SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

Case Title:	**Beagle v Australian Capital Territory and Southern New South Wales Rugby Union Limited**
Citation:	**[2016] ACTSC 271**
Hearing Dates:	29, 30, 31 August, 1 September 2016
Decision Date:	16 September 2016
Before:	Mossop AsJ
Decision:	Judgment be entered for the defendant.
Catchwords:	RESTITUTION – Quantum meruit – Plaintiff identified potential sponsor for sports team – Plaintiff provides sponsorship proposal prepared by team to potential sponsor and meets with with representatives of sponsor – Sponsorship agreement entered with team – Whether actions of plaintiff caused or contributed to sponsorship – Whether plaintiff entitled to reasonable remuneration assessed as percentage of value of sponsorship – Actions of plaintiff had no causal effect on entry into sponsorship agreement – Claim for quantum meruit fails
Cases Cited:	*Andrew Shelton & Co Pty Ltd v Alpha Healthcare Ltd* [2002] VSC 248; (2002) 5 VR 577 *Brenner v First Artists' Management Pty Ltd* [1993] 2 VR 221 *Moneywood v Salamon Nominees* [2001] HCA 2; (2001) 202 CLR 351 *Vasco Investment Managers Ltd v Morgan Stanley Australia Ltd* [2014] VSC 455; (2014) 108 IPR 52
Parties:	John Stanley Beagle (Plaintiff) Australian Capital Territory and Southern New South Wales Rugby Union (Defendant)
Representation:	**Counsel** Mr D Hassall (Plaintiff) Mr R Arthur (Defendant) **Solicitors** Nelson & Co (Plaintiff) Bradley Allen Love (Defendant)
File Number:	SC 212 of 2015

MOSSOP AsJ:

Introduction

1. The plaintiff, John Beagle, has brought a quantum meruit claim seeking reasonable remuneration for assistance he alleges he gave to the defendant in securing sponsorship for its rugby union team, the Brumbies.

2. The plaintiff claims that he assisted the defendant by putting it in contact with representatives of the Aquis group of companies and promoting to representatives of that group a proposal that it sponsor the Brumbies. He contends that it is customary in the business of facilitation of sports sponsorships of the nature and magnitude of the sponsorship arranged with Aquis that a person performing the role that the plaintiff did would receive a commission at the level of between 10 and 35% of the value of the sponsorship involved.

3. The plaintiff pleaded that the value of the sponsorship obtained by the defendant from the Aquis group was in excess of $8.4 million and as a consequence he is entitled to substantial remuneration upon a claim for quantum meruit.

Dramatis personae

4. The plaintiff describes himself as a retired public servant and gaming industry consultant with expertise in the casino sector. He was an officer with the Australian Customs Service from 1953 to 1977. He and his first wife operated a stamp and coin shop in Tasmania until 1981. He then moved to Sydney. After his first wife's death in 1988 he moved, in 1991, to Canberra where he married his second wife and has lived there since then. From 1985 until 2001 he worked as a full-time, consultant writer, speaker and representative of "of the casino and allied industries throughout Australia and overseas". Although not expressly stated in his evidence, I infer from the fact that in 2001 he would have been 69 years old that he has been substantially retired since then. His curriculum vitae, which was in evidence, describes activities consistent with that of an active Canberra retiree. Although he describes himself as a "gaming industry consultant", the evidence does not indicate that he operates a business as a consultant.

5. The defendant is a professional football organisation which fields the "Brumbies" rugby union team in the competition known as the Super XV rugby competition. In these reasons, unless necessary to distinguish between the defendant and the rugby team, I will refer to the defendant as "the Brumbies".

6. Douglas Edwards was the Chief Executive of the Brumbies from February 2014 until the end of December 2014. From the commencement of 2015 Michael Jones took over as Chief Executive.

7. Simon Chester is the general manager of commercial operations for the defendant. He has held that role since October 2013. At the relevant time he was responsible for sponsorships for the Brumbies under the direction of Mr Edwards and then Mr Jones.

8. The Aquis group of companies are companies which are wholly or majority owned by Mr Tony Fung. Amongst those companies are Aquis Entertainment Ltd, Aquis Canberra Pty Ltd, Casino Canberra Ltd and Aquis Developments Pty Ltd. In these reasons, unless it is necessary to refer to a specific entity I will refer to the entities

associated with Mr Fung collectively as Aquis. Justin Fung is Tony Fung's son and also involved in the management of Aquis' businesses in Australia.

