

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
DIVISION: GENERAL

No 95 of 2010

IN THE MATTER OF THE *CORPORATIONS ACT 2001*

and

IN THE MATTER OF MARK RONALD LETTEN
(and others described in the Schedule)

AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION

Applicant

MARK RONALD LETTEN AND OTHERS
(as described in the schedule)

Respondents

TENTH AFFIDAVIT OF DAMIAN JOHN TEMPLETON

On 9 June 2010 I, **DAMIAN JOHN TEMPLETON**, of KPMG, 147 Collins Street, Melbourne, in the State of Victoria, Chartered Accountant, make oath and say -

- 1 I am a partner of the Australian KPMG partnership (“**KPMG Australia**”) specialising in restructuring and insolvency work. I hold a Bachelor of Business (Accountancy) from the Royal Melbourne Institute of Technology, I am a Member of the Institute of Chartered Accountants in Australia and a Member of the Insolvency Practitioners Association of Australia, I am an official liquidator and have approximately 19 years experience as an insolvency practitioner.
- 2 On 25 February 2010, the Federal Court of Australia made orders (“**Orders**”) that receivers and managers be appointed to each of the schemes listed in Annexure A to the Orders. Pursuant to the Orders, I was appointed together with my partner, Philip Arthur Hennessy, as joint and several receivers and managers of the property of each of the second to sixteenth and eighteenth to forty-fifth defendants in this proceeding (“**Letten Entities**”) and as joint and several receivers and managers of the property of the schemes (each a “**Receiver**” and, collectively, the “**Receivers**”).

Filed on behalf of the Receivers and Managers by:

MALLESONS STEPHEN JAQUES

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Ref: S Kinsey:MAT

Matter no: 03-5503-4607

 1

3 On 4 March 2010, the Federal Court of Australia made orders (“**SY21 Orders**”) pursuant to which I was appointed together with my partner, Philip Arthur Hennessy, as joint and several receivers and managers of the property of the scheme defined in Annexure A to the SY21 Orders to mean “*the funds invested, contributed or deposited by investors for the purpose of acquiring an interest in the project known as SY21 Retail Complex Project*” (“**SY21 Scheme**” and collectively with the schemes listed in Annexure A to the Orders, the “**Schemes**”).

4 I am authorised to swear this affidavit on behalf of the Receivers.

5 Statements in this affidavit are made from my own knowledge or to the best of my knowledge, information and belief.

6 I refer to my affidavits sworn on 22 February 2010 (“**First Templeton Affidavit**”), 23 March 2010 (“**Second Templeton Affidavit**”), 26 March 2010 (“**Third Templeton Affidavit**”), 30 March 2010 (“**Fourth Templeton Affidavit**”), 12 April 2010 (“**Fifth Templeton Affidavit**”), 27 April 2010 (“**Sixth Templeton Affidavit**”), 20 May 2010 (“**Seventh Templeton Affidavit**”) and on 27 May 2010 (“**Eighth Templeton Affidavit**”) and on 1 June 2010 (“**Ninth Templeton Affidavit**”) in this proceeding.

LGH Companies’ Report

7 By paragraph 10 of the orders of the Federal Court of Australia made in this proceeding on 6 May 2010 (“**6 May Orders**”), the Court ordered that the Receivers are directed to undertake the work identified in the scoping report which is contained as Exhibit DJT-33 to the Sixth Templeton Affidavit (“**LGH Companies’ Report**”). By paragraph 11 of the 6 May Orders, the Court ordered that the Receivers prepare and file with the Court the LGH Companies’ Report and provide a copy of the LGH Companies’ Report to the parties to the proceeding on 3 June 2010. On 28 May 2010, the Court varied the 6 May Orders so as to extend the date for compliance with paragraph 11 of the 6 May Orders to 8 June 2010.

8 Pursuant to paragraph 11 of the 6 May Orders as varied, the Receivers, with the assistance of their partners and staff, have prepared the LGH Companies’ Report.

Now produced and shown to me and marked “**DJT-37**” is a copy of the LGH Companies’ Report.

