2014, 2015, 2016, 2017, 2018, and 2019

Copies of all yearly fire safety inspection reports By Eagle Fire Protection for FY 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020 (in 2020, report from audit in January and March are required)

Copy of full audit of second gas connections for 218 lots, including who conducted it, the dates of gas disconnections with names of certified plumbers, and the date of the report

Register of items excluded from common-property (examples: exclusive rights to common property given to Lot 3 and Lots 136/137, windows and frames with double-glaze glass, windows and frames with solar heating panels, air-conditioning units on the balconies, five private lattices in front of townhouses Lot 194, Lot 197, Lot 199, Lot 202, and Lot 216, pergola modifications, second gas connections, and others)

Contact details of financial auditors for FY 2017 and 2018

Copies of signed audits that must have been completed before AGMs in FY 2017 and 2018

Copies of multiple quotes for hot water system in Block C costing above \$30,000.00 that Uniqueco Property Services allegedly obtained in 2017

Copies of explicit delegation of duties of Treasurer, Secretary, and Chairperson to strata managers at BCS Strata Management and Waratah Strata Management in any period between October 2012 and 24 April 2020

Copies of all the correspondence with the Police in regards to USB key handed over to them by Waratah Strata Management in period March 2018 to 24 April 2020

Copy of the signed Deed of Release with BigAir ISP and other applicable legal documents after their eviction from the complex

Evidence of who made decision to undercharge BigAir ISP and at which legally-convened meeting

Copies of all invoices and work completed in relation to water leak damages in the complex in period 2012 to 31<sup>st</sup> of March 2020

Evidence that Lot 3 and Lots 136/137 comply with Special By-Laws in regards to public liability insurance for FY 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020

Copies of detailed AGM agenda including quorum calculations for financial owners for FY 2014, 2015, 2016, 2017 and 2018, and 2019

Invoices for all work related to painting and major repairs in 2017/2018 (including work done on townhouses allegedly costing \$92,950.00)

Email from Teagan Robards at BCS Strata Management to Gary Mills and Lilia Olson with the spreadsheet of charges for Lot 181 second gas connection dated 17<sup>th</sup> of July 2015 at 12:51 pm (Subject line: "RE: S & T Pogorelsky - Gas charges paid from 1998 to 2015 - Strata Plan 52948")

Email from Stan Pogorelsky with the spreadsheet for Lot 181 paid levies for second gas connection to Gary Mills at BCS Strata Management on 10<sup>th</sup> of June 2015 at 4:28 pm

All invoices for second gas connection for FY 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and FY 2020 up to 31<sup>st</sup> of March 2020

Details of reimbursements to townhouses for private water and gas usage for FY 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and FY 2019 up to 31<sup>st</sup> of March 2019

ThyssenKrupp Elevator correspondence and invoices in 2015, 2016, 2017, and 2018

ThyssenKrupp Elevator service reports for 2015, 2016, 2017, and 2018

Evidence of tender correspondence for elevator contract renewal in 2018

Copy of current elevator contract with Liftronics

Details of all elevator faults and risks in period 2014 to 24 April 2020

Uniquenco Property Services monthly reports for FY 2016, 2017, 2018, 2019, and 2020 up to 24 April 2020

Evidence of electricity supply contract renewal in 2018, including details of when and who approved it

Copy of current electricity supply contract

Copy of current contract with Waratah Strata Management

Copy of all SP52948 correspondence with Solicitor Adrian Mueller and Crittenden in period 2012 to 24 April 2020

All insurance claims in period August 2013 to 24 April 2020

Correspondence between EC members and strata managers at BCS Strata Management and Waratah Strata Management in period February 2017 to 24 April 2020

Correspondence between CHU Insurance and their lawyers and SP52948 in regards to repayments for insurance claims in 2012/2013 for alleged "Defence of Lot 3"

Correspondence between BCS Strata Management and Waratah Strata Management in period November 2016 to 31<sup>st</sup> of March 2020 (including requests to BCS Strata

Management to provide additional copies of SP52948 strata files due to allegedly lost files on USB key)

All correspondence between Waratah Strata Management with the Police and other applicable enforcement agencies in regards to computer break-in in period 1<sup>st</sup> of February 2019 to 24 April 2020

All correspondence between EC members, strata managers and the Police for any other security or legal matter in period 2014 to 24 April 2020

Copies of recovery of funds from parties responsible for frequent damages to car entrance gate in period 2013 to 24 April 2020

Copies of correspondence with owners for all By-Laws compliance issues in period October 2012 to 24 April 2020 (smoking, safety of tenants, and so on)

Copies of all correspondence with Ryde Council and Fire and Rescue NSW in period October 2014 to 24 April 2020

Copies of:

- Warranty of Workmanship from Townview Painting Services for painting project in 2017/2018
- Dulux warranty for painting project in 2017/2018
- Liftronic warranty for elevator upgrades in 2019

Evidence that Uniqueco Property Services and Waratah Strata Management have no more than 10 staff

Evidence that current contracts with Uniqueco Property Services and Waratah Strata Management were signed by legally-elected members of the EC

Evidence of chequebook payments for all periods before 14<sup>th</sup> of February 2017

Evidence of Police Event, reports to Microsoft and other applicable agencies in relation to alleged ransomware attack at Waratah Strata Management in February 2019

Evidence of who paid for alleged ransomware attack at Waratah Strata Management in February 2019

Extracts from bank transactions for FY 2017, 2018, 2019, and 2020 up to 24 April 2020



Evidence of who paid for frequent maintenance problems with garden beds, BBQ area, louvres in the basement, and townhouses after major upgrades in 2017/2018 and disclose if they are covered by warranties

Evidence that Mr. Frank Tallaridi was strata manager for SP52948 in 2017, 2018, and early 2019