

Executive Summary

This is a document showing how BCS Strata Management deliberately ignored Strata Schemes Management Act (SSMA) 1996 and organized time-warped paper Executive Committee meeting seven days ahead of its scheduled date as per rushed agenda sent to owners corporation.

In order to succeed in providing false Statutory Declaration for CTTT, the paper EC meeting, scheduled for 26th of April 2013 was declared complete on 19th of April 2013.

Since the meeting was actually held on 19th of April 2013, it failed to comply with:

- **SSMA 1996 Schedule Clause 6 (1) and (3) which requires notice of meeting and DETAILED AGENDA to be sent to owners at least 72 hours before the meeting, and in compliance with the Interpretation Act 1987 Section 76.**
- **SSMA 1996 Schedule 3 Clause 10 (2) which states:**
 - (1) A resolution is taken to have been validly passed even though the meeting at which the motion for the resolution was proposed to be submitted was not held if:**
 - (a) notice was given in accordance with clause 6 of the intended meeting, and**
 - (b) a copy of the motion for the resolution was served on each member of the executive committee, and**
 - (c) the resolution was approved in writing by a majority of members of the executive committee.**
 - (2) This clause is subject to clause 11 (2).**
- **Clause 11 stipulates that decision of an executive committee has no force or effect if, before that decision is made, notice in writing is given to the secretary of the executive committee by one or more owners, the sum of whose unit entitlements exceeds one-third of the aggregate unit entitlement, that the making of the decision is opposed by those owners. By running a meeting on undisclosed date, owners corporation (all 209 owners, apart from nine members of the EC) were denied rights to respond.**

In addition, because of missing notice for paper Executive Committee meeting on 19th of April 2013 prevented owners from attending, as address of the meeting was, in practice, not provided.

- **Owners did not get copies of Standard Costs Agreement and Standard Costs Disclosure from the Solicitor before the meeting, and BCS Strata Management did not provide any proof to Tribunal that the owners received them.**
- **Owners did not receive minutes of the Executive Committee meeting held on 9th of July 2012 before the paper meeting on 26th of April 2013, and BCS Strata Management did not provide any proof to Tribunal the owners received them.**
- **Minutes of the Executive Committee meeting held on 9th of July 2012 were not recorded in the Minutes Book or in any other form available to owners before the paper meeting on 26th of April 2013, and BCS Strata Management did not provide any proof to Tribunal confirm it.**
- **Agenda for the paper meeting on 26th of April 2013 did not contain any information about Solicitor's expenses reaching \$16,942.52 as early as 6th of March 2013. This was submitted in owner's master document to the Tribunal and the Respondent on 14th of March 2013, in paragraph 3.5.**
- **Agenda for the paper meeting on 26th of April 2013 did not contain any information that once the legal costs exceeded \$12,500.00, or the reasonable estimate for Solicitor's expenses exceeded, general meeting was required.**

- Agenda for the paper meeting on 26th of April 2013 did not contain any information that owner applied for orders to repeal several motions, invalidate resolutions, issue compliance for special by-law 4, and orders in relation to misconduct of strata agency in CTTT file, and BCS Strata Management did not provide any proof to Tribunal that the owners received it.
- Agenda for the paper meeting on 26th of April 2013 did not contain any information that all roles of office bearers – Secretary, Treasurer, and Chairperson, normally held by members of the Executive Committee, were delegated to the Strata Manager since the Annual General Meeting on 17th of October 2012, making the Strata Manager’s role an omnipotent one. BCS Strata Management did not provide any proof to the Tribunal that such notice was given to owners before the meeting on 26th of April 2013.
- Strata Manager Statutory Declaration on pages 66 and 70 submitted that the member of staff at BCS Strata Management (Mr. Peter Bone, who was silently removed from managing this complex not long afterwards), on 16th of April 2013 sent an email to members of the Executive Committee with agenda for the forthcoming paper Executive Committee meeting scheduled for 26th of April 2013.

The email headers in this message contain no proof of recipients.

