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LAWYERS

RECEIVED
24 NOV 2014

21 November 2014

Hutchinson Legal
PO Box 450
RINGWOOD VIC 3134

Contact: Craig Phillips
Email: cphillips@dwglaw.com.au
Phone: 9672 5850
Our Ref: CP:140752

Dear Sirs

Re: Mericka & Lawyers Real Estate Pty Ltd – Defamatory Statements

We refer to your letter dated 6 November 2014, sent in response to our letter of 21 July 2014.

We note that your letter is headed - "*Without Prejudice Save as to Costs*". We further note that your letter is not, and does not purport to be, an "Offer to Make Amends" pursuant to Part 3 of the *Defamation Act 2005*. That being so, we do not understand how you may rely upon your letter in relation to costs, with respect to the potential defamation proceedings.

In relation to the substance of your letter, we note as follows:

1. You advise that the defamatory material was removed from all sites on your client's "*own volition*". We understand by this, that Mr Mericka did not remove the defamatory material in response to the demand made in our letter of 21 July 2014 and that he has not sought to accommodate our client's concerns as detailed in that letter.
2. You assert that the posting titled - "*Protected: Consumer Affairs Victoria – the Blair Ussher Blackmail*" was "password protected" for "*the sole purpose of controlling the ability to edit the contents of the posting and that the contents of that posting was (sic) not published to anyone.*" These statements lack credibility and do not assist in the resolution of this matter. We would point out that the posting was repeatedly "hyper-linked" and viewers of the site were invited to read the posting. In any event, our letter sought provision of the full and unaltered text of the posting, together with all linked attachments, and the names and addresses of all persons permitted access to the posting. We require a proper and "open" response to these requests.
3. Mr Mericka "*is agreeable*" to providing a full and unqualified retraction and an apology for the defamatory statements. This agreement, however, is subject to our client accepting your client's proposal, contained within your letter, and, in turn, proposing a method of publishing the retraction and apology that is acceptable to your client. This is unsatisfactory. We respectfully refer you to sections 20 and 38 of the *Defamation Act 2005* and reiterate our demand that Mr Mericka provide an undertaking on his own behalf, and on behalf of Lawyers Real Estate Pty Ltd, that a full and unqualified retraction of, and apology for, the defamatory statements will be published without delay. The apology and retraction must be in the form of a letter addressed separately to the Minister for Consumer Affairs and the Director of Consumer Affairs. A draft of this letter must be submitted to our office for approval by our client. Signed and dated copies of the settled letters must be provided to

our office so that they may be provided to the Defence Security Vetting Authority and other agencies, at the discretion of our client.

4. Mr Mericka proposes to pay \$1,000 towards our client's legal costs incurred in this matter. This response is unsatisfactory. We reiterate our request that you forward a written proposal for the payment of *damages* as compensation for the injury caused by their publication of the defamatory statements. We would anticipate that any such proposal be submitted on a "without prejudice basis". However, we require an open response to each of our other requests. As you would appreciate, we will only be able to assess the adequacy of any settlement proposal after receiving an open response to each of the other requests contained in our letter of 21 July 2014.

We shall look forward to a timely reply.

Yours sincerely



Craig Phillips
Consultant
Donaldson Whiting + Grindal