

29 June 2012

Senate Economics References Committee  
Parliament House  
Canberra ACT

Attn: Mr Tim Bryant -  
Committee Secretary

By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Sir,

**RE: PAOLI PTY LIMITED**  
**ACN: 059 071 653 (“the Company”)**  
**6 Bowra Street, Nambucca Heads NSW**  
**2/22 Parkes Street, Nambucca Heads NSW**  
**5/22 Parkes Street, Nambucca Heads NSW (together “the Properties”)**

We refer to Mr Winton’s submission to the Economics References Committee (“ERC”) of 27 May 2012 in relation to the above company and properties. Thank you for the opportunity to respond and for the additional time afforded us in respect to the same.

As you are aware, Geoffrey Reidy and I were appointed Joint & Several Receivers and Managers of the Company and the Properties on 21 September 2009. We subsequently retired as Receivers and Managers on 11 April 2011 following completion of the receivership.

We note the submissions of Mr Kenneth Winton dated 27 May 2012 with particular regard to allegations that, in our role as the Receivers we deliberately delayed the sale process of the Properties.

Our response to Mr Winton’s submission is set out below under the following headings:

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## 1. Properties Subject to the Appointment

- Folio Identifiers: 4/4/758749 and 5/4/758749 - 6 Bowra Street, Nambucca Heads NSW (“the Bowra Street properties”)
- Folio Identifiers: 2/SP79668 - 2/22 Parkes Street, Nambucca Heads NSW; and Folio Identifiers: 5/SP79668 - 5/22 Parkes Street, Nambucca Heads NSW (together “the Parkes Street properties”)

The Bowra Street properties were comprised of nine (9) residential apartments and one commercial shop that, as at the date of our appointment, had not yet had a strata plan registered, but had an Occupation Certificate (“OC”) issued. One of the residential properties had conditional contracts exchanged with a second awaiting exchange and an offer having been received in respect of the commercial shop on 30 September 2009. All the aforementioned potential sales were subject to the registration of the strata plan. As at our appointment, two of the units plus the shop were leased although we were advised that one of the residential tenants wished to break its lease.

The following issues were identified in respect of the Bowra Street properties over the course of the first 2-3 months of this matter;

- Strata plan required registration.
- Structural cracks extending the full height of the building.
- Serviceability of the internal fire stairs.
- Waterproofing issues on the roof of the building leading to major water damage in top floor apartments.
- Inadequate waterproofing and storm water systems surrounding building leading to ongoing flooding of the car park of the building.

In addition to the above, numerous minor issues existed such as a lack of carpets and blinds in units, inadequate or missing air conditioning units, missing hot water systems and missing cabinetry.

A number of these items such as registration of the strata plan and investigation of structural issues required resolution prior to completion of any sales. Further, the majority of these issues required resolution so as to be able to take the Properties to market in a manner which would optimise their realisation. A structural building report was ordered on or around 21 January 2010 and was submitted to us. This report estimated repairs required to the building of approximately \$200,000. The report also identified potential long term issues that would require further investigations and potentially substantial rectification costs. A number of issues identified were considered by the engineers to be “of structural concern”.

We note that whilst an OC had been issued in respect of the Bowra Street properties by a private certifier, we were subsequently advised that council were not satisfied that an OC should have been issued in respect of the property in its condition as at the date of our appointment.

The Parkes Street properties were comprised of two (2) individual, leased residential units, both of which were subject to call options.

## 2. Dealings with Director

From the outset of our appointment, we sought to establish the assistance of, and communication with, the director of the Company, Mr Kenneth Winton. Initially Mr Winton was contactable by telephone. On 25 September 2009, we sought a meeting with Mr Winton to discuss the status of the Company and the Properties. Mr Winton agreed to meet with us but subsequently failed to appear. Despite our repeated attempts and offers for him

to bring representation as required, Mr Winton subsequently refused to meet with us regardless of his obligations at law as a Director of the Company.

Further to the above, Mr Winton refused to provide us with the Company's books and records and in particular the linen plans required to be lodged for the registration of the strata plan which was imperative to effect the sale of the Bowra Street properties. He indicated that as he did not perceive any personal benefit being derived by him as a result of his cooperation he was not prepared to hand over the Company's property in his possession including records and specifically the linen plans.

