

Monday, 24<sup>th</sup> October 2016

The Honourable T F Bathurst  
Chief Justice of NSW  
Supreme Court of NSW  
Queen's Square  
Sydney NSW 2000

Dear Chief Justice

*Re: Misleading statements made to the Court*

I write in full respect of the authority of the Honourable Court.

I have reason to believe that the Court has been misled.

The Honourable Magistrate Milledge presided over Local Court proceedings 2015/00259781 on 26<sup>th</sup> February 2016 ("**the 2016 Proceedings**"). I was the Defendant in those proceedings. Terence Goldberg, solicitor, was the Plaintiff in those proceedings.

In the 2016 Proceedings, Terence Goldberg, under oath, stated that he acted for the sixth Defendant in Supreme Court proceedings 2009/00291458-001 ("**the 2009 Proceedings**"). The 2009 Proceedings were heard before the Honourable Justice Bergin, Chief Judge in Equity, on 27<sup>th</sup> November 2009, in the Supreme Court of NSW.

Such statement as made by Mr Goldberg can be found on page 21, line 38, of the **attached** transcript of the 2016 Proceedings. Such transcript is marked as "**A**".

I also **attach** copy of the Summons in relation to the 2009 proceedings. As your Honour can see from the **attached** Summons, the sixth Defendant, being Enmore Spiritualist Church Incorporated ("**the Church**"), was an unrepresented party in the 2009 Proceedings and remains as such on the Court record. Such Summons is marked as "**B**".

Also, a Notice of Appearance was not filed for the sixth Defendant with the Supreme Court of NSW in relation to the 2009 Proceedings, which therefore also indicates that the sixth Defendant was an unrepresented party.

I **attach** for your Honour's consideration two affidavits sworn by Terence Goldberg on 24<sup>th</sup> November 2009 and 25<sup>th</sup> November 2009, wherein Mr Goldberg makes the identical statement in each affidavit and on oath:

*"I am a partner in the firm Turner Freeman and in that capacity have care, conduct and control of the matter on behalf of the plaintiffs."*

The Church was not a plaintiff in the matter.

It would appear that Terence Goldberg's statement in the 2016 Proceedings that he acted for the sixth Defendant in the 2009 Proceedings is untrue.

Such attached sworn affidavits are marked as "C" and "D".

I also bring your Honour's attention to lines 5-10 on page 22 of the attached transcript of the 2016 Proceedings ("A"). Mr Goldberg states on oath and under cross-examination that the Plaintiffs in the 2009 Proceedings brought about their action on behalf of the sixth Defendant.

As your Honour would be aware, if a member or members of an association bring about an action on behalf of that same association, in line with Section 7.2(1) of the Uniform Civil Procedure Rules 2005, that member or those members must file with the Court at the inception of proceedings an affidavit providing an authority to act in the capacity of the organisation concerned.

On 26<sup>th</sup> May 2016, I wrote to the Supreme Court of NSW, seeking confirmation that such affidavit had been filed with the Court, however, your Honour will see from the response received from the Court, dated 2<sup>nd</sup> June 2016, that there is no record of such affidavit of capacity having been filed. Such response from the Court is **attached** and is marked as "E".

On Friday, 21<sup>st</sup> October 2016, I perused, on Level 4 of the Court building, the file in relation to the 2009 Proceedings and such affidavit is absent.

There is no mention on any Court document whatsoever that provides any evidence that the Plaintiffs in the 2009 Proceedings brought about their action on behalf of the sixth Defendant.

Also find **attached** copy of the Notice of Motion in relation to the 2009 Proceedings which also lists the Plaintiffs and Defendants in the matter, as well as the substance of such matter. Such Notice of Motion is marked as "F". The Notice of Motion refers to the Plaintiffs bringing about the action in the capacity of themselves as individuals only.

It would appear that Mr Goldberg's statement, while under oath, that the Plaintiffs in the 2009 Proceedings brought about such proceedings on behalf of the sixth Defendant is not true.

