

# FEDERAL COURT OF AUSTRALIA

## Australian Securities and Investments Commission v Letten (No 3)

[2010] FCA 512

Citation: Australian Securities and Investments Commission v Letten (No 3) [2010] FCA 512

Parties: **AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v MARK RONALD LETTEN (and others according to the attached schedule)**

File number: VID 95 of 2010

Judge: **GORDON J**

Date of judgment: 25 May 2010

Legislation: *Corporations Act 2001 (Cth)*

Cases cited: *Australian Securities and Investments Commission v Letten* [2010] FCA 140  
*Australian Securities and Investments Commission v Letten (No 2)* [2010] FCA 307

Date of hearing: 21 May 2010

Date of last submissions: 21 May 2010

Place: Melbourne

Division: GENERAL DIVISION

Category: No Catchwords

Number of paragraphs: 30

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Solicitor for the Seventeenth Defendant: Mills Oakley

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

**VID 95 of 2010**

**BETWEEN: AUSTRALIAN SECURITIES AND INVESTMENTS  
COMMISSION  
Plaintiff**

**AND: MARK RONALD LETTEN  
First Defendant  
(and others according to the attached schedule)**

**JUDGE: GORDON J**

**DATE OF ORDER: 25 MAY 2010**

**WHERE MADE: MELBOURNE**

**THE COURT ORDERS THAT:**

NOTE: For the purposes of this order, “**Property**”, “**Receivers**”, “**Scheme**” and “**Secured Lender**” have the meanings ascribed to them respectively in the Orders of Justice Gordon in this proceeding made on 25 February 2010 (**25 February Orders**).

**A. Scheme number 4: George Street Joint Venture, Sixth Defendant: Enmore Enterprises Pty Ltd**

- 1 Paragraphs 3 and 8(c) of the 25 February Orders be varied with respect to the George Street Joint Venture and the Sixth Defendant so that the Receivers shall have the power to sell the land, buildings and fixtures located at 34 George Street, Launceston, Tasmania (**George Street Property**).
- 2 In selling the George Street Property, the Receivers, consistent with their duties as receivers and managers:
  - (a) shall obtain proposals from at least three real estate agents or other agent(s) in relation to the sale of the George Street Property;
  - (b) shall select and appoint that real estate or other agent(s) to sell the George Street Property which the Receivers believe, on the basis of the proposals submitted, to be the most appropriate in all of the circumstances (and as consented to by the Secured Lender), provided that the sales commission

payable to the selling agent shall not exceed 1% (plus GST), exclusive of disbursements, of the achieved sale price;

- (c) shall conduct a marketing campaign for the George Street Property for a period of not less than four weeks;
- (d) may sell the George Street Property either by auction, tender or expressions of interest as agreed with the appointed agent(s);
- (e) may sell the George Street Property together with or separately from the Cimitiere House Property referred to in Part B of this order; and
- (f) shall, upon commencement of the sale process, write to all investors in the George Street Joint Venture (either by email where email addresses of the investors are known or by mail in all other cases) setting out:
  - (i) the identity of the appointed agent(s); and
  - (ii) the process (in general terms) which will be adopted by the Receivers in selling the George Street Property.

3 Subject to paragraph 2(b) above, the Receivers are justified in paying all agent's reasonable fees and other reasonable expenses associated with the sale of the George Street Property.

4 Except as specifically set out in paragraph 3 above or otherwise until further order of the Court, the proceeds of sale of the George Street Property will be paid into the bank account established by the Receivers in relation to the George Street Joint Venture and will not be distributed.

**B. Scheme number 5: Cimitiere House Joint Venture, Sixth Defendant: Enmore Enterprises Pty Ltd**

5 Paragraphs 3 and 8(c) of the 25 February Orders be varied with respect to the Cimitiere House Joint Venture and the Sixth Defendant so that the Receivers shall have the power to sell the land, buildings and fixtures located at 113-115 Cimitiere Street, Launceston, Tasmania (**Cimitiere House Property**).

6 In selling the Cimitiere House Property, the Receivers, consistent with their duties as receivers and managers:

- (a) shall obtain proposals from at least three real estate agents or other agent(s) in relation to the sale of the Cimitiere House Property;
- (b) shall select and appoint that real estate or other agent(s) to sell the Cimitiere House Property which the Receivers believe, on the basis of the proposals submitted, to be the most appropriate in all of the circumstances (and as consented to by the Secured Lender), provided that the sales commission payable to the selling agent shall not exceed 1% (plus GST), exclusive of disbursements, of the achieved sale price;
- (c) shall conduct a marketing campaign for the Cimitiere House Property for a period of not less than four weeks;
- (d) may sell the Cimitiere House Property either by auction, tender or expressions of interest as agreed with the appointed agent(s);
- (e) may sell the Cimitiere House Property together with or separately from the George Street Property referred to in Part A of this Order; and
- (f) shall, upon commencement of the sale process, write to all investors in the Cimitiere House Joint Venture (either by email where email addresses of the investors are known or by mail in all other cases) setting out:
  - (i) the identity of the appointed agent(s); and
  - (ii) the process (in general terms) which will be adopted by the Receivers in selling the Cimitiere House Property.

