


INTIMIDATION

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The following letter was received by your Association in July

Below it you will find our answer - which was sent to the management of Wellington Manor Pty Ltd

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18 July 2006

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Dear Mr Phillips

WELLINGTON MANOR PTY LTD - DEFAMATION

We act for Wellington Manor Pty Ltd and refer to the Association of Residents of Queensland Retirement Villages Inc ('ARQRV') Newsletter 58. The Newsletter contains allegations about our client that are both factually incorrect and defamatory.

These allegations are actionable under the tort of injurious falsehood, which entitles a corporation to recover damages for loss of business reputation arising from a defamatory publication. We refer you to the cases of *Ratcliffe v Evans* [1892] 2 QB 524 and *Mirror Newspapers Ltd v World Hosts Pty Ltd* (1979) 141 CLR 632.

Publishing these allegations also has the effect of making public the major provisions of the Deed of Settlement executed by our client and Messrs Robert Kirk and Eric Stadhams on 26 April 2006. This Deed contains a clause which requires the parties to keep the terms of the settlement confidential.

The Newsletter article publishes the substantive parts of this settlement thereby causing Messrs Kirk and Stadhams to breach this clause. It therefore gives rise to a right on the part of our client to sue under the tort of interference with the performance of a contract; in this regard see *Torquay Hotel Co Ltd v Cousins* [1969] 2 Ch 106.

We also draw your attention to section 52 of the *Trade Practices Act 1974* (Cth) ('the TPA'), which prohibits misleading and deceptive conduct in trade or commerce. This provision is given application to individuals and non-corporate entities in the event of publication by post by virtue of section 6. The Newsletter was sent by post; you therefore fall within the ambit of section 52 of the TPA and are potentially liable under that provision.


Our client's preference is to resolve this dispute without recourse to the Courts. In this regard, we are instructed that a front-page story in the next edition of the ARQRV Newsletter retracting the story complained of, along with a letter to our client apologising for the inaccurate and defamatory publication and undertaking never to publish inaccurate information regarding our client or any of its officers, employees or related companies again, will be an appropriate remedy.

If these terms are not acceptable, we hold instructions to vigorously protect our client's reputation.

We also put you on notice that our client will also be seeking remedies against the other committee members.

Could we please have your response to this letter by close of business on Monday 24 July 2006.

Yours faithfully
McCullough Robertson



The Directors
 Wellington Manor Pty. Ltd.
 269 Birkdale Rd.
 Qld. 4159

28 July 2006

Dear Sirs,

It is not evident to me that you have had a copy of McCullough Robertson's letter of 18 July addressed to me, so I enclose a copy. We have to assume of course that you are at least aware of its purport, which is an attempt to intimidate this Association, just as letters to the two applicants are similarly intimidatory.

This Association was very well aware, from the very beginning, of the case which residents of Wellington Manor brought against you and indeed was instrumental in its preparation. We knew all the circumstances, how the surpluses were accumulated, how much was involved and what issues were canvassed etc. In short we were fully informed of all aspects well before even the Section 154 meeting was sought. We needed subsequently to make no Einsteinian calculations to know what settlement entailed for the residents of Wellington Manor

We shall not be offering any retraction or apology because there is nothing which we need to retract or for which we need apologise. If you can point to any error of fact or figure we will certainly publish a correction. Your practice of accumulating surpluses was a malpractice such as we shall always seek to expose. And, as you will be well aware, what you conceded at mediation could have been made an order of the Tribunal and was no more than the Commercial and Consumer Tribunal would undoubtedly have ordered had you persisted in defending your actions.

It would be in the better interests of the retirement village industry as a whole and all retirement village residents including, perhaps especially including, those of the Manor group of villages, if you were to refrain from trying to intimidate residents or this, their Association. You should, instead, devote yourselves much more assiduously to espousing the objects of the Retirement Villages Act as set out in Section 3 of the Act, particularly subsection (2)(a).

Yours faithfully
Phil Phillips