Bryant Bouma

From: Stephen Colditz <colditz@qldbar.asn.au>
Sent: Monday, November 18, 2019 11:58 AM
To: James Lavercombe; Francis Douglas QC; David Keane; Vivian Kan
Subject: RE: PLEASE RESPOND THIS MORNING: Undertaking provided by Mio Art Pty Ltd to indemnify Delta Law Pty Ltd, in respect of legal fees owing to Francis Douglas QC, David Keane, and Stephen Colditz

Dear James

As you are aware, the firm Law and Commerce Partners Pty Ltd (LACP) and Ms Perovich and Mr Spencer have already assumed liability to pay the overdue professional fees owing to me by Delta Law. There are professional fees in certain other proceedings commenced this year that are payable to me by your firm, in its role acting for Mio Art Pty Ltd. The delay in the payment of my professional fees is satisfactory to me for the time being. I do not insist on immediate payment because my client agreements provide for the payment of interest on the overdue amounts under section 321 of the *Legal Profession Act 2007* (the **LPA**). I am also satisfied that LACP, Ms Perovich, Mr Spencer, and your firm have ample means to pay the comparatively small amounts owing to me in respect of my professional fees. Having regard to certain ongoing litigation and the need to fund it, there may well be cogent commercial reasons for preferring to incur interest on the outstanding portion of my professional fees than to pay them immediately, and it appears to me that this is what has been decided.

Against this background, I have no interest whatsoever in enforcing the payment of my professional fees against Delta Law Pty Ltd.

I release Delta Law Pty Ltd from liability to pay professional fees owing to me. It remains my intention to rely on the liability of other entities and people in relation to the payment of those professional fees.

As a barrister who practices in the field of insolvency law, it is my policy to never submit a proof of debt in the external administration of a company in relation to a claim for professional fees, amongst other things because it is distracting and time consuming to assume a personal interest in an external administration as an unsecured creditor. The general advice of senior colleagues is that it preferable not to descend into the fray (so to speak) as a matter of policy. Thus from a personal perspective, I am totally indifferent to anything that may happen in relation to Delta Law Pty Ltd.

I have considered the way the LPA applies to the proposed arrangement and am satisfied that Mio Art Pty Ltd (in common with LACP, Ms Perovich, and Mr Spencer) falls within the definition of "third party payer" in section 301 of the Act. I consider that none of those entities and people are in any respect disadvantaged by assuming liability to pay the professional fees owing to me - their assumption of liability is at their own request, the choice is fully informed, and in each case there appears to me to be a cogent commercial reason for assuming liability. I understand from you that there can be no suggestion that any of the relevant entities has not received the disclosure of the fee-related information I provided to Delta Law Pty Ltd, or that there is any other potential deficiency in the arrangement having regard to the LPA and my professional obligations.

Please contact me should there be any further matters with which I may be of assistance.

With compliments

Stephen Colditz
Barrister, **Hemmant's List**
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