

Friday, 10th March 2017

Mr Grant Marjoribanks, Partner
Herbert Smith Freehills
ANZ Tower
161 Castlereagh Street
Sydney NSW 2000

Dear Mr Marjoribanks

Re: Allegations of fraudulent conduct

1. I refer to the above, and I write in relation to the conduct of Terence Goldberg, solicitor, and an ex-client of Mr Goldberg's, Mr Jon Lindsay.
2. In 2007, Terence Goldberg of Turner Freeman Lawyers represented Jon Lindsay, the Applicant, in a Federal Court of Australia matter against John Fairfax Publications Pty Ltd. Freehills (as your firm was then known) acted for John Fairfax Publications Pty Ltd (the Respondent), the Court reference being NSD927/2007.
3. The solicitor with carriage of that matter was Kathryn Everett. I was disheartened and saddened to learn that Ms Everett died in 2013 at the premature age of 48 from breast cancer.
4. In 2009, I was the vice president and public officer of a small community centre based in Enmore (2042). A dispute surrounding missing association funds arose and after a number of tumultuous months, a meeting of the members was called and the association's committee was dismissed.
5. The association's president, who was also the treasurer, was unable to explain the 'non-receipted expenditure' of approximately \$45,000.00 over three years, which was the figure provided pursuant to an audit of the association's finances by CBC Partners, Sydney.
6. The president, Ms Patricia Cleary, along with three other committee members refused to accept the will of the financial members of the association and sought the legal services and advice of Terence Goldberg of Turner Freeman Lawyers and commenced proceedings in the Supreme Court of NSW in order to declare invalid the said meeting of members.
7. The abovementioned validly convened meeting of the members took place on 10th September 2009. The following day, a number of church and committee members

received an identical letter from Terence Goldberg of Turner Freeman Lawyers. Find **attached** behind **Tab 1** of the enclosed brief a copy of that letter.

8. You will note Terence Goldberg's statement in that letter, ie *"We act for the Church"*. This statement as made by Terence Goldberg was somewhat difficult to understand as no committee meeting had taken place wherein the decision was made to retain Turner Freeman as the church solicitor.
9. A response was drafted the same day and was provided to Terence Goldberg, advising Mr Goldberg that Turner Freeman did not in fact act for the church. Find **attached** such correspondence, dated 11 September 2009, also behind **Tab 1**.
10. On 17th September 2009, Terence Goldberg wrote to the President of the Law Society of NSW, and stated: *"We act for four members of an eight member committee of the above incorporated association."* Find **attached** copy of such correspondence behind **Tab 1**.
11. On 24th September 2009, Terence Goldberg provided a response to my letter of 11th September 2009 and stated: *"We act for Reverend Patricia Cleary, Caroline Allen, Matilda Vila and Miranda McCarthy (also known as Mandy Miami)."* Find **attached** copy of such correspondence behind **Tab 1**.
12. I responded to Terence Goldberg on 25th September 2009, and I attach a copy of such correspondence to provide you with a background to the issues. Find **attached** copy of such correspondence behind **Tab 1**.
13. Terence Goldberg wrote to me once more on 12th October 2009 and stated: *"We continue to act for Reverend Patricia Cleary, Caroline Allen, Miranda McCarthy and Matilda Vila."* Find **attached** copy of such correspondence behind **Tab 1**.
14. As stated above, proceedings were commenced in the Supreme Court of NSW. Turner Freeman's four clients were the Plaintiffs in those proceedings. There were six Defendants in those proceedings, ie Chorel Terelinck, Recy Kypri, Wendy Hemington, Norman Power, Symn Waters (myself), and Enmore Spiritualist Church Incorporated. As you can see, the association itself was named as the sixth Defendant.
15. Find behind **Tab 2** of the enclosed brief the Summons and the Notice of Motion of proceedings 5454/2009*. You will see from both of these Court documents that Turner Freeman Lawyers represented the four Plaintiffs. Pigott Stinson represented the first to fifth Defendants. The sixth Defendant was an unrepresented party in the proceedings and remains on the Court record as such.
16. You will see from the **attached** Notice of Motion as at **Tab 2** that the sixth Defendant, along with the first to fifth Defendants, is noted as being a party affected by the orders sought.

* Now known as Supreme Court proceedings 2009/00291458-001 due to change in Court system.

