

12 December 2008

Our ref: 27259.19 / Douglas Cowan

Your ref: Stephen Barter

S.H. Barter
Barrister & Solicitor
DX BP61507
ALBANY

Without Prejudice Save as to Costs

Dear Stephen

Joe Mansell/Matt Blomfield - Consolidated of All Claims – Settlement Offer

Introduction

1. We write further to the Judicial Settlement Conference on October 22
2. You will recall that there was an agreement between the parties to try to settle all matters between our respective clients. You sought a statement of claim encapsulating all causes of actions on all matters.
3. We write with the intention of presenting a Calderbank offer rather than the long winded and unnecessarily expensive exercise of drafting a statement of claim. The acceptance of which would effectively curtail the need for any further judicial intervention thus reducing unnecessary expenditure of both time and money.
4. We now comment on each individual matter and we invite you to respond should you wish or better still arrange with us a time to meet with us with our clients to attempt to bringing all matters to a close between our clients.

Car Loan

5. Our client maintains that payment was never received in respect of the interest free car loan, advanced to your client on 11 May 2007, in the sum of \$12,259.00.
6. In satisfaction of this debt our client seeks the full amount. Amount payable \$12,259.00.
7. Your client has raised defences that he has paid the money in full and has annexed to his supporting affidavit Omni Cheque Account Statements of a payment of \$2,000 on 05 June 2007, \$2,250 payment on 15 June. With respect these support money transferred to the account FC03-0104-0512449-00 which is the MJ Blomfield

Partners
Lawrence Ponniah
John P Kahukiwa
Bruce Johnson

Associate
Lisa Roberts

Consultants
Philip G Revell
Alan P Goodwin
Brian PN Corban QSO.

Limited account not the lender's account. Our client believes that these sums repaid other loans that our client has made to your client.

8. We are instructed that our client never received the \$8,000 in cash your client says he paid soon after 31 May 2007. This will therefore lead to a direct test of evidence by way of cross examination. This carries risk for both our clients.
9. More here if need be

Cinderella NZ Limited Loan

10. On 24 August 2007, Black Trading Limited loaned Mr Mansell \$30,000 for the purchase of shares in Cinderella NZ Limited. The loan was subject to interest at the lower rate of 8.85% and at the higher rate of 15%.
11. Your client's defences and counter claim based on the Fair Trading Act will fail because all the events your client pleads as "misleading and deceptive conduct" took place after the loan was taken out.
12. Our client's position is simply this: your client wanted to buy into Cinderella NZ Ltd but did not have the means to do so. A loan was arranged as is normal practice in business. Our client was protected by that loan agreement Mr Blomfield was in the process of negotiating a deal with Colenso BBDO for that Company to purchase Cinderella NZ Limited. Colenso BBDO made a decision not to acquire Cinderella NZ Ltd. There was no promise or representation by our client that this deal was guaranteed to proceed.
13. With respect, it is drawing a long bow to argue before the Court that our client misrepresented the situation and that your client is entitled to Contractual Remedies Act relief. Our client did not say ever that the deal was certain. He only ever described it as in progress..
14. The insolvency argument raised by your client faces a heavy evidential burden. Again, but for Tasman Pacific Foods Ltd not paying nearly \$500,000 in outstanding invoices, and subject to separate litigation, Cinderella NZ Ltd was a good financial state. With respect we believe the Court will agree with our submission that a business for the most part cannot control the actions of debtors.
15. In conclusion our client is, we argue, in a much stronger position and as such our client requests that this debt be paid in full and as a measure of good faith, will not pursue any additional interest. Amount payable, \$30,000.

Scottish Pacific Business Finance Limited (SPBF)

16. On or about 22 February 2007, both parties entered into a written notification factoring facility agreement ("the Agreement") with SPBF. The parties also entered into a deed of guarantee and indemnity wherein they jointly and severally guaranteed

the obligations of Cinderella NZ Ltd to SPBF. Under the guarantee, each party also guaranteed their personal liability.

17. Upon default, SPBF issued proceedings in order to recover the debt accrued under the Agreement. Your client again issued a cross claim and pleaded the same affirmative defences as the loan proceedings.
18. Our client denies entirely that your client is not liable in any way to SPBF and that any of the grounds for opposing summary judgment would give rise to a tenable defence. In short, your client had vast knowledge of the financial dealings of Cinderella, was aware of the guarantee and the potential for liability rising from any lack of assets of Cinderella.
19. In conclusion, our client paid in full an agreed settlement amount of \$190,000.00. Mr Mansell is jointly and severally liable for this debt and our client seeks a contribution by way of half the total amount. Amount payable, \$95,000.00.
20. Please note, there has been a valid assignment of the right to litigate in this matter to Black Rural Developments Limited (BRDL). BRDL reserves its rights pursuant to R47 DCR 1992 to seek increased or indemnity costs should a settlement not be achieved in this matter as part of the consolidated claim. Depending on the outcome of the settlement negotiations our client will be in a position to lodge summary judgment proceedings to recoup its losses.

Alleged Cinderella NZ Ltd Voidable Transactions

21. It was previously alleged by the Liquidator that there were funds transferred out of Cinderella NZ to our client that were voidable transactions. This allegation has been dealt with by our client and the liquidator is now satisfied there were no voidable transactions.

Centurion Printing Limited

22. As you are aware, our client has been joined as a third party to the proceedings between Centurion Printing Limited and Mr Mansell. Mr Mansell has brought a cross-claim against our client seeking \$18,265.27 plus interests and costs of \$2,000, the full sum of the plaintiff's claim.
23. Our client will accept that this its portion (50%) of amount be deducted from the amount owed by Mr Mansell, by way of set-off, i.e. \$10,132.64

APN Outdoor

24. APN Outdoor Limited are owed \$200,000.00 by Cinderella NZ Limited. This debt is guaranteed by our client and your client jointly. Our client has paid \$50,000.00 off this debt so there is \$150,000.00 left outstanding. Our client is making arrangements to pay a further \$50,000.00. \$100,000.00 of the account is your clients responsibility.

Total

25. In full settlement of the dispute between the parties, our client seeks payment of:

<u>Owing</u>	
Car Loan	\$12,259.00
Cinderella NZ Limited Loan	30,000.00
Scottish Pacific Business Finance Limited	95,000.00
APN Outdoor	100,000.00
Total	<u>\$237,259.00</u>

<u>Set-Off</u>	
Total	\$23,259.00
LESS Centurion Printing Limited	<u>10,132.64</u>
Total	<u>\$227,126.36</u>

Therefore, our client seeks the amount of **\$227,126.36** in full satisfaction of the debts owed by Mr Mansell in order to avoid the time, energy and added expense of continuing to litigate all matters in COURT

Yours faithfully
CORBAN REVELL

Douglas Cowan
Solicitor
DDI +64 9 837 5743
dcowan@corbanrevell.co.nz

Partner ref: Lawrence Ponniah