9 The LGH Companies’ Report develops those issues set out in the Disclosure Report Overview which is contained as exhibit “**DJT-15**” to the Fifth Templeton Affidavit. The LGH Companies’ Report is intended to be read in conjunction with the Disclosure Report Overview. The LGH Companies’ Report also refers to those matters set out in each of the disclosure reports which have been filed in relation to the Schemes and, in particular, the Yarra Valley Golf Joint Venture disclosure report which is contained as exhibit “**DJT-30**” to the Sixth Templeton Affidavit. The

LGH Companies' Report is intended to be read in conjunction with each of these disclosure reports.

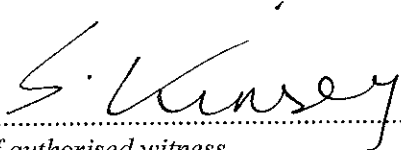
Basis of preparation

- 10 The LGH Companies' Report has been prepared by the Receivers on the basis of the books and records of the Letten Entities and the Schemes, as well as discussions with various parties including:
- (a) Mr Letten;
 - (b) Mr Paul Lane;
 - (c) employees and consultants of the Schemes; and
 - (d) former employees of Mr Letten or entities controlled by Mr Letten.
- 11 The Receivers' investigations have largely focused on:
- (a) locating and attempting to reconcile appropriate and complete accounting information and MYOB records for LGH Administration Pty Ltd (receivers and managers appointed) ("**LGHA**"), LGH Holdings Pty Ltd (receivers and managers appointed) and LGH Finance Pty Ltd (receivers and managers appointed) (collectively, the "**LGH Companies**");
 - (b) attempting to trace payments into and out of the LGHA bank accounts and to determine whether it is possible to wind up each of the Schemes separately;
 - (c) attempting to identify where the funds contributed by Investors in the Schemes have gone;
 - (d) identifying the potential assets of the LGH Companies (including potential claims against third parties) and liabilities of the LGH Companies; and
 - (e) understanding and analysing the overall financial position and solvency of the LGH Companies.
- 12 Owing to the volume of transactions and inconsistencies in the LGH Companies accounting information, it has not been possible for the Receivers to fully investigate and come to a conclusive view on all of those matters set out in paragraph 11 above. However, the LGH Companies Report outlines the work that has been possible within the available information.
- 13 We believe that further investigations are required and would be justified in order to identify and recover potential assets of the LGH Companies and the joint venture managers of the Schemes (such as potential claims by the LGH Companies and the joint venture managers of the Schemes against directors, insurers, entities related to Mark Letten and other third parties).

14 As set out in the LGH Companies' Report, on the basis of the investigations conducted to date, the Receivers are of the view that it is not practically possible to wind up each of the Schemes separately. Therefore, the Receivers recommend that no further tracing of investor contributions to the Schemes be attempted. Rather, as set out in the LGH Companies' Report, the Receivers recommend that the "scheme property" of each of the Schemes be distributed to Investors, in effect, on a pooled basis.

SWORN by the deponent at Melbourne in the State of Victoria)

before me:)



.....
Signature of authorised witness

.....
*Name of authorised witness
(block letters)*

Samantha Kinsay
Level 50, 600 Bourke Street, Melbourne, Vic. 3000
.....
An Australian Legal Practitioner within the meaning
of the Legal Profession Act 2004.
.....
Address of authorised witness



.....
Signature of deponent

.....
Capacity in which authorised witness takes affidavit

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CERTIFICATE OF COMPLIANCE

Order 14, rule 5A

I, **SAMANTHA JANE KINSEY**, certify to the Court that the affidavit of **DAMIAN JOHN TEMPLETON** sworn on 9 June 2010 filed on behalf of the Receivers complies with Order 14, rule 2 of the Federal Court Rules.