7 Subject to paragraph 6(b) above, the Receivers are justified in paying all agent's reasonable fees and other reasonable expenses associated with the sale of the Cimitiere House Property.

8 Except as specifically set out in paragraph 7 above or otherwise until further order of the Court, the proceeds of sale of the Cimitiere House Property will be paid into the bank account established by the Receivers in relation to the Cimitiere House Joint Venture and will not be distributed.

**C. Scheme number 8: Low Head Joint Venture, Twelfth Defendant: Low Head Village Pty Ltd**

9 Paragraphs 3 and 8(c) of the 25 February Orders be varied with respect to the Low Head Joint Venture and the Twelfth Defendant so that the Receivers shall have the power to sell:

- (a) the land, buildings and fixtures located at:
  - (i) 128-136 Low Head Road, George Town, Tasmania;
  - (ii) 142 Low Head Road, George Town, Tasmania; and
  - (iii) 40 Gunns Parade, Low Head, Tasmania; and
- (b) the Low Head Tourist Park business located at 136 Low Head Road, George Town, Tasmania,

(each a **Low Head Property** and collectively the **Low Head Properties**).

10 In selling the Low Head Properties, the Receivers, consistent with their duties as receivers and managers:

- (a) shall obtain proposals from at least three real estate agents or other agent(s) in relation to the sale of the Low Head Properties;
- (b) shall select and appoint that real estate or other agent(s) to sell the Low Head Properties which the Receivers believe, on the basis of the proposals submitted, to be the most appropriate in all of the circumstances (and as consented to by the Secured Lenders), provided that the sales commission payable to the selling agent shall not exceed 2% (plus GST), exclusive of disbursements, of the achieved sale price;
- (c) shall conduct a marketing campaign for the Low Head Properties for a period of not less than four weeks;
- (d) may sell the Low Head Properties either by auction, tender or expressions of interest as agreed with the appointed agent(s);
- (e) may sell each Low Head Property together with or separately from the other Low Head Properties; and

(f) shall, upon commencement of the sale process, write to all investors in the Low Head Joint Venture (either by email where email addresses of the investors are known or by mail in all other cases) setting out:

- (i) the identity of the appointed agent(s); and
- (ii) the process (in general terms) which will be adopted by the Receivers in selling the Low Head Properties.

11 Subject to paragraph 10(b) above, the Receivers are justified in paying all agent's reasonable fees and other reasonable expenses associated with the sale of the Low Head Properties.

12 Except as specifically set out in paragraph 11 above or otherwise until further order of the Court, the proceeds of sale of the Low Head Properties will be paid into the bank account established by the Receivers in relation to the Low Head Joint Venture and will not be distributed.

**D. Scheme number 9: Nicholson Street Joint Venture, Thirteenth Defendant: Nicholson Street Pty Ltd, Fourteenth Defendant: Holloway Crest Pty Ltd and Fifteenth Defendant: Rosebery Enterprises Pty Ltd**

13 Paragraphs 3 and 8(c) of the 25 February Orders be varied with respect to the Nicholson Street Joint Venture and the Thirteenth, Fourteenth and Fifteenth Defendants so that the Receivers shall have the power to sell the land, buildings and fixtures located at 127 - 137 Nicholson Street, Brunswick, Victoria (**Nicholson Street Property**).

14 In selling the Nicholson Street Property, the Receivers, consistent with their duties as receivers and managers:

- (a) shall obtain proposals from at least three real estate agents or other agent(s) in relation to the sale of the Nicholson Street Property;
- (b) shall select and appoint that real estate or other agent(s) to sell the Nicholson Street Property which the Receivers believe, on the basis of the proposals submitted, to be the most appropriate in all of the circumstances (and as consented to by the Secured Lender), provided that the sales commission payable to the selling agent shall not exceed 1% (plus GST), exclusive of disbursements, of the achieved sale price;

