

# MALLESONS STEPHEN JAQUES

Mr Craig Offenhauser  
23 Killara Avenue  
HAMILTON QLD 4007

21 July 2005

Daniel Piggott  
Direct line  
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Partner  
Philip Pan

## Copy to

Mrs Lorelle Offenhauser  
23 Killara Avenue  
HAMILTON QLD 4007

Boda Investments Pty Ltd  
c/- Offenhauser Chartered  
Accountant  
23 Killara Avenue  
HAMILTON QLD 4007

Mr Eugene Fung  
Partner  
Phillips Fox  
Level 28  
1 Eagle Street  
BRISBANE QLD 4000

Boda Investments Pty Ltd  
875 Cootharaba Road  
COOTHARABA QLD 4565

Dear Sir

## **Purchase of Charter Pacific Securities Limited by Australian Property Systems Limited**

We act for Australian Property Systems Limited ("APSL").

We have set out below details of allegations that our client makes against you regarding the purchase by APSL of shares in Chartered Pacific Securities Limited (now known as Libertas Securities Pty Ltd) ("CPSL"), and subsequent dealings between yourself and APSL.

You will see that our client has instructed us that the conduct that is the subject of these allegations was undertaken by you on your own behalf, and on behalf of Mrs Lorelle Offenhauser and Boda Investments Pty Ltd.

### **1 Your agreements with APSL**

We are instructed that:

- (a) You entered into an agreement with APSL for the sale of shares in Chartered Pacific Securities Limited. You entered into that agreement on behalf of the shareholders of CPSL, which included yourself and your wife, Mrs Lorelle

Solicitors

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Offenhauser. The terms of that agreement are set out in a letter of offer dated 16 September 2002 (“**2002 Agreement**”). A copy of that letter is Attachment A to this letter; and

- (b) You also entered into a subsequent agreement with our client at a meeting on 22 September 2003 (“**2003 Agreement**”). The terms of the 2003 Agreement are recorded in a file note prepared by Mr Steve Barnard, a copy of which is Attachment B to this letter.

## **2 Breaches of the 2002 Agreement**

2.1 We are instructed that you have breached the express terms of the 2002 Agreement in the following respects:

- (a) Contrary to condition 3, the dealers license held by CPSL was not unrestricted in the sense intended by the parties to the 2002 Agreement;
- (b) Contrary to condition 5, CPSL did not have cash at bank of \$500,000 at the date of shareholder approval;
- (c) Contrary to condition 6, CPSL did not have funds under management of \$30 million; and
- (d) Contrary to condition 8, within 3 years of resigning as proper authority holder of CPSL you have competed or carried on the business of a dealers license holder other than as proper authority holder of CPSL.

2.2 We are also instructed that:

- (a) You diverted the revenue stream that CPSL was to receive from funds held under management to an account outside the control of CPSL; and
- (b) You obstructed the performance of the compliance audit of CPSL referred to in condition 9 of the 2002 Agreement, and compliance audits that were sought to be performed subsequent to 6 January 2003.

That conduct may amount to breaches of, amongst other obligations, obligations implied into the 2002 Agreement that you would act in good faith and take all steps reasonably necessary to allow CPSL to obtain the benefit of the 2002 Agreement.

**3 Breaches of the 2003 Agreement**

3.1 We are instructed that you have breached the express terms of the 2003 Agreement in the following respects:

- (a) Contrary to bullet point 2, you did not hold approximately \$31 million in funds under management as at 22 September 2003;
- (b) Contrary to bullet point 3, you did not, from 22 September 2002, pay a minimum \$45,000 annual fee to CPSL (to be indexed annually for funds under management greater than \$30 million) less any agreed expenses;
- (c) Contrary to bullet point 5, you did not ensure that 100% of funds under management fees received were remitted to CPSL;
- (d) Contrary to bullet point 9, you did not make best endeavours to ensure an amicable and professional ongoing business relationship was maintained. In particular, you failed to comply with all of your obligations under the 2003 Agreement and ultimately resigned from your position as proper authority holder of CPSL to commence practice for another dealership.

**4 Agency for Mrs Offenhauser and Boda**

*Mrs Offenhauser*

4.1 You executed the 2002 Agreement “*on behalf of all shareholders of CPSL*”, and we are instructed that the 1,100,000 shares in APSL currently held by Lorelle May Offenhauser were issued to her as part of the settlement of the 2002 Agreement. Accordingly, our client considers that Mrs Offenhauser is party to your breaches of the 2002 Agreement referred to above.

*Boda Investments Pty Ltd*

4.2 We are also instructed that:

- (a) Boda Investments Pty Ltd (“**Boda**”) received 1,000,000 shares in APSL as part of the settlement of the 2002 Agreement;
- (b) The shares were issued to Boda at your direction, and in exchange for Boda supplying part of the funds necessary for CPSL to satisfy condition 5 of the 2002 Agreement;



(c) At all material times you have provided financial advice to and acted on behalf of Boda with respect to the CPSL transaction; and

(d) The current registered office for Boda is "Offenhauser Chartered Accountant."

4.3 In light of those matters, and our instructions that Boda became a shareholder of CPSL prior to 6 January 2003, our client holds Boda liable for breaches of the 2002 Agreement.

