



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID1620/2018

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Plaintiff

ASKK INVESTMENT GROUP PTY LTD

Defendant

ORDER

JUDGE: JUSTICE DAVIES

DATE OF ORDER: 14 April 2020

WHERE MADE: MELBOURNE

THE COURT ORDERS BY CONSENT THAT:

1. The restraints in paragraph 2 of the orders made on 20 December 2018 and extended by orders made 7 February 2019, 14 February 2019, 13 March 2019, 17 April 2019 and 23 May 2019 (**Freezing Orders**) do not prohibit the Defendant from:
 - (a) avoiding the contract of sale of land dated 3 October 2017 relating to the property known as Lot 2, 615 Hume Highway, Beveridge in the State of Victoria exhibited as NMJ-14 to the affidavit of Naomi Margaret Johnston sworn 19 December 2018 (**Contract**) pursuant to s 29F of the *Sale of Land Act 1962* (Vic); and
 - (b) executing a deed with the vendor under the Contract, Old Hume Pty Ltd (ACN 617 035 006), a copy of which is annexed to this order as Annexure A (**Deed**).
2. The case management hearing listed on 24 April 2020 is adjourned to 9.30 am on 4 June 2020.
3. Liberty to apply on reasonable notice to the other party.



Date that entry is stamped: 14 April 2020.

Sia Lagos
Registrar



Annexure A



Settlement Deed

BETWEEN

Askk Investment Group Pty Ltd (ACN 621 924 589)

AND

Old Hume Pty Ltd (ACN 617 035 006)

MILLS OAKLEY

Level 6, 530 Collins Street
MELBOURNE VIC 3000
Telephone: 61 3 9670 9111
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Settlement Deed

Parties

Askk Investment Group Pty Ltd (ACN 621 924 589)
of 2/1523-1535 Sydney Road, Campbellfield, Victoria 3061

("ASKK")

Old Hume Pty Ltd (ACN 617 035 006)
of 57 Ravenhall Way, Ravenhall VIC 3023

("Old Hume")

Recitals

- A. The parties voluntarily entered into a contract of sale of land dated 3 October 2017 for a parcel of land known as Lot 2, 615 Old Hume Highway, Beveridge, Victoria 3753 (**Contract**).
- B. Under the terms of the Contract, ASKK agreed to purchase, and Old Hume agreed to sell, the Land.
- C. ASKK is exercising its right to avoid the Contract and reclaim all monies paid by it under the Contract pursuant to s29F of the *Sale of Land Act 1962* (Vic) (**Sale of Land Act**).
- D. Old Hume does not dispute ASKK's right to avoid the Contract under s29F of the Sale of Land Act.
- E. The parties have agreed to formalise the avoidance of the Contract and the return of monies paid under the Contract in accordance with the terms set out in this Deed.

Operative Provisions

1 Interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

Act means the *Corporations Act 2001* (Cth).

Bank Account means the bank account held by ASKK with the Westpac Banking Corporation BSB 033-338 Account Number 53 9311.

Business Days means a day other than a Saturday, Sunday, a public holiday or a bank holiday in the State.

Caveat means caveat No. AR119103J in favour of ASKK as caveator registered on the title to the Land;

Claim means any claim, damage, debt, expense, liability, loss, allegation, suit, action, demand, writ, entitlement, cause of action or proceeding of any kind whether arising



under contract, tort, statute, equity or otherwise and whether held individually, jointly or joint and severally by any party.

Court means the Supreme Court of any State or Territory of Australia, or the Federal Court of Australia.

Deed means this Deed of Settlement.

Execution Date means the date on which this Deed is exchanged between the parties.

GST means:

- (a) the same as in the GST Act;
- (b) any other goods and services tax, or any tax applying to this transaction in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under a law for such a tax.

GST Act means the A New Tax System (Goods & Services Tax) Act 1999.

Land means the land known as Lot 2, 615 Old Hume Highway, Beveridge, Victoria 3753 and more particularly described in Certificate of Title volume 10685 folio 976.

Real Estate Agent means PSP Property Group Pty Ltd.