From: @bcms.com.au
Sent: Tuesday, 16 April 2013 1:52 PM
Subject:
Attachments: img-416134244-0001.pdf

Dear Committee Members,

Please find attached an agenda for the forthcoming Paper Executive Committee Meeting for your information and attention.

Kind Regards



Raine & Horne Strata-Sydney
 Level 2, 51 Rawson Street Epping NSW 2121
 T: (02) 9868 2999 F: (02) 8216 0331
www.bcms.com.au

This is the annexure marked "L" referred to in the statutory declaration of [redacted] declared at Epping on 19 April 2013 before me:

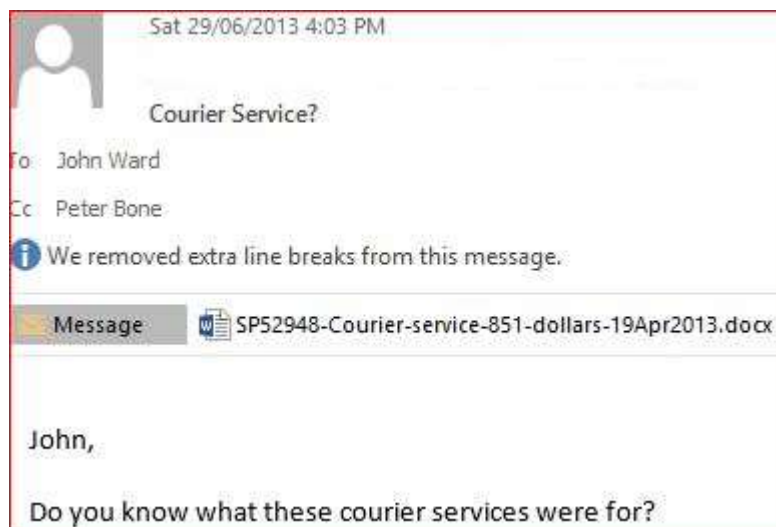
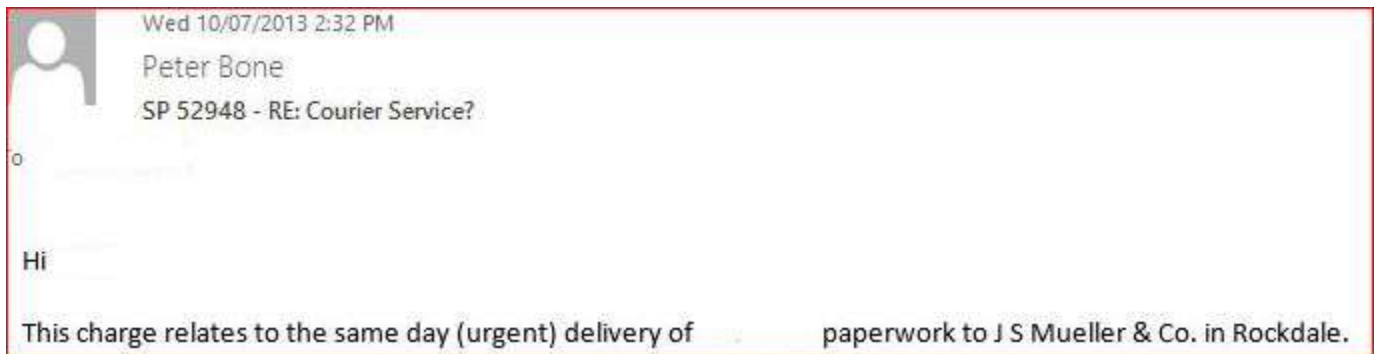
[Signature]
 Solicitor

- Minutes of paper EC meeting on 19th of April 2013 are not the minutes of paper EC meeting scheduled for 26th of April 2013.
- Minutes of paper EC meeting on 19th of April 2013 did not contain any details of the venue of the meeting and time when it happened (eight members of the EC voted).
- Owners were not notified about special change in the strata plan’s insurance policy that was secretly initiated by BCS Strata Management on 1st of August 2013 and the insurance claims for illegal costs under name fictive case “CTTT defence” (that crucial information was withheld by BCS in all CTTT proceedings). The insurance claims defrauded insurance company in amount of over \$25,000.00.