## 5 Misrepresentations and misleading and deceptive conduct

5.1 We are instructed that:

(a) Prior to the 2002 Agreement, you made representations to the effect that:

- (i) CPSL held an unrestricted dealer's license suitable for the commercial purposes for which it was intended to be used by APSL. Those purposes included the purposes set out in an email by you to Mr Jamieson dated 20 August 2002;
- (ii) CPSL held funds under management of \$30 million;
- (iii) those funds under management generated a revenue stream for CPSL of approximately \$300,000 per annum; and
- (iv) CPSL would have cash at hand of \$500,000 on settlement of the share purchase;

(b) Those representations were made by you to:

- (i) the directors of APSL, including in the letter of offer dated 16 September 2002;
- (ii) to Bella Accountants, in financial statements and other information provided to them for the purposes of preparing an independent valuation of CPSL prior to 6 January 2003; and
- (iii) to the shareholders of APSL in the explanatory memorandum tabled at the shareholders meeting on 6 January 2003.

(c) Each of those representations was incorrect.

## **6 Breaches of your duties to APSL**

6.1 You were a director of APSL from 27 June 2002 to 12 January 2004.

6.2 The conduct described above was contrary to the interests of APSL, and for that reason may have constituted breaches by you of the duties that you owed to APSL under the *Corporations Act* and at common law.

## **7 Our client's loss**

7.1 APSL has suffered, and continues to suffer, economic loss as a result of your conduct. Without limitation, that loss includes:

- (a) the loss of annual fees that should have been paid to CPSL from funds under management of \$30 million from 6 January 2003, less any fees already paid by you;
- (b) additional loss arising from the absence of cash-flow from revenue that would have been generated by \$30 million funds under management; and
- (c) further additional loss arising from your competition with CPSL since your resignation as proper authority holder for CPSL.

The quantum of those losses will include the diminution in value of CPSL caused by its inability to continue trading. Our client has obtained an independent valuation of CPSL that indicates its current market value to be \$27,321 (compared to the valuation of \$1.2 million provided by Bellas Accountants at the time of the Purchase Agreement).

## **8 Our client's requirements**

8.1 Our client requires you to respond to this letter confirming that you will:

- (a) pay to CPSL \$1,259,679, representing:
  - (i) \$45,000 on account of annual fees outstanding for the period up to your resignation as proper authority holder of CPSL;
  - (ii) \$1,172,679 on account of the diminution in value of CPSL; and
  - (iii) \$42,000 on account of directors fees paid to you by APSL since 6 January 2003;

# MALLESONS STEPHEN JAQUES

Mr Craig Offenhauser

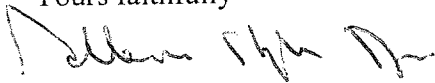
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- (b) account to CPSL for all fees earned by you since your resignation as proper authority holder for CPSL; and
- (c) undertake to cease competing with CPSL until the expiry of three years from the date on which you resigned as proper authority holder of CPSL.

8.2 Our client reserves its right to commence proceedings without further notice to you, Mrs Offenhauser or to Boda should you fail to confirm those matters by 5.00 pm on Friday, 29 July 2005. In that event, you will become liable for the further legal costs incurred. It is therefore in your interest to give this matter your urgent attention.

Yours faithfully



Encl 2

# ATTACHMENT "B"

File Note re Libertas Discussion  
12.45pm Monday 22 September 2003  
Held at APSL's offices, 3 Edward St Brisbane.

## In attendance:

Geoffrey Jamieson  
Craig Offenhauser  
Alex Kay  
Steve Barnard (taking notes)

## Matters noted /agreements reached:

- It was generally agreed that if all parties could not come to an agreement in relation to settling the matters, then the original agreement should be unwound.
- Craig advised that he had approximately \$31million FUM and that total revenues (including consulting fees revenue) broadly approximated 1% of FUM
- Craig agreed that he would pay a minimum \$45,000 (on \$30m) annual fee to Libertas less any agreed expenses. This fee is to be indexed annually for FUM greater than \$30million.
- All parties agreed that the following expenses incurred by Craig could be recharged to Libertas (refer action below):
  - Van Eyk (6months) \$ 1,350 + GST
  - Visiplan modelling software \$ 4,209 + GST
  - FPA Principal members subs \$ 1,000 + GST
  - FI complaints service \$ 350 + GST
  - PI Cover (up to a max of) \$ 3,250 + GST
  - BAS preparation \$ 525 + GST
  - **TOTAL** **\$10,684 + GST**
- It was agreed by all parties that in future, 100% of funds under management fees received (ie the gross revenue) would be remitted to Libertas via electronic transfer from Craig's clients to the Libertas clearing platform within 48hours of receipt of monies by Libertas. The money owing to Craig as a PAH less fees to dealership of \$45,000 (or greater if FUM above \$30m).
- Agreed that Craig will remit gross fee income for the period 6 January to 30 June 2003 received from clients to dealership.
- Agreed that the gross fees income (less costs or \$45,000) for the period since 30 June 2003 to date should be transacted immediately.
- Craig agreed to abide by the dealer/PAH agreement as provided by the dealership other than a letter that set out the above agreed expenses of \$10,684.
- Agreed by all parties to make best endeavours to ensure an amicable and professional ongoing business relationship is maintained.
- Agreed that the financial records of Libertas for the period to 30 June 2003 be adjusted so as to properly account for the gross fees income of \$120,000 less expenses of \$10,684 and proper authority holder's commission of \$97,500.

## Actions:

1. Alex to prepare and then provide to Craig an invoice for \$120,000 + GST being gross management fees for the period from 6 January to 30 June 2003,
2. Craig to prepare and then provide to Alex, 2 invoices as follows:
  - a. \$97,500 + GST being Authority holders fees (ie: net fees), and
  - b. \$10,684 + GST being agreed expense reimbursement
3. Alex to arrange the audit of Craig's records by Jimali ASAP
4. Alex to send Craig a PI application form for completion ASAP. Craig to complete and return ASAP.