Also find **attached** the narrative of an Application for Assessment of Solicitor/Client Costs, as filed in the Supreme Court of NSW by Terence Goldberg on 23<sup>rd</sup> June 2010. Such narrative is marked as “**G**”.

Your Honour will note Mr Goldberg’s claim in that Application: *“In this matter we acted for Enmore Spiritualist Church Incorporated, Reverend Patricia Cleary, Caroline Allen, Miranda McCarthy and Matilda Vila collectively and as individuals...”*

The above statement by Terence Goldberg claiming that he acted for the sixth Defendant and the four Plaintiffs [in the 2009 Proceedings] conflicts with his statements in his affidavits sworn on 24<sup>th</sup> November 2009 and 25<sup>th</sup> November 2009 in that he acted for the Plaintiffs only (as at “**C**” and “**D**”).

Your Honour will also note that in the narrative of the above Application, Mr Goldberg states that there were only five Defendants, when in fact there were six, and also claims that 11 Orders were made in the 2009 Proceedings, when in fact one Order only was made by the Honourable Justice Bergin in those proceedings, being that each party was to bear their own costs.

As a result of the above Application for Assessment of Solicitor/Client Costs being filed with the Court, a certificate of determination was issued against the Church, and a judgment debt obtained in the District Court, Sydney, in the amount of \$124,661.90. This forced the winding up of the Church and the sale of its only asset, a building, for the sum of \$965,000.00.

On the winding up of the Church, Turner Freeman claimed to be owed \$185,802.62, therefore creating a disparity of \$61,140.72. No explanation has been provided for this disparity.

On 29<sup>th</sup> May 2014, Terence Goldberg attended a non-quorate and therefore unlawful meeting of creditors at the offices of the liquidator. As such quorum was not achieved in that meeting, such meeting breached Regulation 5.6.16(2) of the Corporations Regulations and any decision made in that meeting is without standing.

Your Honour can see from the **attached** minutes of that meeting that Mr Goldberg discusses the creation of a new entity by the name of ‘The Congregation of the Enmore Spiritualist Church Incorporated’. Find such minutes marked as “**H**”.

Mr Goldberg was the only attendee at this purported meeting of creditors on 29<sup>th</sup> May 2014. It is believed that Turner Freeman was not a creditor at this point in time. It is believed that Turner Freeman was paid in full in 2011.

Your Honour will note that the minutes of the above purported meeting state that Turner Freeman is supposedly owed the now swelled amount of \$188,303.60.

Find **attached** letter from the Department of Fair Trading, dated 17<sup>th</sup> October 2016, stating that the Church's surplus funds have been or are about to be transferred to the Congregation of the Enmore Spiritualist Church Foundation Trust. Such attached letter is marked as "I".

It is reasonable to assume that the trust as discussed by Terence Goldberg in the purported meeting of creditors on 29<sup>th</sup> May 2014 and the trust mentioned in the above correspondence from the Department of Fair Trading are the one and the same.

I wrote to Terence Goldberg on 22<sup>nd</sup> August 2016 advising him, among other things, that the meeting of creditors of 29<sup>th</sup> May 2014 was legally invalid. Mr Goldberg did not respond to that correspondence.

I have had cause to write to Mr Goldberg on a number of occasions in relation to the above raised issues, bringing to Mr Goldberg's attention the several inconsistent statements he has made to the Court. Mr Goldberg has refused to provide any explanation for his inconsistent statements, nor indeed has he provided any response whatsoever to any of my communications.

I am unaware if Mr Goldberg, in line with Rule 19.2 of the Solicitors' Rules, has brought to the attention of the Court his conflicting and therefore misleading statements and sought to correct such with the Court as the Rules define he must do.

I shall, as a matter of courtesy, provide a copy of this letter to the Honourable Justice Bergin, Chief Judge in Equity, and to the Honourable Magistrate Milledge, who presided over the abovementioned proceedings, and a copy of such correspondence shall also be provided to Mr Goldberg.

Yours faithfully



Symn Waters