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**From:** Jeremy Nipps <JEREMY.NIPPS@twcs.com.au>  
**Sent:** Tuesday, 22 November 2011 2:51 PM  
**To:** Sean Butler (sbutler@iinet.net.au)  
**Cc:** Mark Englebert; Kennedy, David @ Perth; GClarke@burgessrawson.com.au  
**Subject:** Lighthouse Beach Resort  
**Attachments:** FW: Lighthouse Beach Resort Sale and my starting on the Lord Forrest (17.5 KB); Letter to Jackson McDonald - re\_ Sean Butler - Butler Constructions Pty Ltd - 18 August 2011 (2).pdf

Sean,

I refer to your email of 22 November 2011 (copy attached).

In relation to queries raised, I note the following:

- The Receivers are in advanced discussions with a prospective purchaser for the Lighthouse Beach Resort; and
- Please refer to Minter Ellison’s letter dated 18 August 2011 (copy attached) in relation to your obligations and duties as a director.

Regards,

**JEREMY NIPPS**  
MANAGER | TAYLOR WOODINGS



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Version: 10.0.1411 / Virus Database: 2092/4030 - Release Date: 11/21/11

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**From:** Graeme Clarke <GClarke@brwa.com.au>  
**Sent:** Tuesday, 22 November 2011 11:13 AM  
**To:** Mark Englebert; Jeremy Nipps  
**Subject:** FW: Lighthouse Beach Resort Sale and my starting on the Lord Forrest

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**From:** Sean Butler [mailto:sbutler@iinet.net.au]  
**Sent:** Tuesday, 22 November 2011 10:10 AM  
**To:** David Kennedy  
**Cc:** Graeme Clarke  
**Subject:** Lighthouse Beach Resort Sale and my starting on the Lord Forrest

Hi Graeme and David,

I refer to the email below and have had no feedback on this from the receivers.

I have held off starting any work on the business at the Lord Forrest for 18 weeks and they are keen for me to start however I don't want to jeopardise any sale of the Lighthouse if there are any concerns here. The work I am doing there now is only room refurbishments.

The manager at the Lord Forrest has told me the Lighthouse staff will be advised what's happening this week and that it's now sold.

Are there any issues with the Lighthouse Beach Resort sale if I start working on the business at the Lord Forrest now?

Regards

Sean

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**From:** Sean Butler [mailto:sbutler@iinet.net.au]  
**Sent:** Thursday, 17 November 2011 1:03 PM  
**To:** Mark Englebert (Mark.Englebert@twcs.com.au)  
**Cc:** David Kennedy; Graeme Clarke; 'Jon.Karolczak@minterellison.com'  
**Subject:** Lighthouse Beach Resort Goodwill & Deed of Restraint

Dear Mark,

David Kennedy advised me yesterday that the receiver has advised him that negotiations on the sale of the Lighthouse Beach Resort are very advanced that they will not be treating on any other offers unless the dealing fails and that they will let him know the outcome in due course.

He told me he has had other enquiries and I had another group who wanted to put in an offer to purchase the property in partnership with myself but we can't now it seems. Please let me know if this is not the case.

I refer to my email to you dated 15<sup>th</sup> August 2011 regarding the Deed of Restraint:

I want the property to sell for the best price possible and have done so all along.

There is a goodwill component attributable to the business owned by Butler Constructions trading as Lighthouse Beach Resort which operates the Hotel and leases it from the ownership partnership.

That component of the sale price must be paid to Butler Constructions.



Brian Benari has argued in the past that there is no goodwill attributable to Butler Constructions but clearly this isn't the case as you have so rightly pointed out in your concerns that I may engage with the staff, with the assumption (I presume) that I may perhaps be trying to take them away from the business (which I am not). I am fully aware there is value in the staff, client base, network of friends and businesses and consultants and tradespeople that I and my family have built up over the last eight years.

Legal advice from Jackson McDonald before your appointment also highlighted the issues of goodwill and the tax implications if that goodwill was gifted back to the ownership partnership.

You have pointed out that the business and its employees are Butler Constructions and not mine personally.

The issues raised by previous purchasers requiring me personally to sign a Deed of Restraint that extended over my wife and family clearly shows that there is a goodwill component, the portion attributable to a personal Deed of Restraint is clearly not owned by Butler Constructions but rather by the people who the Deed relates to.

If the Lighthouse is sold and Butler Constructions and / or myself and family don't get paid for the goodwill attributable to Butler Constructions and ourselves then our family will start and/or run another business or businesses in the town separate to Butler Constructions and use our network of friends, contractors, business associates, consultants and others along with our knowledge and experience to establish that business. We personally know the staff at the Lighthouse Beach Resort employed by Butler Constructions and several staff have discussed that they may leave the employment of the Lighthouse Beach Resort, whether that's Butler constructions or a new owner, and come and work for us. The same goes for our client base, referral network, tradespeople and consultants.

Your company has argued that my role in operating the resort is redundant. I can assure you the growth in the business from almost zero profits to almost \$1m over six years didn't happen by accident and my family and I intend to repeat that again and have been presented several opportunities in Bunbury to do so. The only reason I haven't started building another business in the town to date is that by doing so would affect the income and value of the business I presently own at the Lighthouse.

At the moment I am doing work at the Lord Forrest and I have others wanting to assist me with the business there. The work at this stage is only minor building work however we have discussed with the owner the above issues and have told her we will hold off any further business development until we know what's happening with the Lighthouse sale. I have also been contacted by two other property owners in the town to use our experience to run and build businesses on a management rights basis.

You need to make any potential buyer aware of this now. My position has remained the same on this since your appointment. I am not trying to jeopardise the sale of the property but I am saying like any other business owner would if their business was being sold, that I want to be paid what it's worth. On negotiation this may not impact on the total price a purchaser pays as long as the split up of goodwill vs the asset is fair.

To date you have not contacted me on this though negotiations are very advanced. Any buyer of the Lighthouse Beach Resort needs to be aware of my position; I don't, and neither should you, want to be in a position of finding a new property owner was not told if staff and customers leave the Lighthouse if I open up elsewhere. If I get paid an agreed price for the goodwill I will not open up elsewhere and I will sign a comprehensive Deed of Restraint to protect the business at the Lighthouse. If I don't I will re-establish another business in the town.

I hope I have made my position perfectly clear. If you have any questions or concerns please let me know.

Kind Regards,

**Sean Butler**  
**Project Management**

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