In the course of our subsequent discussions with Mr Winton we eventually obtained his agreement that he would provide the Company's books and records including the linen plans for a \$15,000 payment from the Bank. Whilst the Bank was not obliged to make this payment, we recommended that the payment be made as the cost of reverse engineering the linen plans together with the additional holding costs as a result of the ensuing delay would have been far more costly.

In late October 2009 the payment was made and Mr Winton provided the linen plans for the Bowra Street properties, however, only limited books and records for the Company were ever provided to us.

### ***2.1 Structural Defects Identified***

As our inspections progressed, we identified structural damage, improper waterproofing and fire safety issues present in the Bowra Street properties. We engaged an Engineering consultant to conduct a structural building report ("the Building Report"). This report, which was provided in January 2010, revealed additional, potentially long-term structural building defects at the Bowra Street properties, with estimated repair costs of approximately \$200,000. A copy of the Building Report can be provided if required.

A summary of the Building Report identified instability of external brick walls allowing for differential movement between brick and concrete; structurally inadequate retaining walls; lack of proper waterproofing; and water drainage, amongst other defects at the Bowra Street properties.

Following the findings of the Building Report, we notified Mr Winton in his role as director of Ken Winton Constructions Pty Limited, the builder of the property, that these defects required urgent rectification.

We continued to pursue Mr Winton for resolution of the aforementioned issues. Finally, acknowledging his lack of intention to address the various structural issues identified, a letter was sent to Mr Winton advising that we had engaged contractors to perform the works necessary to rectify the defects identified on the Properties.

We note that whilst the majority of issues identified by the engineers were assessed as resulting from "poor workmanship", a number were considered to be of "structural concern". The report also identified that in a number of areas the constructed building did not meet the approved architectural drawings.

### ***2.2 Communications with the Director***

Over the course of the file, we received numerous items of correspondence from Mr Winton regarding the conduct of the file with allegations of negligence and possible litigation proceedings against the bank, the Receivers and the sale agent.

Initially we provided specific responses to Mr Winton, however, due to the frequency of the ongoing correspondence and the associated increase to the cost of the receivership in

dealing with Mr Winton, ultimately we sought advice from our lawyers as to an alternate approach.

In an effort to avoid ongoing costs associated with Mr Winton's frequent communications, on 12 March 2010 we placed him on notice via our solicitors that we would not respond to his letters except in circumstances where they contained fresh matters.

During this time, Mr Winton was communicating with us and/or the Bank on approximately a weekly basis. His correspondence was normally multiple pages in length and repeated various allegations of misconduct and wrong-doing against the joint Receivers, the Bank and the agents. Copies of the correspondence, together with responses, are available if required. We estimate that up to March 2010 Mr Winton had written to both us and the Bank approximately 15 times.

### **3. Marketing Program**

There were three (3) sales agents acting in respect of the Properties prior to our appointment. None of the aforementioned agents held an exclusive agreement with the vendor, and the marketing to date extended only to window displays and internet advertising. None of the agents appointed prior to our appointment had ever secured a sale on the Properties. The conditional contract in place as at the date of our appointment had been put in place by the Company's director personally.

To address the requirements posed by Section 420A of the Corporations Act, we ensured the following steps were taken to adequately present the Properties to market:

1. Completed works/carpets/blinds for units to best present them for sale.
2. Effected registration of strata plan to optimise available sale price on a unit by unit basis as opposed to selling the building in one line.
3. Appointed reputable real estate agents to market the Properties.
4. Obtained advice from the real estate agents about the best way to market and sell the Properties and whether the offers on hand represent the best price achievable in the current market.
5. Appropriately structured marketing campaign recommended by the sale agents was adopted in respect of the sale of the Properties.
6. Staggered auction campaign to avoid saturation of the local market in an effort to achieve an optimal outcome.

We sought marketing submissions and appraisals from the three (3) pre-appointment agents, and ultimately, Ray White Nambucca was appointed as the agent for the Properties.

The marketing campaign for the Properties commenced on 2 December 2009 with the first auction date scheduled for 30 January 2010.

Prior to auction, we faced particular difficulty locating the Home Building Insurance certificates for unit 2 at Bowra Street, and units 2 and 5 at Parkes Street. Although we had requested them, Mr Winton had failed to make them available. We subsequently had to seek provision of these documents from the original surveyor of the development.

#### **3.1 1<sup>st</sup> Auction on 30 January 2010 for Units 1, 2, 5 & 9, 6 Bowra Street**

In the lead up to the first auction we communicated regularly with the agents confirming level of interest, contracts issued, and to gauge the effectiveness of the marketing.

