

Quintin Rozario

From: Quintin Rozario <q.rozario@deltalaw.com.au>
Sent: Tuesday, September 5, 2017 8:13 AM
To: 'Admin Delta Law'
Subject: RE: Mio Art v Mango - BS1714/11 - TVM request for particulars

We have to decide what it is that they will be looking for from the particulars they seek. Perhaps we could use the software for extracting 11 years of phone calls CSV them. Then do the same for emails. Out of that will come the manual work of correlating the electronically harvestable information with the attendances and advises etc

Quintin

From: Admin Delta Law [mailto:admin@deltalaw.com.au]
Sent: Tuesday, September 05, 2017 7:30 AM
To: Rozario Quintin; info@deltalaw.com.au
Subject: Fwd: Mio Art v Mango - BS1714/11 - TVM request for particulars

Begin forwarded message:

From: "Info" <info@deltalaw.com.au>
Date: 4 September 2017 at 9:41:42 pm AEST
To: "'admin@deltalaw. com. au'" <admin@deltalaw.com.au>
Subject: **FW: Mio Art v Mango - BS1714/11 - TVM request for particulars**
Reply-To: <info@deltalaw.com.au>

A number of points

- Stephen's points reveal why we should not get locked in now, so resisting particulars now will be good – question is can we? – and that depends on the argument of particulars vs evidence etc
- It will require much thought and construction of the management record, this is why someone **on the side** like Mark McKillop would be useful
- He is correct in treating it as a forensic exercise involving spreadsheet etc, but he is incomplete in thinking only of legal costs – management by Mio Art and funding by ALF will be seminal
- Can you envisage the massive challenge by Shute with affidavit referencing Eddy Galea deposing that he is not funding Mio Art – lots of verbatim transcript etc – so this needs major thought and preparation
- Stephen appears to be putting up his hand on this, but we need to be careful he does not depress the claim
- Elia Lytras (see attached) appears to be good value, and may have the bonus of an existing relationship with Stephen
- We could consider having a person like Mr Lytras also formulating the claim by Colmine Consulting against the ICC

- But starting point here is how long to ask for, and how little to disclose at this time?

Richard

From: Stephen Colditz [<mailto:colditz@qldbar.asn.au>]
Sent: Monday, 4 September 2017 7:44 PM
To: admin@deltalaw.com.au; 'David Keane' <dkeane@qldbar.asn.au>
Cc: 'Francis Douglas' <douglasqc@newchambers.com.au>; s.perovich@spars.net.au
Subject: RE: Mio Art v Mango - BS1714/11 - TVM request for particulars

Quintin

Do you think there might be a serious problem with providing what appear to be round figure estimates of some key elements of the particulars when it comes to proving actual, provable, figures subsequently as would be necessary at trial? As in, isn't there a risk that the opponents will argue that the means of proof of the actual figures ought to be available to instructing solicitors now, and if a more fulsome basis for the figures is put into evidence later the provision of mere estimates at this stage suggests subsequent invention or reconstruction when we have to come up to proof?

It would, of course, be fine to particularise costs, fees, and allowances for remuneration only up to the date of the counterclaim. But I had in mind that a fairly involved accounting exercise is required, starting with actual costs incurred as calculable from fee notes and involving a spreadsheet of line items. Wouldn't a good approach be to treat the preparation of particulars as a forensic accounting exercise rather than one of making retrospective estimates? This would involve starting with the legal costs for which firm figures are available, use the legal costs as a structure for taking account of other expenses and entitlements, and then calculate appropriate reimbursement allowances for each component of the structure, element by element, based on contemporaneous records such as diaries? It will take three to five days solid work to prepare a master set of spreadsheets from all the source documents.

Unfortunately, as you already know, I don't have great availability this week and next due to an inquest that's a bit challenging due to late changes in evidence and other features and that doesn't finish until next Thursday.

Subject and subordinate to Francis' and David's views, my opinion is that the draft response simply is not in any adequate form to be put on record. I worry that Martin QC would even seek to put this response before Daubney J somehow if Marin QC receives it, as evidence of the weakness of the salvage lien claim (because, Martin QC will say, adequate figures simply can't be provided in support of the lien). I hope that Francis and David will excuse me for venturing this opinion independently of my leaders, but I do so only because the situation appears to be time critical.

The responsible course of action appears to me to be to notify relevant opposing solicitors that a fortnight is required to complete the forensic accounting exercise of calculating the amount of the lien and particularising its components, and then to actually undertake the accounting exercise of calculating the sum of all the elements of the lien. There's a forensic accountant I usually work with in my plaintiff banking cases, Mr Elia Lytras, who's open to negotiating deferred fees, and you could possibly seek to involve him if Delta Law is extremely short of capacity due to the other matters. Input from counsel (or an accountant) into the calculation itself is only possible if counsel is properly briefed with the source documents needed to be reviewed.

Stephen

Stephen Colditz

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From: Delta Law Admin [<mailto:admin@deltalaw.com.au>]
Sent: Monday, 4 September 2017 7:09 PM
To: 'David Keane' <dkeane@qldbar.asn.au>; Stephen Colditz <colditz@qldbar.asn.au>
Cc: 'Francis Douglas' <douglasqc@newchambers.com.au>; s.perovich@spars.net.au
Subject: FW: Mio Art v Mango - BS1714/11 - TVM request for particulars

David, Stephen,

The orders made by Jackson J on 24 August provided that we provide the further particulars requested by TVM by 4pm 5 September – tomorrow

We attach the following:

1. Request dated 9 August
2. Draft response dated 22 August
3. Estimate of lien costs dated 22 August

Please note that our draft response has not yet had the benefit of any Counsel's advice whatsoever, so the draft response might be regarded as a framework only.

As we and our clients are still students of the salvage lien, and have been studying Thackray's case, we want to preserve as much flexibility as possible, and do not want to commit to particulars which would undercook the liens.

Accordingly we first of all wish to know how much extra time should be requested for the provision of particulars, and then discuss with you your advice on claiming the liens, and the particulars we should provide TVM at this stage.

Regards

Quintin Rozario