Reclaimed Sum means the sum of \$13,071,039.40

Registrar means Registrar of Titles of Land Use Victoria.

State means the state of Victoria.

Operative Provisions:

2 Accuracy

The parties acknowledge the accuracy of the Recitals and acknowledge that the Recitals form part of this Deed.

3 Interpretation

In this Deed unless the context otherwise requires:

- (a) headings and clause headings have been inserted for guidance only and shall not be deemed to form any part of the context of this Deed;
- (b) if a party to this Deed is made up of more than one person or a term is used in this document to refer to more than one party an obligation of those persons is joint and several;
- (c) a reference to an individual or person includes a corporation and vice versa;
- (d) an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
- (e) the words "including" or "includes" means "including, but not limited" or "includes, without limitation" respectively;



- (f) alternative grammatical forms of defined words or expressions have corresponding meanings;
- (g) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (h) the singular includes the plural and vice versa;
- (i) a reference to any gender includes all genders;
- (j) a reference to a recital, clause or schedule is to a recital, clause or schedule of or to this Deed;
- (k) a reference to any deed or document is to that deed or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (l) "notice" means a written communication;
- (m) a reference to "dollars" or "\$" is to Australian currency; and
- (n) words and phrases defined in the recitals or elsewhere in this Deed have the meaning there ascribed to them.

4 Acknowledgments and Warranties

- 4.1 The parties acknowledge and warrant that they have full power to enter into this Deed and do all things required by it.
- 4.2 Each party warrants and represents to each other party that:
 - (a) they have full power and authority to enter into and perform this Deed;
 - (b) they have received legal advice regarding the subject matter of this Deed (including the releases contained in this Deed) before entering into this Deed;
 - (c) they have had the opportunity to negotiate the terms of this Deed;
 - (d) they consider that the terms of this Deed are fair in all the circumstances;
 - (e) they enter into this Deed voluntarily and without duress; and
 - (f) the terms of this Deed are binding upon them according to its terms.

5 Payment

- 5.1 Old Hume acknowledges that ASKK is entitled to avoid the Contract and reclaim all monies paid under the Contract in accordance with s29F of the Sale of Land Act.
- 5.2 Notwithstanding that ASKK is entitled to the immediate return of all monies paid, ASKK agrees that Old Hume pay the Reclaimed Sum by instalments in accordance with Clause 5.3.
- 5.3 Old Hume shall pay the Reclaimed Sum to ASKK as follows:
 - (a) the sum of \$3,257,479.43 on or before the expiry of 60 days from the date of this Deed by providing a written direction to the Real Estate Agent to release that sum from its trust account to ASKK by electronic funds transfer to the Bank Account;
 - (b) the sum of \$63,559.97 on or before the expiry of 60 days from the date of this Deed; and



- (c) the balance, being \$9,750,000, by one or more instalments, as soon as practicable using its best endeavours, but in any event the full amount is due and payable within 18 months from the date of this Deed.

5.4 Payment of the Reclaimed Sum shall be made by electronic funds transfer to the Bank Account.

5.5 Time is of the essence of the requirement to pay the Reclaimed Sum under clause 5.3.

6 Security (Charge as security for performance)

6.1 For the purpose of securing Old Hume's obligations under this Deed, including Old Hume's obligations to pay the Reclaimed Sum, Old Hume as beneficial owner charges by way of equitable charge to ASKK all the present and future right, title and interest of Old Hume in and to the Land (**Charge**).

7 Release of Caveat

7.1 The parties acknowledges and agrees that:

- (a) within 7 days of the date of this Deed, ASKK must withdraw the Caveat
- (b) Simultaneously or subsequently, ASKK may lodge a caveat over the Land to give notice of the Charge to third parties (**New Caveat**);
- (c) Save for the circumstances set out in Clause 7.3, ASKK will not be required to withdraw the New Caveat until the Reclaimed Sum has been paid in full.

7.2 Upon payment of the Reclaimed Sum in full, ASKK shall forthwith lodge a withdrawal of caveat in relation to the New Caveat.