9. Jessica Mellor is Executive Director of Aquis Entertainment Ltd and Aquis Developments Pty Ltd. She is also Executive Director of Aquis Canberra Pty Ltd and Casino Canberra Limited. From about October 2013 one of her primary duties was the acquisition by Aquis of the Reef Hotel Casino in Cairns and Casino Canberra.

10. Ben Ready of RG Communications was Aquis' public relations adviser in relation to all Australian businesses up until December 2014. After that he remained responsible for Aquis' Australian activities, apart from those in the Australian Capital Territory.

11. Warren Apps is the director of a communications and public relations business which trades under the name Coordinate. From 4 December 2014 Coordinate was engaged to coordinate media and public relations activities in relation to Aquis' purchase of the Canberra Casino. Coordinate also had as a client Guvera, a music streaming business.

Events giving rise to the claim

The parties prior to November 2014

12. Prior to June 2014 Mr Beagle was aware of the possibility that Aquis was negotiating to buy the Reef Casino in Cairns from its current owner and that, if that occurred, the Cairns casino was likely to be sold along with the Canberra Casino.

13. In June 2014 he prepared a document entitled "CONFIDENTIAL FOR ACT GOVERNMENT ONLY, A TRANSFORMATIONAL PROPOSAL FOR CANBERRA, A CONCEPT SUGGESTED BY JOHN BEAGLE, RESIDENT". The document was two pages and dated 9 June 2014. I will refer to it later in these reasons as the Transformational Proposal. It suggested Aquis may be able to provide Canberra with a "world-class" viable Casino in a development which included a new convention and exhibitions centre as well as a five or six star hotel. The document indicated that to achieve this it would be necessary to have a partnership between the ACT government, Aquis, the "ACT Club Movement" and the ACT community. It pointed out that the casino licence specifically stated that poker machines would not be permitted. He said:

> In the past, the successful operation of Canberra Casino has been inhibited due to two major reasons. Firstly, the inability of Casinos Australia, as operators, to make this a viable entity. Secondly, and most importantly, the opposition by the Club Movement to the installation of electronic gaming machines (EGMs), otherwise known in Australia as "pokies". The casino licence, when granted in 1992, specifically stated that EGMs would not be permitted. Over the years, a number of unsuccessful attempts have been made to overturn this condition.
>
> FOR REASONS THAT MUST REMAIN CONFIDENTIAL AT THIS TIME, I BELIEVE THIS IMPEDIMENT CAN NOW BE OVERCOME. (I am prepared to discuss this confidentially with appropriate ACT officials as soon as convenient).
>
> I believe a practical plan to bring about this partnership quickly is possible, and I have the necessary background and experience to assist in this process (attachment 4) my viewpoint has been encouraged and supported by Jeremy Lasek (ex senior ACT government official) with whom I shared the basic details of my proposal on Saturday 7 June 2014. Jeremy, unbeknown to me, contacted David Dawes and Gary Rake of the Chief Minister's Department on the same day, giving them an outline of the proposal and

> suggesting we should meet to further discuss. Jeremy further stated he considered the proposal to be "amazingly positive".
>
> …
>
> My rationale for submitting this proposal is that of a long-term senior resident and passionate supporter of Canberra. My background in government, media, commerce, business and gaming is unique. I have no connection with Aquis.

14. He provided a copy of the document to Mr Gary Rake, and ACT government official, and arranged to have a telephone discussion with him about it.

15. Mr Beagle also followed up a newspaper article with a News Ltd journalist and got a contact for the Fungs, namely, Mr Ready of RG Communications Pty Ltd, the public relations adviser engaged by Aquis. On 13 June 2014 he telephoned Mr Ready telling that he had a "deep knowledge of Canberra Casino" and indicating he had an interest in assisting the Fungs. He then sent an email to Mr Ready outlining his background and indicating that "extremely confidentially" he was exploring a mechanism to enable poker machines into the casino.

16. On 23 and 24 June 2014 he spoke again to Mr Ready. Mr Ready told him that the major person in Aquis dealing with Canberra was Ms Jessica Mellor.

The Brumbies search for a sponsor

17. In about June 2014 Mr Simon Chester, the general manager of the defendant, became aware that the University of Canberra would not continue its sponsorship beyond the 2014 season. His primary focus then became to obtain a replacement major sponsor. In obtaining sponsors he relied heavily on contacts that he and other people at the Brumbies developed over the years including contacts at the ACT government.

18. For the purposes of attracting a major sponsor, in August 2014 he prepared a PowerPoint slideshow presentation entitled "The Brumbies Rugby - 2015 Major Sponsor Presentation". He estimated that he circulated about 300 copies of that presentation to various organisations. He also circulated it to agency companies such as IMG, