

Memo

To: JRR
 From: AVW
 Date: 23 March 2012
 File No: 7141000
 Re: Formation of an enforceable contract – Lighthouse Beach Resort sale agreement with B Benari

1. INTRODUCTION

1.1 You have asked me to determine whether Sean Butler had an enforceable contract for the sale of the Lighthouse Beach Resort to B Benari for \$14 million via various emails dated January – February 2011.

2. SUMMARY

2.1 **Elements of enforceable contract:** In my opinion, the email of 26 February 2011 (attachment 1), meets the requirements for an enforceable contract, being:

- (a) Agreement (offer and acceptance occurred);
- (b) Consideration (agreed price of \$14 million); and
- (c) An intention to create legal relations (ie intend that the agreement will give rise to legal rights and obligations).

2.2 **Absence of formal contract not fatal:** In my opinion, the fact that Sean and Brian proposed to have the terms restated in a formal contract was a formality only.¹ It was not a condition. Therefore, it still meets the requirements of an enforceable contract.

2.3 **Property Law Act:** The email is in writing which satisfies the requirement in section 34(1)(a) of the Property Law Act 1969 (WA), - a contract for the sale or other disposition of land or an interest in land, will only be enforceable if it is in writing.

2.4 **Alternative causes of action:** Sean Bulter also has the following alternative causes of action based on "pre-contractual liability" available:

CAUSE OF ACTION	REMEDY
The doctrine of promissory estoppels	Prevents Mr Benari asserting his strict legal rights in a way which contradicts the promise to buy the Lighthouse for \$14million
In tort, for fraud or negligence	Damages from Mr Benari
Under statute, for example, in respect of misleading or deceptive conduct	Damages from Mr Benari
In restitution, for example, where the concept	Compensation from Mr Benari

¹ *Godecke v Kirwan* (1973) 129 CLR 629 (sale agreed but conditional on vendor's solicitors settling subsidiary terms of formal contract).