7.3 Within 21 days of written notice being given by Old Hume to ASKK that it is to lodge a dealing with the Registrar effecting a transfer of the Land from the registered proprietor to Old Hume and a mortgage to the registered proprietor, if required ("**the Transfer**"), ASKK must, at its cost, prepare and submit to Old Hume all required documents to undertake either as required:-

- (a) consent to the Transfer being registered; or
- (b) withdraw the Caveat or the New Caveat from the Land to enable the Transfer to be registered by the Registrar.

7.4 The parties acknowledge and agree that if the New Caveat is withdrawn pursuant to Clause 7.3(b), ASKK may re-lodge a caveat over the Land to give notice of the Charge to third parties which will not be required to withdrawn until the Reclaimed Sum has been paid in full.

8 Power of Attorney

8.1 ASKK irrevocably appoints Old Hume (and any representative appointed by the Old Hume and each officer of Old Hume), at the expense of ASKK, as ASKK's attorney to do the following on the ASKK's behalf in the attorney's name:

- (c) to complete all necessary forms and documents to give effect to ASKK's obligations pursuant to Clause 7.1(a), 7.2 and 7.3;
- (d) to do anything which, in the opinion of the attorney, would give effect to a right, power or remedy of Old Hume's powers under Clause 7 and this clause;



- (e) to use ASKK's name to exercise Old Hume's powers under Clause 7 and this clause.
- 8.2 ASKK agrees to ratify anything done by an attorney under this power of attorney.
- 8.3 This power of attorney is granted to secure the performance by ASKK of ASKK's obligations under this Deed and it may not be revoked by the ASKK until this Deed has been discharged and ASKK has unconditionally released Old Hume from its obligations under this Deed.
- 8.4 In any lawful way, an attorney appointed under Clause 8 may execute any document or exercise any right given to the attorney by this Deed even if the attorney benefits or may benefit personally.

9 Release

- 9.1 Conditional upon and subject to payment of the Reclaimed Sum in full, ASKK releases and forever discharges Old Hume from all Claims it has or but for this Deed may have had against ASKK in relation to the Contract.

10 Default

- 10.1 If any of the payments referred to in Clause 5.3 are not paid when due:
 - (a) Interest shall accrue on all amounts outstanding at the rate specified under the Penalty Interest Rates Act; and
 - (b) ASKK shall be entitled to commence proceedings against Old Hume to recover the Reclaimed Sum less any amounts which Old Hume has paid ASKK pursuant to this Deed.
- 10.2 For the purpose of obtaining a judgment pursuant to the provisions of these terms, Old Hume agrees that:
 - (a) these terms may be produced to the Court as Old Hume's consent to judgment; and
 - (b) that an affidavit by a solicitor acting for ASKK will be sufficient evidence of:
 - (i) a failure to receive any amount provided for by clause 10.1;
 - (ii) any amounts which might have been received and any amounts which remain outstanding.

11 Bar to action and covenant not to sue

- 11.1 Subject to Clauses 8 and 10 the parties agree that the releases provided in this Deed may be pleaded by them as a bar to any action, suit or proceeding commenced now or taken at any time by any party, or any person on behalf of that party, with respect to or in any way connected with the Contract or the Land.
- 11.2 Subject to Clauses 8 and 10 the parties to this Deed covenants not to bring any action, suit or proceedings against any of the other parties based in any way on any claim which is the subject of a release in clause 8 of this Deed even if one or all of the releases contained in that clause prove to be ineffective for any reason.



12 Costs, expenses

- 12.1** Each party must bear its own costs and expenses arising out of and in connection with the negotiation, preparation and execution of this Deed.

13 GST

13.1 Definitions

13.2 Interpretation

Words or expressions used in this clause 13 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

13.3 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this Deed, unless specifically described in this Deed as 'GST inclusive', does not include an amount on account of GST.