17. Also **enclosed** behind **Tab 2** is an Order made in her Honour's chambers excusing the Plaintiffs from serving the sixth Defendant as at 25th November 2009. The sixth Defendant was not served.
18. Find behind **Tab 3** sworn Affidavits of Terence Goldberg of 24th November 2009 and 25th November 2009. You will note the identical statement in each of such affidavits, ie: *"I am a partner in the firm Turner Freeman and in that capacity have care, conduct and control of the matter on behalf of the plaintiffs."*
19. You will also see that several statements are made in those affidavits in relation to acting for the Plaintiffs in proceedings 5454/2009, such as: *"At the time of being retained by the plaintiffs to act on their behalf in respect of the affairs of the Enmore Spiritualist Church Inc."*
20. Please find behind **Tab 4** of the enclosed brief the Judgment/Order as made in the abovementioned proceedings. You will note that the Honourable Justice Bergin, Chief Judge in Equity, made one Order only, ie *"Each party to pay their own costs"*.
21. As you would know, the above Order as made by her Honour prohibited any Plaintiff from seeking their costs from any Defendant in the same proceedings.
22. In order to avoid any ambiguity, I **enclose** behind **Tab 5** the transcript of proceedings 5454/2009. You will note that Christopher Bevan of Counsel appeared for the four Plaintiffs, Mr John Ralston of Pigott Stinson appeared for the first to fifth Defendants, and the sixth Defendant is unrepresented.
23. I now bring you to **Tab 6** of the enclosed brief and bring your attention to an Application for Assessment of Solicitor/Client Costs as filed with the Supreme Court of NSW on 23rd June 2010 by Terence Goldberg of Turner Freeman.
24. I specifically bring your attention to the page as marked as "1", being the first page of the narrative in such Application and to the statement in such narrative as made by Terence Goldberg: *"In this matter, we acted for Enmore Spiritualist Church Incorporated ("the Church"), Reverend Patricia Cleary, Caroline Allen, Miranda McCarthy and Matilda Vila collectively and as individuals..."*
25. As you can see, this statement as made by Terence Goldberg in the filed Application for Assessment of Solicitor/Client Costs does not accord with his previous statements in his correspondences, nor in his statements in the aforesaid Summons and Notice of Motion, as well as in his sworn Affidavits as filed with the Court.
26. A large number of anomalies exist in such Application, such as Mr Goldberg stating that there were only five Defendants in the proceedings and omitting to mention that the sixth Defendant was in fact a Defendant. You will also note that Mr Goldberg states that 11 Orders were made in the associated proceedings, when in fact there was only one.
27. At this point, I bring your attention to item 2 on page 6 and item 487 on page 49 of the **attached** Application for Assessment of Solicitor/Client Costs as behind **Tab 6**. You will

note that Mr Jon Lindsay has been named as an agent to act between Turner Freeman and Turner Freeman's four clients. This is the same Jon Lindsay who is mentioned in paragraphs 1 and 2 at the beginning of this letter.

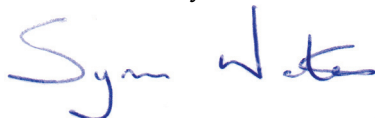
28. Another important item of note is item 3 on the page marked as "1" in the narrative of such Application, which contains: *"On 14/09/09 a committee meeting was held at our offices and a resolution passed providing instructions to act for the Church."* I shall refer to this further in paragraph 34 this letter.
29. An assessment of solicitor/client costs was carried out by John Bartos, costs assessor, and a certificate of determination was issued on 3rd February 2011 in the amount of \$124,661.90. Such certificate of determination states that the costs Respondents are to pay the costs Applicants the sum of \$124,661.90. You will see that the sixth Defendant is named alongside the four Plaintiffs as a costs Respondent, with Turner Freeman being the Applicants. Such certificate of determination can be found behind **Tab 7**.
30. A judgment debt was subsequently obtained in the District Court, Sydney, on 15th March 2011 in the same amount, ie \$124,661.90. Such judgment debt can be found behind **Tab 8**.
31. A decision was made to wind up the association in order to pay the above supposed debt to Turner Freeman. Minutes of any committee meeting or meeting of the members of the association carrying the decision to wind up the association have never been located.
32. Find behind **Tab 9** the constitution of the association involved, ie Enmore Spiritualist Church Incorporated. You will note Rule 27 of the Constitution, which states: *"No resolution for dissolution of the Church or the selling, disposing of all or any part of the property of the Church shall be effective until it has been approved by a vote of nine tenths (9/10) of the Members on the Roll of Members present at three prior consecutive Special General Meetings duly convened for that purpose"*. The required three meetings of nine tenths of the church membership did not take place.
33. Rule 30 of the Church Constitution states: *"If upon the winding-up or dissolution of the Church there remains after satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid or distributed amongst the Members of the Church but shall be given or transferred to some other institution or institutions having objects similar to those of the Church and which shall prohibit the distribution of its or their income and property amongst its or their Members, and if this provision cannot be satisfied then to some charitable object."*
34. All the above appears to be negated by the fact that Rule 25f of the Constitution states: *"the quorum necessary for Meeting of members of a Committee may be fixed by the Committee but shall not be less than five (5) in number."* Such would indicate that Turner Freeman's clients' actions were not valid in the first instance.
35. On perusing further the invoice attached to the Application for Assessment of Solicitor/Client Costs (as behind **Tab 6**), you will note item 44 which refers to such committee meeting and such denotes that three committee members attended such in the offices of Turner Freeman Lawyers. This is three days after Terence Goldberg's original

claim in his letter of 11th September 2009 that he acted for the association, which, of course, completely refutes Terence Goldberg's original claim to have acted for the association as written in his letter of 11th September 2009, as referred to in paragraphs 7 and 8 of this letter.