- The Statutory Declaration of BCS Strata Management and the minutes of the alleged EC meeting held on 19th of April 2013 were delivered by courier service to CTTT at the cost of:

Disstn	Amount	Exp. Code	Expense Description	Raised By	Date Raised	Qty	Fund	Ind	Batch	Seq	Batch Date
	851.56	COUR	Courier Service	Manual	19/04/2013	2	A		999		24/05/2013
	85.16	GSTEX	GST Courier Service	Manual	19/04/2013	2	A		999		24/05/2013

No members of the EC were even aware of this expense:



History of Reasons for this EC Meeting

For two years prior to this meeting, an owner tried to prove that BCS Strata Management mismanaged the complex and engaged in numerous illegal activities.

One of the issues was related in using owners corporation funds to engage Solicitor without owner corporation approval at any legally-run meeting.

- At the Directions Hearing on 8th of August 2012, CTTT issued the following orders. This document was hidden from owners corporation by BCS.

Application to the Tribunal concerning

Applicant

Respondent Owners Corporation SP -

On 08 August 2012 the following orders were made:

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.

Owner was only given six days to submit the documents, whilst BCS Strata Management and EC, through their illegally engaged Solicitor were given more than a month.

The owner complied with the orders. Most of the documents BCS Strata Management and EC already had long before the CTT orders were made.

One of the crucial documents requested from BCS Strata Management was the proof that owners corporation legally engaged Solicitor at any public meeting and that owners corporation was notified about it.

- On 5th of September 2012, CTTT set the Hearing date on 17th of October 2012.

- In spite of complaints by the owner about apprehension of bias, CTTT granted the request on 26th of September 2012:

The request by Owners Corporation SP – 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.

- Solicitor again failed to comply and CTTT issued third notice on 9th of October 2012:

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.

- Overall, three times BCS Strata Management, through Solicitor, failed to comply with CTTT orders to provide all documents they intended to rely on:

8th of August 2012

17th of September 2012

9th of October 2012

- At the Hearing on 17th of October 2012, Solicitor arrived without any evidence and even provided false statements.
- CTT made every effort to ignore evidence by the owner and eventually dismissed the same in spite of overwhelming evidence.
- The case was reopened and two additional times CTTT refused to allow owner to obtain access to documents even when he asked for issue of summonses.

- These were the CTTT responses which prevented owner from access to evidence:

5th of March 2013 (no explanation by CTTT provided)

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

24th 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.

- The owner insisted on getting the evidence nevertheless because the document that Solicitor submitted to CTTT and the owner in January 2013 was not signed by BCS Strata Management or any member of the Executive Committee although he claimed to have received it via email as early as 6th of August 2012.
- At the Hearing on 15th of April 2014, the Solicitor Mr. Adrian Mueller provided the following false statement:

“What I wish to do is... continue with the Hearing today on proviso that I am able to tender some evidence on this issue. Evidence which I’ve only discovered... having perused my file in the last five minutes. Material... There’s two documents: first is a letter from me to the owners corporation dated the 2nd of July 2012 in which I did an estimate of my costs to act in owners corporation’s appeal. Second document is email from the Strata Manager to me on the 6th of August 2012 returning the signed copy of my costs agreement... and the costs agreement... signed by the strata manager on behalf of the owners corporation.... And... I apply...for leave... tender of these documents today on the basis that I’ve only been informed of the challenge...”

The dates of when the Solicitor received the signed Standard Costs Agreement significantly differ between versions submitted by the Strata Manager’s in his Statutory Declaration on 19th of April 2013 and an authoritative oral submission under oath by the Solicitor at Hearing on 15th of April 2013.

Solicitor tried to play a game, procrastinate, talked about absolutely worthless issues, could not provide any evidence, and the case had to be adjourned one more time.

