

QUARTERLY NEWSLETTER

DECEMBER 2012

Merry Christmas and Happy New Year!

MLB Lawyers & Associates (MLB) looks back at a year of growth and achievement.

MLB is a law firm that places an emphasis on providing outstanding client communication with trusted legal advice. The company has implemented new procedures over this year to ensure that client satisfaction is achieved and maintained. MLB also offered a range of free legal seminars for both business owners and individuals.

On behalf of all staff at MLB we would like to take this opportunity to thank you for your interest and custom throughout 2012 and wish you and your families all the best for 2013.

False Statements by Estate Agents

In the case of *Miletich v Murchie* [2012] FCA 1013 the court held that agents and developers used false and misleading statements to lease new retail centres under development in Melbourne CBD.

An order for damages was made against the estate agency, the agent personally, the developer company and the director of the developer personally. The orders were made against the individuals as it was found that they were knowingly concerned in making the false and misleading statements.

The estate agency and developer created glossy plans, a video, brochure and computer simulation of the completed centre, showing certain tenants and customers.

The agent represented to the tenants that there would be specific shops including an Irish Bar, a gift shop, hairdresser, florist,

gym, sporting complex, Drummond Golf, newsagent, chemist shop and food sites.

Before the meetings between the agent and the tenant, the agent received an email from the developer who expressed concern about the lack of progress in negotiating with prospective tenants. There was also evidence showing that it should have been apparent to the agent and the developer that the representations to the tenants were unlikely to become true. There were only 3 shops opened.

The Court found that the material created to induce the tenants to enter into a leasing contract, were false and misleading and that there was no reasonable basis for the agent and developer to believe that the representations they made to the tenants would eventuate.

The conclusion to be drawn from the case is that if an agent and developer make a representation to a potential tenant which they know is false or is likely to be false then, a court may make an order against them personally and their company.

Changes to Parental Leave

On 1 October 2012, the *Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measure) Act 2012* provides new rights to employees who become parents on or after 1 January 2013 and take unpaid absence during the first 12 months after the birth or adoption of their child.

Parents may be entitled to government-funded Dad and Partner Pay of up to 2 weeks at the National Minimum Wage (presently \$606.40 per week before tax), under the Australian Government Paid Parental Leave Scheme.

Employees who are entitled include biological fathers, partners of the birth mother, adopting parents and their partners, parents and their partner in a

surrogacy arrangement and same sex partners, who care for the baby or child (either through primary care or joint care). To be eligible the employee must be an Australian resident and satisfy the same income and work tests as Parental Leave Pay.

The legislation also amends certain provisions of the *Fair Work Act 2009* (Cth) ("the FW Act").

Employees on unpaid parental leave can now perform paid work up to 10 "keeping in touch days" without breaking the continuity of the parental leave period, as long as they satisfy the requirements set out in section 79A of the FW Act.

A pregnant employee may now commence their unpaid parental leave period before 6 weeks of their expected date of delivery, provided the employer consents.

In the case of stillbirth or infant death, the employee can return to work within 4 weeks of giving notice to the employer without the consent of the employer.

Employers are advised to ensure that their employment agreement and policies reflect the legislative changes to parental leave.

Competitor Poaching Employees Held Liable

In *Wilson HTM Investment Group Limited & Ors v Pagliaro & Ors* [2012] NSWSC 1068 a group of employees were "poached" from Wilson HTM Investment Group Limited ("WHIG Ltd") by Ord Minnett Limited ("OM Ltd").

WHIG Ltd claimed that their former employees in their new positions at OM Ltd breached the terms of their employment contracts with WHIG Ltd which prohibited the employees from disclosing confidential information. WHIG Ltd also alleged that OM Ltd caused the employees to disclose the information, persuade other employees of WHIG Ltd to terminate their contracts with WHIG Ltd and accept offers of employment from OM Ltd.

The court found that OM Ltd was aware of the contractual obligation of the employees and that it had induced the employees to breach their contractual obligations.

The court ordered damages against OM Ltd. However, the court reduced the damages payable as the employees had the intention of leaving WHIG Ltd prior to being poached by OM Ltd. The court therefore calculated damages based on the income the employees would have generated during the 1 month notice period in their employment contract, reduced by 60%, equating to a total of \$176,416 in damages.

An injunction was also granted against OM Ltd to restrain it from using and publishing in the future any confidential information it had received from the former employees of WHIG Ltd.

The case demonstrates that caution should be taken when offering employment to employees of a competitor and in particular, using any information these employees may have acquired during their employment.

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