

**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

**SIXTH AFFIDAVIT OF DAMIAN JOHN TEMPLETON**

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On 27 April 2010 I, **DAMIAN JOHN TEMPLETON**, of KPMG, 147 Collins Street, Melbourne, in the State of Victoria, Chartered Accountant, make oath and say -

Filed on behalf of the Receivers and Managers by:

**MALLESONS STEPHEN JAQUES**

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Matter no: 03-5503-4607



- 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 Hennessey, 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**”).
- 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 Hennessey, 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**”), on 30 March 2001 (“**Fourth Templeton Affidavit**”) and on 12 April 2010 (“**Fifth Templeton Affidavit**”) and in this proceeding.

#### **Outstanding Disclosure Reports**

- 7 Pursuant to order 11 of the Orders as varied by the Federal Court of Australia on 16 April 2010 (“**16 April 2010 Orders**”), the Receivers have prepared, with the assistance of their partners and staff, a Disclosure Report for the following Schemes:
- (a) Yarra Valley Golf Joint Venture (Report # 15) (which relates to scheme number 15 and the 21st to 45th corporate defendants);
  - (b) the Glenbelle Project (Report # 16) (which relates to scheme number 16 and the 29th and 36th corporate defendants); and

- (c) the Reef House Resort (Report # 17) (which relates to scheme number 6 and the 7th and 8th corporate defendants),

(“**Outstanding Disclosure Reports**”).

Now produced and shown to me and marked “**DJT-30**” is a copy of the Disclosure Report for the Yarra Valley Golf Joint Venture (Report # 15).

Now produced and shown to me and marked “**DJT-31**” is a copy of the Disclosure Report for the Glenbelle Project (Report # 16).

Now produced and shown to me and marked “**DJT-32**” is a copy of the Disclosure Report in relation to the Reef House Resort (Report # 17).

- 8 Exhibit DJT-15 to the Fifth Templeton Affidavit is a Disclosure Report Overview (Report # 1) which was prepared by the Receivers to explain the relationships between the different Schemes and general operational matters in relation to the Letten Entities. The Disclosure Report Overview also sets out a number of issues which the Receivers have identified as being common to all or a number of the Schemes. Each of the Outstanding Disclosure Reports are intended to be read in conjunction with the Disclosure Report Overview.

- 9 Pursuant to paragraph 8 of the 16 April 2010 Orders, the Receivers were directed to prepare and file with the Court and serve on the parties by 27 April 2010 a report setting out:

- (a) their recommendation as to what further investigation work and reporting ought to be done by them in relation to LGH Administration Pty Ltd (receivers and managers appointed), LGH Holdings Pty Ltd (receivers and managers appointed) and LGH Finance Pty Ltd (receivers and managers appointed) (“**the LGH Companies**”); and
- (b) their estimate of the likely costs associated with that further work (“**Scoping Report**”).

- 10 Pursuant to paragraph 8 of the 14 April 2010 Orders, the Receivers have prepared, with the assistance of their partners and staff, a Scoping Report.

Now produced and shown to me and marked “**DJT-33**” is a copy of the Scoping Report.

### **Basis of preparation**

- 11 The Outstanding Disclosure Reports have 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.

12 The Receivers' investigations have largely focused on constructing or reconstructing the history and historical financial performance of the Schemes, based on the books and records available to the Receivers, and thereby responding to the matters set out in order 11 of the Orders. Further investigation work will be required at some point in the future into the various issues raised in each of the Disclosure Reports. However, prior to undertaking that work, the Receivers believe the primary focus, subject to any further orders and directions of the Court, should be on realising the assets of the schemes and determining whether it is possible for the Schemes to be wound up separately or whether the Schemes should be pooled for the benefit of all investors. This is discussed further in the Scoping Report.

### **Confidentiality**

13 Aspects of the Outstanding Disclosure Reports are regarded as highly confidential, due to their commercial sensitivity. In particular, each of the Outstanding Disclosure Reports annexes:

- (a) a detailed recommended realisation strategy;
- (b) forecast profit and loss statements, balance sheets and cashflows; and
- (c) a valuation report(s).

14 These documents are confidential because I believe that it is likely to prejudice marketing and realisation of the relevant Scheme properties if the market was aware of the Receivers' proposed realisation strategies and their views as to the value of the Scheme assets.

15 Therefore, I request that the Court direct that the annexures to the Outstanding Disclosure Reports, which comprise the detailed recommended realisation strategy and valuation reports, be kept confidential.

16 I note that in relation to the Receivers' recommended realisation strategy, the body of each of the Outstanding Disclosure Report includes a high level outline of the recommended strategy. It is not intended that this high level outline be kept confidential.

17 I propose to provide a copy of each of the Outstanding Disclosure Reports to the solicitors for Westpac (the secured lender to each of the relevant Schemes) immediately upon swearing this affidavit. I expect that Westpac may request that certain aspects of the Outstanding Disclosure Reports (in addition to those aspects which are identified in paragraph 13 above) be kept confidential. On that basis, I request that each of the Outstanding Disclosure Reports be kept confidential pending the Court making orders in relation to any such request (either with the consent of the parties or upon an application being made) or the Court being notified that no such request will be made.

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

before me: )

*S. Kinsey*  
..... )

*Signature of authorised witness*..... )

*Name of authorised witness (block letters)* )

..... )  
*Address of authorised witness*

**Samantha Kinsey**  
Level 50, 600 Bourke Street, Melbourne, Vic. 3000  
An Australian Legal Practitioner within the meaning  
of the Legal Profession Act 2004.  
.....  
*Capacity in which authorised witness takes affidavit*

*[Handwritten signature]*

.....  
*Signature of deponent*