The Tribunal, nevertheless, issued orders that the Solicitor must provide evidence and copies of documents that he was engaged through proper legal process by Monday, 22nd of April 2013.

- After the Hearing, owner submitted the following request to Solicitor Mr. Mueller:

By signing this form, the following has been acknowledged by Solicitor, or an authorised representative of his firm:

a) Solicitor confirms that the Strata Manager of Strata Plan XXX (Raine & Horne Epping) lost the folder that the Applicant had sent to them on 14th of March 2013;

b) Solicitor confirms that he and the Respondent did not raise any complaints to the CTTT or the Applicant about not receiving the Applicant's documents after the deadline on 15th of March 2013;

c) Solicitor refused offer to obtain access to the Applicant's folder at the CTTT Re-Hearing on 15th of April 2013, via the following two methods:

** Electronic delivery*

** Document search at the CTTT*

The latter method was forced upon the Applicant on 27th of February 2013, after three complaints to the CTTT that he did not get copies of the Respondent's files.

d) Solicitor acknowledges the cost of preparing another folder for the Respondent on 18th of April 2013 will amount to around \$700.00 to the Applicant.

e) Solicitor acknowledges that, if the evidence in the Appendix herewith which he committed to provide to the CTTT and the Applicant by next Monday is not delivered (as per the Appendix herewith), the UNNECESSARY and UNJUSTIFIED cost of the preparation and delivery of the Respondent's folder shall be charged to his firm.

Received the Applicant's folder with 36 sleeves at: Arncliffe NSW 2205

Signed by:

Date: 18th of March 2012

• At the same time, knowing that he could not provide such documents as they did not exist, Solicitor engaged in secret email exchange with BCS Strata Management, requesting some immediate actions. Including suggestive recommendation for urgent EC meeting:

FROM:

Sent: Tuesday, 16 April 2013 2:50 PM
To: WARD, John
Subject: FW: SP52948 - CTTT Appeal (22012)
Importance: High

This explains why we need the additional paper meeting

From: Adrian Mueller [mailto:AdrianMueller@muellers.com.au]
Sent: Monday, April 15, 2013 6:12 PM
To: peterb@bcms.com.au; ; paul.banoob@picaust.com.au
Subject: Re: SP52948 - CTTT Appeal (22012)
Importance: High

Dear All,

I attach letter reporting on today's CTTT hearing.

I need you to immediately do the following:

1. Confirm when Raine & Horne Strata Sydney received my letter dated 2 July 2012 advising that Mr [redacted] had lodged an appeal against the adjudicator's decision.
2. Provide me with complete copies of the notice and minutes of the executive committee meetings held on 9 July 2012 and the next meeting held in August 2012.
3. Confirm that Gary Webb signed my costs agreement on 25 July 2012 on behalf of the owners corporation.
4. Convene another executive committee meeting to be held by this Friday, 19 April 2013 and to place on the agenda for and, if thought fit, pass the motions which appear towards the end of my attached letter (those motions may require amendment - you should consult with me before sending the meeting notice).

Regards

Adrian Mueller
Solicitor

From:

Sent: Tuesday, 16 April 2013 3:39 PM
To: 'WARD, John'; 'zellew'; 'esault'; 'jeffrey'; 'mcdonald151'; 'hirsch25'; 'pogo.'
Cc: Peter Bone
Subject: Paper Committee Meeting to be held on 26th April 2013
Attachments: SP52948 Voting 20130416.pdf

Dear All,

Please sign and date your voting paper as soon as possible. Despite the proposed date of the meeting we must have a clear majority as soon as possible to allow Adrian Mueller to rebut the allegations that he was never appointed to represent us at CTTT.

Please also not in whichever way that you wish that the decision in the minutes of the last paper meeting was defeating a motion to have someone represent us at a MEDIATION at DOFT and not a hearing at CTTT. This is a confusion caused by Peter mixing up the two issues in the notice.

I have attached a copy of my voting paper for your information and for Peter to record my vote.