13.4 Gross up of consideration

Despite any other provision in this Deed, if a party ('**Supplier**') makes a supply under or in connection with this Deed on which GST is payable (not being a supply the consideration for which is specifically described in this Deed as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under this Deed but for the application of this clause ('**GST exclusive consideration**') is increased by, and the recipient of the supply ('**Recipient**') must also pay to the Supplier, an amount equal to the GST payable in respect of that supply ('**GST Amount**'); and
- (b) subject to clause 13.5, the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

13.5 Tax invoices

The Recipient need not pay the GST Amount in respect of a taxable supply made under or in connection with this Deed until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

14 General

14.1 Amendment

This Deed may only be amended, supplemented, discharged or abandoned in writing, signed by the parties.

14.2 Assignment

The rights and obligations of each party under this agreement are personal. No party may assign, encumber or otherwise deal with such rights and obligations without the prior written consent of all other parties.

14.3 Attorneys

Each attorney who executes this Deed on behalf of a party declares that the attorney has no notice of the revocation or suspension of the power of attorney under the authority of which the attorney executes this Deed.



14.4 Enurement

This Deed shall be binding upon the parties and their respective successors and permitted assigns and shall enure to their benefit.

14.5 Counterparts

- (a) This agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one and the same instrument.
- (b) This agreement is not binding on any party unless one or more counterparts have been duly executed by, or on behalf of, each person named as a party to this agreement and those counterparts have been exchanged.
- (c) A copy of a counterpart sent by facsimile machine or emailed as a PDF:
 - (i) must be treated as an original counterpart;
 - (ii) is sufficient evidence of the execution of the original; and
 - (iii) may be produced in evidence for all purposes in place of the original.

14.6 Entire agreement

This agreement embodies the entire agreement and understanding between the parties concerning its subject matter and succeeds and cancels all other agreements and understandings concerning the subject matter of this agreement and any warranty, representation, guarantee or other term and condition of any nature not contained in this agreement is of no force or effect.

14.7 Further assurances

Each party to this Deed shall do, sign and execute all deeds, schedules, acts, documents and things as may reasonably be required by the other parties so as to carry out and give effect to the terms and intentions of this Deed effectively and to perfect, protect and preserve the rights of the other parties hereunder whether before or after completion.

14.8 Invalid or unenforceable provisions

If a provision of this Deed is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down and severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) it does not affect the validity or enforceability of:
 - (i) that provision in another jurisdiction; or
 - (ii) the remaining provisions.

14.9 Jurisdiction

This agreement is to be governed by and construed in accordance with all applicable laws in force in the State from time to time and the parties submit to the non-exclusive jurisdiction of the courts of the State.

14.10 Liabilities

If any party consists of more than one person then the liability of those persons in all respects under this Deed shall be a joint liability of all those persons and a liability of each of those persons severally.



14.11 Non-merger

The warranties, other representations and agreements made by the Parties in this Deed are continuing and will not merge or be extinguished by payment of any monies payable under this Deed.

14.12 Severability

If it is held by a Court of competent jurisdiction that:-

- (a) any part of this Deed is void, voidable, illegal or unenforceable; or
- (b) this Deed would be void, voidable, illegal or unenforceable unless any part of this Deed were severed from this Deed,

that part shall be severed from and shall not affect the continued operation of the rest of this Deed unless to do so would change the underlying principal commercial purposes of this Deed.

14.13 Time shall be of the essence

Time shall be of the essence and shall be an essential term in relation to the timing of the payments referred to in this Deed.

14.14 Waiver

No failure, delay, relaxation or indulgence on the part of any party in exercising any power or right conferred upon such party in terms of this Deed shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right nor any single failure to do so, preclude any other or future exercise thereof, or the exercise of any other power or right under this Deed.



Settlement Deed

Execution Page

EXECUTED as a Deed on this _____ day of _____ 2020

**Executed by Askk Investment Group
Pty Ltd (ACN 621 924 589) in
accordance with Section 127 of the
Corporations Act 2001 (Cth)**

Signature of director

Signature of director

Name of director (print)

Name of director

**Executed by Old Hume Pty Ltd (ACN
617 035 006) in accordance with
Section 127 of the
Corporations Act 2001 (Cth)**

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary
(print)