- (c) shall conduct a marketing campaign for the Nicholson Street Property for a period of not less than four weeks;
  - (d) may commence the marketing campaign for the Nicholson Street Property prior to the completion of the rezoning of that property;
  - (e) may sell the Nicholson Street Property either by auction, tender or expressions of interest as agreed with the appointed agent(s);
  - (f) may invite both unconditional offers for the Nicholson Street Property and offers which are conditional upon the completion of the rezoning;
  - (g) shall, upon commencement of the sale process, write to all investors in the Nicholson Street Joint Venture (either by email where email addresses of the investors are known or by mail in all other cases) setting out:
    - (i) the identity of the appointed agent(s); and
    - (ii) the process (in general terms) which will be adopted by the Receivers in selling the Nicholson Street Property.
- 15 Subject to paragraph 14(b) above, the Receivers are justified in paying all agent's reasonable fees and other reasonable expenses associated with the sale of the Nicholson Street Property.
- 16 Except as specifically set out in paragraph 15 above or otherwise until order of the Court, the proceeds of sale of the Nicholson Street Property will be paid into the bank account established by the Receivers in relation to the Nicholson Street Joint Venture and will not be distributed.
- E. Scheme number 13: The Glen Centre Joint Venture, Eighteenth Defendant: The Glen Centre Hawthorn Pty Ltd, Nineteenth Defendant: Castello Holdings Pty Ltd**
- 17 Paragraphs 3 and 8(c) of the 25 February Orders be varied with respect to The Glen Centre Joint Venture and the Eighteenth and Nineteenth Defendants so that the Receivers shall have the power to sell the land, buildings and fixtures located at 673-681 Glenferrie Road, Hawthorn, Victoria (**The Glen Centre Property**).
- 18 In selling The Glen Centre Property, the Receivers, consistent with their duties as receivers and managers:

- (a) shall obtain proposals from at least three real estate agents or other agent(s) in relation to the sale of The Glen Centre Property;
- (b) shall select and appoint that real estate or other agent(s) to sell The Glen Centre Property which the Receivers believe, on the basis of the proposals submitted, to be the most appropriate in all of the circumstances (and as consented to by the Secured Lender), provided that the sales commission payable to the selling agent shall not exceed 1% (plus GST), exclusive of disbursements, of the achieved sale price;
- (c) shall conduct a marketing campaign for The Glen Centre Property for a period of not less than four weeks;
- (d) may sell The Glen Centre Property either by auction, tender or expressions of interest as agreed with the appointed agent(s); and
- (e) shall, upon commencement of the sale process, write to all investors in The Glen Centre Joint Venture (either by email where email addresses of the investors are known or by mail in all other cases) setting out:
  - (i) the identity of the appointed agent(s); and
  - (ii) the process (in general terms) which will be adopted by the Receivers in selling The Glen Centre Property.

19 Subject to paragraph 18(b) above, the Receivers are justified in paying all agent's reasonable fees and other reasonable expenses associated with the sale of The Glen Centre Property.

20 Except as specifically set out in paragraph 19 above or otherwise until further order of the Court, the proceeds of sale of The Glen Centre Property will be paid into the bank account established by the Receivers in relation to The Glen Centre Joint Venture and will not be distributed.

**F. Scheme number 14: Twinview Joint Venture, Twentieth Defendant: Twinview Nominees Pty Ltd**

21 Paragraphs 3 and 8(c) of the 25 February Orders be varied with respect to the Twinview Joint Venture and the Twentieth Defendant so that the Receivers shall have the power to sell the land, buildings and fixtures located at 167 Flinders Lane, Melbourne, Victoria (**Twinview Property**).

22 In selling the Twinview Property, the Receivers, consistent with their duties:

- (a) shall obtain proposals from at least three real estate agents or other agent(s) in relation to the sale of the Twinview Property;
- (b) shall select and appoint that real estate or other agent(s) to sell the Twinview Property which the Receivers believe, on the basis of the proposals submitted, to be the most appropriate in all of the circumstances (and as consented to by the Secured Lender), provided that the sales commission payable to the selling agent shall not exceed 1% (plus GST), exclusive of disbursements, of the achieved sale price;
- (c) shall conduct a marketing campaign for the Twinview Property for a period of not less than four weeks;
- (d) may sell the Twinview Property either by auction, tender or expressions of interest as agreed with the appointed agent(s); and
- (e) shall, upon commencement of the sale process, write to all investors in the Twinview Joint Venture (either by email where email addresses of the investors are known or by mail in all other cases) setting out:
  - (i) the identity of the appointed agent(s); and
  - (ii) the process (in general terms) which will be adopted by the Receivers in selling the Twinview Property.

23 Subject to paragraph 22(b) above, the Receivers are justified in paying all agent's reasonable fees and other reasonable expenses associated with the sale of the Twinview Property.

24 Except as specifically set out in paragraph 23 above or otherwise until further order of the Court, the proceeds of sale of the Twinview Property will be paid into the bank

account established by the Receivers in relation to the Twinview Joint Venture and will not be distributed.

**G. General matters**

- 25 The further hearing of the matter be adjourned to 9:30am on 28 May 2010.
- 26 Costs be reserved.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.  
The text of entered orders can be located using Federal Law Search on the Court's website.

