

SIMON OWER
Edmund Barton Chambers
72 Wright Street
ADELAIDE SA 5000

Tel: (08) 8213 6400
Fax: (08) 8231 5295
DX 398 ADELAIDE

Email: sower@edmundbartonchambers.com.au

24 October 2010

Jenkins Anderson Solicitors & Conveyancers
PO Box 411
PORT LINCOLN SA 5606

Attention: Joe Anderson

Dear Sir

Quotila Pty Ltd v SAMPI Pty Ltd

I refer to our telephone conversation on Friday and my subsequent email containing a copy of Justice Besanko's judgment.

As discussed, his Honour has concluded that there is a prima facie case as to the proposed share issue being for an improper purpose and that the balance of convenience lies in maintaining the injunction.

At the delivery of the judgment, his Honour, in effect, indicated that he was not satisfied with the adequacy of the undertaking as to damages. He directed that any further evidence in respect of the adequacy of the undertaking as to damages be filed by 12:00pm Adelaide Time, **Tuesday, 26 October 2010**. The injunction continues until further order.

He then set a further hearing at 1:00pm on **Wednesday, 27 October 2010**.

Undertaking as to damages

Quotila has previously provided an oral undertaking as to damages. This means that, if Quotila subsequently lose its case against SAMPI, Mr Franchina and Mr Romaro, and SAMPI, Mr Franchina and Mr Romaro suffer loss due to the inability to issue shares during that time, then Quotila will have to compensate them for that loss.

In this respect, it is important to note that the undertaking only relates to losses suffered that are directly caused by the inability to issue shares and which could have been foreseen at the time the undertaking is given.

His Honour raised the issue of whether Quotila has any assets that would support such an undertaking. It needs to be more than a \$2 company. It also needs more than its shares in SAMPI. The fact that Quotila appears to be a trustee company is also relevant, in that it will be the assets of the Trust rather than the assets of the company per se that are relevant. As such, you will need to take instructions from Mr Laughton in respect of that issue.

If Quotila does not have sufficient assets over and above its shares in SAMPI, then the undertaking will need to be given by a third party, i.e. Mr Laughton personally. Assuming that Mr Laughton has sufficient assets, he will need to carefully consider the risk of providing the undertaking personally. In my view, it is very unlikely that, in the event that the action is unsuccessful, any of SAMPI, Mr Franchina or Mr Romaro will suffer loss because SAMPI are unable to issue these shares. However, there is a risk and, if Mr Laughton does give the undertaking, he should be aware that he is putting his own assets on the line.

If no sufficient undertaking is given, the injunction will be set aside. I also note that, whoever gives the undertaking will need to do so in writing. ✓

Further conduct of the matter

Besanko J raised the issue of the further conduct of the matter. He is expecting that a timetable for the further conduct of the action be set at the next hearing. In addition to the ordinary steps, he raised the issues of whether the trial would be heard here in Adelaide or in Perth and, whether in light of his interlocutory judgment, it was appropriate for him to hear the matter.

Mr Laughton should understand that, now that he is started the process, he is required to take steps to progress the matter to a trial unless he either discontinues (which means that he would pay the Defendants' costs), settles with Mr Franchina or a shareholders' meeting renders the whole dispute moot. As no shareholders' meeting has yet been organised, and is still at least a month away, he will need to provide instructions for the further conduct of the action for a short time in any event.

The first issue in this respect is the width of the action. At the moment, the case only concerns the proposed share issue. A trial would take one to two days and could be heard and determined reasonably quickly. It would cost at least another \$30,000. The outcome would concern the share issue.

Alternatively, Mr Laughton may wish to make the case wider – arguing oppression about the way in which SAMPI has been run. This could take into account any issue that Mr Laughton has had over the last five years and provide suitable remedies. The main difficulty with this is that, on one view, Quotila's shares in SAMPI are worthless due to the large amount of debt incurred to Fishtrade. After hearing evidence of oppression, the Court is very likely to appoint a liquidator, with the end result that Mr Laughton will have lost his investment. The Court would be unlikely to make an order

that Mr Franchina or Fishtrade buy out Mr Laughton/Quotila's interest as it is otherwise not worth anything.

In my view, the best and cheapest approach is to ask the Court to set a timetable towards a trial concerning the share issue only. In the meantime, a shareholders' meeting should be organised as a matter of urgency.

I look forward to hearing from you. As discussed, I will need instructions by close of business on Monday, 25 October 2010.

Yours faithfully



SIMON OWER

Note Franchina/Romano refused to call a Shareholders meeting which is against company law. Laughton arranged to hold a shareholders meeting in Freemantle chamber of commerce building with independent chairperson with conflict resolution experience. Laughton traveled to Freemantle from Port Lincoln and met by Solicitor from Fish Trade and told meeting would not proceed as a shareholders meeting due to technicalities in advice notification. Laughton admitted to Freemantle hospital intensive care due to heart and stress related condition.