Immediately prior to the auction date, seven (7) parties had indicated interest in the auction at a reasonable price point. Based on the expressions of interest received from the market,

we recommended reserve prices for the Properties to be set in accordance with the market valuation for the Properties with latitude for us to discount the reserve by up to 15% if required.

The first auction resulted in the successful sale of units 1, 2 and 5 of the Bowra Street properties. Unit 9 was passed in. The initial reserve price was achieved for unit 2 with the other two properties selling for approximately 5% off initial reserve.

### **3.2 2<sup>nd</sup> Auction on 24 April 2010 for Unit 3, 6, 7, 8, 9 & 10, 6 Bowra Street and 2 & 5, 22 Parkes Street**

A marketing campaign was conducted in accordance with the agent's recommendations in the lead up to the second auction on 24 April 2010.

As with the first auction, we communicated regularly with the agents over this period and noted their advice that the local property market had worsened over the course of our appointment.

The second auction took place on 24 April 2010 for the remaining units at Bowra Street and units 2 and 5 at Parkes Street. At this time only one of the offered properties sold and five (5) were passed in.

Whilst only one property sold at the 24 April auction, a number of interested parties put forward offers shortly following the auction. We instructed our sales agents to negotiate directly with these parties. Ultimately, this resulted in the sale of the remaining properties via private treaty over the period up to 2 September 2010. The last of these properties settled on 7 October 2010.

The length of time encountered in realising these properties were as a result of the various issues associated with the buildings; building works required to be undertaken; delays encountered in obtaining documentation from Mr Winton required to effect sales; the number of individual properties involved; and a difficult and depressed local property market.

## **4. Insolvency Practitioners Association of Australia ("IPA") Review**

In early 2011 we were contacted by the IPA who advised that Mr Winton had lodged a complaint in respect to the conduct of this matter. We responded to all of the queries raised by the IPA including access to our files. We met with the legal director of the IPA, Mr Michael Murray, to answer additional questions and discuss his review. Mr Murray subsequently indicated that he was satisfied with our conduct of the receivership and had advised Mr Winton of the same.

## **5. External File Review**

Rodgers Reidy has a policy of having an external review of our systems and a selection of files carried out on an annual basis. The objective of the review is to ensure that appropriate systems, policies and procedures are in place and that the files are conducted in accordance with these systems, relevant legislation and industry best practice.

The reviews are undertaken by Mr Richard Morrow of Ferrier Hodgson. We note that Mr Morrow undertakes practitioner file reviews for the Institute of Chartered Accountants ("ICAA"), IPA and also for the Australian Securities and Investments Commission ("ASIC") as well as being involved in the IPA education programs. The reviews are undertaken at Rodgers Reidy's own expense and no time or expense incurred is billed to any of the clients selected for review.

Due to the issues surrounding this case and the ongoing criticism raised by Mr Winton we requested Mr Morrow review our files in respect of the matter both in February 2010 and January 2011. Mr Morrow confirmed he did not identify any material issues in relation to the

conduct of the receivership. Further, he has commented in particular that he concurs with the approach adopted for the realisation of the Properties and our treatment of the communications received from Mr Winton.

## **6. Further Communication with Director**

In late 2010 Mr Winton requested an itemised account of monies received and disbursed throughout the conduct of the matter to date. Copies of Receipts and Payments in respect to the file were provided to him. Further, we advised that all books and records of the Company would be returned to him upon our resignation as Receiver and Manager of the Company.

At that time, the only outstanding issue requiring resolution in respect to the file was lodgement of quarterly BAS returns with the Australian Taxation Office ("ATO"). However, despite our requests for the same, BAS documentation had not been provided from the ATO for the relevant periods at the time.

## **7. Finalisation of the Matter**

As noted above, we retired from this appointment on 11 April 2011. Finalisation of the matter was delayed by 3-4 months as a result of difficulties encountered in obtaining BAS documentation from the ATO and finalising the Company's taxation position.

All books and records of the Company were subsequently returned to Mr Winton.

We agree to this reply being made available on the website of the enquiry.

Should you wish to discuss this matter or require any additional information in respect of it, please do not hesitate to contact me directly.

Yours faithfully,

**ROBERT MOODIE**  
**Director**  
**Rodgers Reidy**

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