IN THE FEDERAL COURT OF AUSTRALIA

NSW DISTRICT REGISTRY

GENERAL DIVISION

File No NDF 167 of 2010

In the matter of the SEVEN NETWORK LTD

SEVEN NETWORK LTD
Applicant

Stephen Mayne
Respondent

AFFIDAVIT
(Form 20)
(Order 14 rule 2)

On *22 April 2010*, I Stephen Mayne of Templestowe in the State of Victoria say on oath -
1. I am a shareholder in Seven Network Ltd and a holder of TELYS3 securities registered at PO Box 925, Templestowe 3106.

2. I flew to Sydney and attended all three scheme meetings on Tuesday, April 20 and wish to formally raise some objections to the scheme with the court and the way it was conducted. Unfortunately, I have a long-standing speaking engagement in Melbourne on Friday, April 23, and therefore won't be able to attend the Federal Court hearing in Sydney. I am not requesting an adjournment, merely that the court considers some of these issues.

3. It is clear from public statements that key shareholders, Perennial and Ausbil Dexia, changed their votes to support the Scheme of Arrangement on the basis of the promises contained in the Deed Poll executed by Australian Capital Equity (ACE) on 12 April. A subsequent Deed Poll was also released to the ASX on 13 April by North Aston Pty Ltd, a wholly owned subsidiary of ACE. Following publicity in relation to the release of these

(*Note: The following signature block bounded by two horizontal lines must appear at the **foot of the first page of the application)***

Filed by the Applicant

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Deed Polls and the representations made about the promises within, many other shareholders may also have changed their votes to support the Scheme of Arrangement. It should concern the Court that no independent advice was provided to shareholders about the effectiveness of the Deed Polls or the enforceability of the promises contained within the Deeds. I believe shareholders have been short-changed by the lack of communication about the Deed Polls – this has resulted in sub-standard disclosure.

In a statement to the ASX on 12 April, Seven director Professor Murray Wells commented "The Independent Directors are pleased that the Proposed Scheme could be enhanced in this manner and we look forward to the implementation of the merger for the benefit of all shareholders."

During the meeting fellow independent director Peter Ritchie commented about the deed: "Personally, I don't think it adds anything to the deal." This is a disturbing statement.

At no time were shareholders assured that the promises contained in the Deeds were enforceable or counselled about their remedies in the event that they might wish to pursue them, if they feel aggrieved in the future. The Deed Polls were concluded following discussions with ACE, Seven independent directors and major shareholders, yet we don't know if the independent directors or the major shareholders received independent legal advice. ASIC has expressed no view on the enforceability of the Deed Polls.

There are several aspects of the Deed Polls that are troubling, which I believe the Court should have a view on.

- The fundamental issue is whether the Deed Polls are enforceable by Seven independent directors or in the event that any dispute arose about enforcement, whether minority shareholders could exercise any rights they might have under those Deed Polls.
- There are two Deed Polls, from two entities – which one is relevant? Why were two Polls required? There are differences in each of the Polls.
- The parties to the Deed Polls are ACE and North Aston – but the Deed Polls purport to be 'in favour of' Seven Group Holdings on its own behalf and on trust for its Unrelated Shareholders. Does this have the effect of creating a trust for minority shareholders? Isn't there a conflict that ACE is still the majority holder of Seven?
- Clause 1.3 (b) of the Deed Poll provides that all decisions about enforcement or waiver of SGH's rights will be made by the Related Party Board Committee only, having regard to the interests of Seven and its unrelated shareholders. Has the board of Seven formally and irrevocably delegated this authority to this Committee? Can a Deed Poll from North Aston or ACE formalise this arrangement when Seven itself or the directors are ***not*** a party to the Deed Poll?
- How would Unrelated shareholders ever have standing to enforce the rights that are purportedly conferred to them under the Deed Polls?

If the Court believes that the Deed Polls are in any way deficient or that there are serious risks in minority shareholders relying on them, then this is a fundamental failure of disclosure. It may be within the Court's power to commission the independent view of counsel about the effectiveness of the Deed Polls before the Scheme is finally approved.

I noted with interest former Judge Kevin Lindgren's views about the Court's role in approving Schemes that was published in *The AFR* on Wed 21 April. He mentioned that "The only way you are going to get disclosure of certain latent problems is if you have an opposing party, someone who is against the scheme – someone who ferrets out the problem". This is a perfect example of a deficiency which the Court can identify and, hopefully, remedy for the benefit of minorities.

4. Board renewal and independent directors

Perennial Value is the third largest Seven Network shareholder with 6.05% or more than 12% of the eligible votes at Tuesday's meetings. After substantial negotiations with ACE, Perennial managing director John Murray made the following public statement: "The commitment to an accelerated board renewal program is also a positive for minority shareholders. Having secured these commitments Perennial Value believes that it is now in the best interests of our investors to vote in favour of the revised proposal"

Indeed, *The AFR* reported the following on Wednesday, April 21:

"Earlier this month, sources close to the negotiations between ACE and fund managers said Mr Stokes had indicated Mr Ritchie and Ms Boling, who have been Seven directors since 1991 and 1993 respectively, would resign after the Seven-WesTrac merger was completed on May 13."

Yet when I asked Peter Ritchie about this at the meeting on Tuesday, he said: "None of us (the three independent directors) have plans to resign."