From: WARD, John [mailto:jward@

Sent: Tuesday, 16 April 2013 4:43 PM
To: WARD, John; ; 'zellew'; 'esaults'; 'jeffrey'; 'mcdonald151'; 'hirsch25'; 'pogo@'
Subject:

Hi all,

[redacted] has requested that I send this out to all to assist you with the voting papers sent out today by the strata manager.

Please assist by returning your voting papers ASAP to the Strata Manager to help the Solicitor progress this matter appropriately.

Any questions please contact me.

- The same day, in panic, BCS Strata Management published notice of special EC meeting for 26th of April 2013.

Raine & Horne Strata - Sydney
Level 2, 51 Rawson Street Epping
Locked Bag 22, Haymarket NSW 1238

Telephone 02 9868 2999

Fax 02 8216 0331

Email strata@bcms.com.au

Web www.bcms.com.au

NOTICE OF PAPER EXECUTIVE COMMITTEE MEETING

To: The Executive Committee Members
Strata Scheme No. 52948
1-15 Fontenoy Road
MACQUARIE PARK NSW 2114

COPY FOR YOUR
INFORMATION

NOTICE is hereby given of BUSINESS TO BE DEALT WITH AT A PAPER EXECUTIVE COMMITTEE MEETING OF STRATA SCHEME NO. 52948 to be held in The Offices of Raine & Horne Strata-Sydney, Level 2, 51 Rawson Street Epping on 26th April 2013 at 10.00am

- An example of how EC members voted is shown here. Mr. Wang is known as dormant EC member who has extremely high number of absences from meetings over many years.

Raine & Horne Strata - Sydney
Level 2, 51 Rawson Street Epping
Locked Bag 22, Haymarket NSW 1238

Telephone 02 9868 2999
Fax 02 8215 0331
Email strata@bcms.com.au
Web www.bcms.com.au

VOTING PAPER

STRATA SCHEME NO. 52948

Executive Committee Meeting for Strata Scheme No. 52948 to be held on the 26th April 2013 at 10.00am.

MOTION 1 I am in favour / ~~against~~ the motion being carried.

MOTION 2 I am in favour / ~~against~~ the motion being carried.

MOTION 3 I am in favour / ~~against~~ the motion being carried.

NAME: JEFFERY WANG

LOT NUMBER: 39

SIGNATURE: 

DATE: 16/4/13

- The Minutes of EC meeting were submitted seven days before the schedule. Even Star War fans would be impressed by this time-warped event.

Raine & Horne Strata - Sydney
Level 2, 51 Rawson Street Epping
Locked Bag 22, Haymarket NSW 1238

Telephone 02 9868 2999

Fax 02 8216 0331

Email strata@bcms.com.au

Web www.bcms.com.au

**MINUTES OF RESOLUTIONS OF THE EXECUTIVE COMMITTEE OF STRATA
SCHEME NO. 52948 PASSED BY WRITTEN VOTE OF EXECUTIVE COMMITTEE
MEMBERS ON 19TH APRIL 2013.**

VOTING PAPERS WERE RECEIVED FROM:

- Three Motions were published on the notice boards.

Non-compliance error: evidence in support of the statements provided in the agenda not provided to the owners.

Technical error: Motion 2 and Motion 3 had identical titles, misleading and misconstrued statements.

1. **Motion 1**, to confirm the minutes of the last Committee meeting (presumably held at another paper Executive Committee on 28th of April 2013) could not have been approved due to the following facts and serious concerns:

1.1 The agenda for the paper EC meeting held on 28th of March 2013 did not comply with the Strata Schemes Management Act 1996 Schedule 3, Part 2, Clause 6.

The following CTTT cases confirm it:

La Delle v Owners Corporation SP 53737 (Strata & Community Schemes) [2005] NSWCTTT 280 (28 April 2005)

Coote v Owners Corporation SP 55434 (Strata and Community Schemes) [2010] NSWCTTT 260 (11 June 2010)

1.2 At the CTTT Hearing on 15th of April 2013, the Tribunal held the opinion that the agenda for this meeting was misconstrued because "Strata Manager mistook the DFT Mediation with the CTTT Hearing", and based on that contentious decision, the Hearing proceeded. Therefore, the Solicitor and the CTTT confirmed that the agenda for this paper EC meeting was INCORRECT and INVALID! In addition, the agenda did not contain sufficient information for owners to form an opinion about what action to take for the meeting.

1.3 The EC and the Strata Manager failed to amend the minutes of the EC meeting held on 20th of February 2013 in spite of numerous errors that were reported in a timely manner (emails sent to the Strata Manager on 10th and 13th of March 2013).

1.4 The minutes were distributed two weeks after the EC meeting (they must come within seven days) as per Strata Schemes Management Act 1996, Schedule 3, Part 2, Clause 16.

1.5 The minutes of the EC meetings held on 20th of February 2013 were NOT approved at the paper EC meeting on 28th of March 2013 because:

* Three members of the EC did not even bother to respond, so their vote was not cast

One EC member was against approving the minutes of the EC meeting held on 20th of February 2013;

One EC member abstained from voting for Motion 1.

Therefore, out of nine members of the EC, only four voted in favor of Motion 1.

For the Motion to be approved, Strata Schemes Management Act 1996, Schedule 3, Part 2, Clause 10 applies.

2. **Motion 2**, to ratify appointment of Solicitor in CTTT Appeal by EC could not be approved due to the following facts:

2.1 The information about the incurred legal costs was not properly disclosed to the owners (breach of the Strata Schemes Management Act 1996, Section 37).

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 (illegally) on 16th of July 2012 and owners had to be notified about it!

The Strata Manager and the EC failed to notify the owners and the CTTT that the actual Solicitor's expenses were \$19,640.52 at the time:

2.2 The EC and the Strata Manager failed to seek or evaluate quotes from other legal service providers although they now seek multiple quotes for even much smaller expenses.

2.3 The owners never received full details of the Standard Cost Agreement, which, in accordance with the Strata Schemes Management Act 1996 Section 230A, is a serious non-compliance issue.

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

The copy of the disclosure of costs was never given to owners.

2.4 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.

The AGM 2012 did not even discuss the Solicitor's past or future engagement;

2.5 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 Standard Cost Agreement.

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

2.6 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 Strata Schemes Management Act Section 15).

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).

2.7 The poor management of the complex is evident in owner's email to the Strata Manager on 22nd of February 2013, whom owner asked for the third time to provide details of the office bearers since the AGM 2012. 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, even after the repeated warning on 26th of March 2013.

The lack of office bearers is in breach of SSMA 1996 Section 18.

This is confirmed in several CTTT cases:

Vaughan & Cadogan v Owners SP 72 (Strata & Community Schemes) [2005] NSWCTTT 41 (24 January 2005)

Owners Corporation SP 72 held an Annual General Meeting on 30 October 2003. Six persons, being six lot owners, were elected to the Executive Committee. Contrary to common practice, there was no Executive Committee Meeting after the conclusion of the Annual General Meeting. No office bearers were elected, in contravention of Section 18 of the Act.

Owners Corp SP 20655 v Allan Dale Real Estate (Commercial) [2012] NSWCTTT 421 (18 October 2012)

The secretary is one of three compulsory office bearers that the executive committee of every Owners Corporation must appoint at the committee's first meeting each year.

2.8 The Standard Cost Agreement was not signed by the owners corporation in the copy of the Standard Cost Agreement that was submitted to the CTTT and owner. By providing a "signed" copy now, it is highly possible that it was done retrospectively because owner flagged it in his submission on 14th of March 2013 (more than a month ago).

Signed:	
_____	_____
Client	Date
	16 July 2012
_____	_____
Solicitor	Date

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

2.9 The Standard Cost Agreement contained numerous questionable clauses which the Solicitor did not comply with.

2.10 Owner made the following request to the Strata Agency and the EC on 4th of February 2013 and they failed to respond:

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

For more than three years, EC members and BCS Strata management prevent access to the documents.