Date: *9 June 2010*

..... *S. Kinsey*

Samantha Jane Kinsey
Mallesons Stephen Jaques
Solicitor for the Receivers

Filed on behalf of the Receivers and Managers by:
MALLESONS STEPHEN JAQUES
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Ref: S Kinsey:MAT
Matter no: 03-5503-4607

SCHEDULE OF DEFENDANTS

Mark Ronald Letten
First Defendant

LGH Holdings Limited ACN 077 191 943
Second Defendant

211 Wellington Road Pty Ltd ACN 092 663 860
Third Defendant

Bluemist Holdings Pty Ltd ACN 097 306 922
Fourth Defendant

Dellwood Holdings Pty Ltd ACN 098 505 803
Fifth Defendant

Enmore Enterprises Pty Ltd ACN 082 158 487
Sixth Defendant

Firbark Arch Pty Ltd ACN 059 464 381
Seventh Defendant

Glenline Pty Ltd ACN 098 532 364
Eighth Defendant

Gerling Holdings Pty Ltd ACN 091 726 457
Ninth Defendant

LGH Administration Pty Ltd ACN 077 165 069
Tenth Defendant

LGH Finance Pty Ltd ACN 078 859 248
Eleventh Defendant

Low Head Village Pty Ltd ACN 091 731 958
Twelfth Defendant

Nicholson Street Pty Ltd ACN 069 104 089
Thirteenth Defendant

Holloway Crest Pty Ltd ACN 091 731 967
Fourteenth Defendant

Roseberry Enterprises Pty Ltd ACN 091 826 229
Fifteenth Defendant

Simms Investments Pty Ltd ACN 093 504 511
Sixteenth Defendant

SY21 Retail Pty ACN 107 874 564
Seventeenth Defendant

The Glen Centre Hawthorn Pty Ltd ACN 089 906 543

Eighteenth Defendant

Castello Holdings Pty Ltd ACN 088 204 175
Nineteenth Defendant

Twinview Nominees Pty Ltd ACN 097 307 278
Twentieth Defendant

Yarra Valley Golf Pty Ltd ACN 066 632 479
Twenty-First Defendant

Adina Rise Pty Ltd ACN 083 181 122
Twenty-Second Defendant

Albright Investments Pty Ltd ACN 088 204 166
Twenty-Third Defendant

Ashfield Rise Pty Ltd ACN 093 504 806
Twenty-Fourth Defendant

Bradfield Corporation Pty Ltd ACN 088 204 371
Twenty-Fifth Defendant

Copeland Enterprises Pty Ltd ACN 093 504 824
Twenty-Sixth Defendant

Devlin Way Pty Ltd ACN 088 264 813
Twenty-Seventh Defendant

First Hazelwood Pty Ltd ACN 093 505 303
Twenty-Eighth Defendant

Glenbelle Pty Ltd ACN 097 306 646
Twenty-Ninth Defendant

Glenvale Way Pty Ltd ACN 088 287 021
Thirtieth Defendant

Greenview Lane Pty Ltd ACN 093 505 312
Thirty-First Defendant

Hallmark Corporation Pty Ltd ACN 083 180 812
Thirty-Second Defendant

Moorleigh Holdings Pty Ltd ACN 088 287 058
Thirty-Third Defendant

Norton Ridge Pty Ltd ACN 078 821 066
Thirty-Fourth Defendant

Raleigh Glen Pty Ltd ACN 088 204 380
Thirty-Fifth Defendant

Redcrest Holdings Pty Ltd ACN 100 836 486
Thirty-Sixth Defendant

Suri Corporation Pty Ltd ACN 093 505 321
Thirty-Seventh Defendant

Sutton Rise Pty Ltd ACN 088 204 399
Thirty-Eighth Defendant

The Virtual Milmer Pty Ltd ACN 065 374 665
Thirty-Ninth Defendant

Tivendale Pty Ltd ACN 093 505 349
Fortieth Defendant

Tulloch Downs Pty Ltd ACN 078 895 048
Forty-First Defendant

Maining Pty Ltd ACN 100 790 485
Forty-Second Defendant

Topglen Pty Ltd ACN 096 857 564
Forty-Third Defendant

Allblue Pty Ltd ACN 100 836 388
Forty-Fourth Defendant

Aranbay Pty Ltd ACN 098 532 319
Forty-Fifth Defendant

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(as described in the schedule)**

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EXHIBIT "DJT-37"

This is the exhibit marked "DJT-37" referred to in the affidavit of **DAMIAN JOHN TEMPLETON** sworn

Before me:.....



Samantha Kinsey
Level 50, 600 Bourke Street, Melbourne, Vic. 3000
An Australian Legal Practitioner within the meaning
of the Legal Profession Act 2004.

DJT-37

LGH Companies' Report

Filed on behalf of the Receivers and Managers by:
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