The full transcript was as follows:

Stephen Mayne: *tell us more about these new non-executive directors we're getting. I've read in the press that some of you are going to resign? There's some sort of understanding, nothing in the scheme book about it. Could you give us an update as to, I think we're 74, 73 and 68, 46 years of combined service, on some criteria you are no longer independent because of your length of tenure, there's talk about some of you going. Give us an update on what actually is planned, in terms of who's representing the non-Stokes interest going forward.*

Peter Ritchie: *Thanks for that. The question about our tenure, none of us have plans to retire, and when we do we will do it in the formal and appropriate way. The media report was inaccurate. The additional directors the company has decided to appoint, will be found by one the world's leading search firms Egon Zehnder, over the short term future, and they will be announced as soon as possible.*

If a swing shareholder has changed their vote based on an undertaking around board renewal, then it should be firmly established that this will be occurring. ACE does have the capacity to remove any director and it would be appropriate for the court to satisfy itself that the apparent commitment to board renewal will be fulfilled. If the long-serving directors are refusing to go, then ACE needs to commit that they will be forced out in line with their commitment to appoint new independent directors who will be re-elected by the independent shareholders only at the 2010 AGM.

5. Meeting procedure

It was disappointing that Tuesday's meeting was so heavily influenced by an executive director in the form of Bruce McWilliam. Seven failed to webcast the meeting, provide a transcript online and even attempted to ban any individual shareholder from recording proceedings.

As a message for future scheme meeting votes, it would be appropriate for the court to sanction Seven's conduct and lay out a best practice model.

For instance, I attach one brief transcript from my own bootleg audio recording of the first meeting to demonstrate Mr McWilliam's regular interference and sometimes aggressive behaviour.

Stephen Mayne: page 44 of *The Financial Review* today the *Rear Window* column has a headline "So good they said it twice" and it goes through the fact that….

Bruce McWilliam: inaudible

Stephen Mayne: I don't quite follow you Bruce, but we will work it out later. The story is about…

Bruce McWilliam: can I interrupt you and just say we have two separate advisors advising the companies on the deal. Why wouldn't they have talked if they did? It's not a matter of coincidence they talked in advance before they wrote to RiskMetrics.

Stephen Mayne: but isn't it the point that one of them is meant to be an advisor to the independent directors? Providing you with independent advice and it looks like…

Bruce McWilliam: Stephen..

Stephen Mayne: Bruce, can I finish?

Bruce McWilliam: no I'm sorry so you don't go off on a tangent, one is the advisor to Westrac, which is the vendor, that is Goldman Sachs, the other JP Morgan is the advisor to the company. You are not seriously suggesting if someone writes an incorrect report, you can't write and pick them up on a few points.

Stephen Mayne: well I just don't think it is a good look when I read this article…

Bruce McWilliam: why isn't it a good look for us, as directors of the company, if someone writes something incorrect about a transaction the company is undertaking? Why isn't a good look drafted correctly when it's wrong – incorrect?

Stephen Mayne: I'll take you up on one of your points. One of the letters apparently talks about if this deal fails, the shares will head down towards six bucks!

Peter Ritchie: let's end it..

Stephen Mayne: okay?

Peter Ritchie: let's end it there. Let's end it there. This is not adding to the discussion.

Stephen Mayne: no no, this actually gets to the very core of it! This gets to the very core of it. Can I actually just finish what I am saying please? One of these letters from your independent advisors to the independent directors makes a reference to if this deal doesn't go through, the shares are going to tank. They are going to go down to six bucks. Which is the traditional scare tactic you use to trying get institutions over the line on a controversial deal. Now…

Bruce McWilliam: it does sort of match up with what the shares were before we started…

Stephen Mayne: what I am asking you, the last time you came to reflect on the net assets of this business, as a stand alone entity, you were pushing it up. So what's this talk about six bucks? When you last reflected as independent directors, when you last reflected…

Bruce McWilliam: it wasn't our talk.

Peter Ritchie: Stephen, what's your question?

Stephen Mayne: I'm concerned that the independent directors have been overly influenced by the controlling shareholder and their advisors, and you have not negotiated hard enough, and in the final sequence, your advisors have actually come to parroting the advice given to the conflicted controlling shareholder. So you've gone through this whole thing saying Kerry can't be here today because he has a conflict, and we've got to be independent, and then you've got your advisor sending off letters seemingly drafted by Kerry's advisor to the proxy advisors, who are the kingmakers in this deal!

Peter Ritchie: we have noted your concern, thank you.

Bruce McWilliam: and Stephen, just for the record, Grant Samuel were the independent advisors, they didn't write to RiskMetrics, they were advising the independent directors, I have told you what two firms did write to them, and do think that poor little Risk Metrics is so fragile it can't receive a letter saying they were wrong on these points. Have to disagree, sorry.

Stephen Mayne: I think the meeting should be told where they're wrong. There has been a big hullabaloo about this, I don't know the detail of where they're wrong, so I would be interested in you telling us the details.

Bruce McWilliam: one thing where they were wrong was that they totally mis-stated the effect of the deed poll, which was negotiated on behalf of Perennial and Ausbil Dexia, the second and third biggest shareholders. RiskMetrics, right, in their report, ignore the fact the clause in there is held on trust, not for ACE, for non-ACE shareholders - totally mis-stated and incorrect. Then they say what if the independent directors won't enforce the deed, that's put forward as a serious point. It is a kindergarten point, but the directors have to act in the best interests of the company, and it's spelt out, it would be a breach of trust then, not to act for the benefit of those shareholders. In your submission, we shouldn't have written and said you're sorry you're wrong on that point?

Peter Ritchie: we have had a couple of contrary view points, and that's part of the democratic process, everybody has had that information and we will see how the vote turns out.

Whilst it is not material to the scheme, I do note that Mr McWilliam was wrong and that Ross Grant, chairman of Grant Samuel, did indeed co-sign a letter along with JP Morgan, which was sent to RiskMetrics, as *The AFR* reported on April 21.

Sworn at .... }
}   ....
before me:.. }

(Barrister)