

**IN THE FEDERAL COURT OF AUSTRALIA  
SOUTH AUSTRALIA DISTRICT REGISTRY  
GENERAL DIVISION**

**No SAD 131 of 2010**

**IN THE MATTER OF SOUTH AUSTRALIAN MARINE PRODUCTS  
INDUSTRIES PTY LTD**

**ACN: 107 786 201**

**QUOTILA PTY LTD (ACN 005 763 502)**

Plaintiff

**SOUTH AUSTRALIAN MARINE PRODUCTS INDUSTRIES PTY LTD  
(ACN 107 786 201)**

First Defendant

**CHARLES JOHN FRANCHINA**

Second Defendant

**TERRY STEPHEN ROMARO**

Third Defendant

**STATEMENT OF CLAIM  
(Order 4 rule 6 and Order 11)**

1. The Plaintiff, **QUOTILA PTY LTD (ACN 005 763 502)** (“**Quotila**”) is and was at all material times a corporation duly registered under the *Corporations Act 2001* (Cth) (“**the Act**”).
2. The First Defendant, **SOUTH AUSTRALIAN MARINE PRODUCTS INDUSTRIES PTY LTD (ACN 107 786 201)** (“**SAMPI**”) is and was at all material times a corporation duly registered under the Act.
3. The Second Defendant, **CHARLES JOHN FRANCHINA** (“**Franchina**”):
  - 3.1 is, and has been since 1 March 2004, a director of SAMPI;

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Filed on behalf of the Plaintiff by:

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- 3.2 is and was at all material times a director of Fishtrade International Pty Ltd (ACN 100 500 187) (“**Fishtrade**”); and
- 3.3 is and was at all material times a member of Fishtrade, holding 333 out of 1000 ordinary shares.
4. The Third Defendant, **TERRY STEPHEN ROMARO** (“**Romaro**”):
  - 4.1 is and has been since 1 March 2004, a director of SAMPI; and
  - 4.2 is and was at all material times a director of Fishtrade.
5. At all material times, Peter George Laughton (“**Laughton**”) has been:
  - 5.1 the sole director and member of Quotila; and
  - 5.2 since 1 March 2004, a director of SAMPI.
6. In or about August 2003, Fishtrade and Laughton agreed to form a joint venture company for the purpose of producing fertiliser and fishbait from fish by-products. Pursuant to the agreement:
  - 6.1 Laughton would contribute his knowledge and skills in respect of the production of trap bait, tuna oils and tuna liquor, together with approximately \$100,000 worth of equipment.
  - 6.2 Fishtrade agreed to contribute \$160,000 in four lots of \$40,000 as the funds are required.
  - 6.3 Each party or their nominee would hold 50% of the shares in the joint venture company.

#### Particulars

- 6.4 The agreement was oral and made during various conversations between Franchina on behalf of Fishtrade and Laughton in mid 2003.
- 6.5 The agreement is recorded in an email dated 20 August 2003 from Franchina to Laughton.

7. On 29 January 2004, in accordance with the agreement pleaded in paragraph above, SAMPI was registered as the joint venture company and issued 100 ordinary shares, being 50 to Quotila (on behalf of Laughton) and 50 to Fishtrade.
8. As from 29 June 2007:
  - 8.1 Quotila has held 45 ordinary shares in SAMPI;
  - 8.2 Fishtrade has held 45 ordinary shares in SAMPI; and
  - 8.3 Discovery III Pty Ltd (ACN 116 241 733) (“**Discovery III**”) has held 10 ordinary shares in SAMPI.
9. In or about late 2009, Laughton became concerned that Franchina in his capacity as director of SAMPI was causing SAMPI to make decisions and/or take actions without consultation with Laughton. He notified Franchina of his concerns and offered to sell Quotila’s interest in SAMPI for the sum of \$546,000, which was rejected by Franchina.

#### Particulars

- 9.1 Emails dated 11 September 2009, 4 November 2009, 8 November 2009 and 9 November 2009 between Laughton and Franchina.
10. Subsequently, the relationship and communications between Laughton and Franchina became hostile and broke down.

#### Particulars

- 10.1 Emails dated 15 December 2009, 16 December 2009, 12 January 2010, 13 January 2010, 14 January 2010, 15 January 2010, 18 January 2010 between Laughton and Franchina.
11. On 19 March 2010, Laughton appointed Peter Lombardo (“**Lombardo**”) as an alternate director pursuant to clause 76 of SAMPI’s Constitution, with such appointment terminating on 30 June 2010.
12. Between April 2010 and July 2010, Lombardo reviewed and considered various financial records in respect of SAMPI and SAMPI’s business operations. He

subsequently prepared a report for Laughton, which recommended that Laughton on behalf of Quotila call a shareholders' meeting to resolve the perceived deadlock between Laughton and Franchina.