36. In relation to such quorum and Turner Freeman's clients' validity, please find **enclosed** behind **Tab 10** advice received from William Washington of Counsel, dated 11th October 2011. Unfortunately, Mr Washington died on 15th September 2015.
37. A meeting was held in the offices of Jones Partners, Insolvency and Business Recovery, on Level 13, 189 Kent Street, Sydney on 13th April 2011, at 11.00am. I **attach** a copy of the minutes of that meeting behind **Tab 11**.
38. You will note at the rear of these minutes that Turner Freeman now claims to be owed the sum of \$185,802.62, despite the abovementioned judgment debt sum of \$124,661.90. The disparity of \$61,140.72, despite many requests, has never been explained.
39. I also place behind **Tab 11** minutes of a meeting of creditors of Enmore Spiritualist Church, also held at the premises of Jones Partners, on 17th May 2011, at 2.30pm. You will see that Jon Lindsay, again the same person as mentioned in paragraphs 1 and 2 at the beginning of this letter, puts forward the motion to remunerate the liquidator, and also puts forward the motion to wind up the association, as well as putting forward the motion to destroy all books and records.
40. The association's only asset, a building, 2 London Street, Enmore, was sold in June 2011 for \$965,000.00 to pay the purported debt to Turner Freeman Lawyers.
41. Also placed behind **Tab 11** find **enclosed** minutes of a purported meeting of creditors held at Jones Partners, as above, on 29th May 2014, at 11.00am. You will note that only one purported creditor attends this meeting, ie Terence Goldberg of Turner Freeman Lawyers.
42. As is evidenced in the above minutes, the amount supposedly owing to Turner Freeman Lawyers has now swelled to \$188,303.60.
43. You will see that Mr Goldberg puts forward the motion to handsomely reward the liquidator and also discusses the creation of the association's new trust, which is to be called 'Congregation of the Enmore Spiritualist Church Incorporated'.
44. Behind **Tab 12** find **enclosed** copy of correspondence to Terence Goldberg of 15th November 2016 and copy of correspondence to Michael Jones, Liquidator, of 15th August 2016. You will see that those correspondences inform Messrs Jones and Goldberg of the non-validity of the supposed meeting of creditors of 29th May 2014 due to a breach of Regulation 5.6.16(2) of the Corporations Regulations. No response was received to these correspondences, nor was any action taken.
45. Also find behind **Tab 12** letters to Michael Jones of Jones Partners of 16th June 2016 and 9th July 2016, calling into question several inconsistencies and conduct matters, as well as alleging fraud. These letters did not receive any response.

46. At this point, I interject slightly. Find enclosed behind **Tab 13**, copy of letter from Michael Jones of Jones Partners (the liquidator) of 7th November 2012 to Geoff and Christine Kingsley, quoting Rule 30 of the association's Constitution (as in paragraph 33 of this letter), which indicates that Mr Jones was quite aware of such Rule. It is of interest that Mr Jones declines to accept the membership of Mr and Mrs Kingsley, who were in fact members of the church for a great number of years.
47. Behind **Tab 14** find **attached** the roll of church members which dates to the closure of the church. You will note that Jon Lindsay and Miranda McCarthy (a plaintiff in the abovementioned proceedings) are both church members and provide the home address of 3/349 Bourke Street, Darlinghurst NSW 2010.
48. Please find **enclosed** behind **Tab 15** correspondence from NSW Fair Trading, which states:
"Following receipt of that advice, on 26 September 2016, the delegate of the Commissioner approved a proposed distribution of the Association's surplus assets to the Congregation of the Enmore Spiritualist Church Foundation Trust pursuant to section 65(3) of the Associations Incorporation Act 2009."
49. Behind **Tab 16** please find **enclosed** NSW Fair Trading Association Extract which shows the entity known as The Congregation of the Enmore Spiritualist Church Incorporated is based at the address of 3/349 Bourke Street, Darlinghurst NSW 2010, which is the home address of Jon Lindsay and Miranda McCarthy, while also noting that Jon Lindsay is the registered public officer of this entity. You will note that this is the same entity as discussed by Terence Goldberg in an unlawful meeting of creditors, as in paragraph 43 of this letter.
50. It would strongly appear that a conspiracy existed between Terence Goldberg, Jon Lindsay and Michael Jones, to commit fraud and strip the church of its assets, and we seek assistance from Herbert Smith Freehills, if possible.
51. Without wishing to impose on you or your free time, please feel free to call me on either of the numbers in the header of this letter if you so wish any time over the coming weekend.
52. I look forward to hearing from you.

Yours faithfully



Symn Waters