Particulars

12.1 Undated report from Lombardo to Laughton entitled "SAMPI".

13. On 27 July 2010, Quotila by its solicitors requested Franchina in his capacity as secretary convene a shareholders' meeting of SAMPI.

Particulars

13.1 Letter dated 27 July 2010 from Jenkins Anderson to Franchina.

14. On 29 July 2010, Franchina acknowledged the request.

Particulars

14.1 Email dated 29 July 2010 from Franchina to Jenkins Anderson.

15. On 10 August 2010, Quotila by its solicitors advised Franchina that Quotila intended to move additional resolutions at the proposed shareholders' meeting, including a resolution to remove either Romaro or Franchina as a director and a resolution to appoint a new director nominated by Discovery III.

Particulars

15.1 Email dated 10 August 2010 from Jenkins Anderson to Franchina.

16. On 11 August 2010, Franchina advised Quotila that "*arrangements will be made in due course for the shareholders meeting*" and that "*other directors*" wanted to move additional resolutions including to remove Laughton as a director.

Particulars

16.1 Email dated 11 August 2010 from Franchina to Jenkins Anderson.

17. On 23 August 2010, Franchina issued a notice of a directors' meeting of SAMPI to be held on 27 August 2010 at 10:00am.

Particulars

- 17.1 Notice of Directors' Meeting of SAMPI dated 23 August 2010.
18. The notice pleaded in paragraph above did not state whether any resolutions were to be proposed at the directors' meeting or what the terms of such a resolution might be.
19. On 27 August 2010, a directors' meeting of SAMPI was held.
20. Franchina, Romaro and Laughton attended the meeting pleaded in paragraph above.
21. At the meeting, the directors of SAMPI passed the following resolution:

*[SAMPI] undertake a pro rata rights issue, pursuant to clauses 4 and 5 of [SAMPI's] Constitution, by the issue of 100 fully paid ordinary shares at \$5,555 per share to raise a total sum of \$555,000, the purpose of which would be to:*

- (a) retire debt of \$358,062 owed to Fishtrade International Pty Ltd;*
- (b) provide additional working capital of \$197,438 to fund on-going business activities; and*
- (c) the Company Secretary be authorised to issue a letter to shareholders ... notifying the shareholders that they are entitled to apply for their pro rate share entitlement by 5pm on 16 September 2010.*

**("the Resolution")**.

Particulars

Franchina and Romaro voted in favour of the Resolution, and Laughton voted against it.

22. The meeting pleaded in paragraph above was approximately 10 minutes in duration.
23. Prior to the Resolution, Franchina and/or Romaro did not obtain:

- 23.1 any advice for and on behalf of SAMPI in respect of the proposed Rights Issue from an accountant, financial planner or business advisor; or
- 23.2 alternatively, any such advice that suggested that there was an urgent need for the proposed Rights Issue.
24. As at the time of the Resolution, SAMPI did not have any urgent need for funds in that its principal creditor was Fishtrade, whose debt was secured by way of registered charge.
25. At all material times, Franchina knew that Quotila and/or Laughton were not able to raise funds, whether in the time stipulated in the Resolution or at all, in order to take up the proposed Rights Issue.
26. In the premises pleaded above, Romaro and Franchina in exercising their power to make the Resolution:
- 26.1 did not exercise their powers as directors of SAMPI and discharge their duties to SAMPI in good faith; and
- 26.2 acted for an improper purpose, namely to dilute Quotila's shareholding in SAMPI in order to defeat Quotila's attempt to call a shareholders' meeting and to preserve Franchina's control of SAMPI;
- and thereby contravened s. 181 of the Act and/or acted in breach of their fiduciary duty as directors of SAMPI.
27. Further or in the alternative, in the premises pleaded above, the Resolution was oppressive to, unfairly prejudicial to, or unfairly discriminatory against, Quotila within the meaning of s. 232 of the Act.

**AND THE PLAINTIFF CLAIMS:**

1. A declaration that the resolution of the directors of the First Defendant made on 27 August 2010 that the First Defendant undertake a pro rata rights issue pursuant to clauses 4 and 35 of its Constitution by the issue of 100 fully paid ordinary shares ("**the Resolution**") was:

- 1.1 undertaken for an improper purpose in breach of [s. 181](#) of the Act; and/or
  - 1.2 contrary to the interest of the members of the First Defendant as a whole or oppressive or unfairly prejudicial to the Plaintiff;
  - 1.3 invalid and void.
2. An injunction pursuant to [para. 233\(1\)\(i\)](#) and/or s. 1324 of the Act restraining the Defendants, whether by themselves, their agents or employees, from undertaking or proceeding with the allotment of shares pursuant to the Resolution.
  3. The Second Defendant and the Third Defendant pay the Plaintiff's costs of the proceedings, as taxed or agreed.
  4. Such further or other orders as this Honourable Court deems fit.

This pleading was prepared by S.D. Ower, counsel.

Date:

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**JENKINS ANDERSON**  
Solicitors for the Plaintiff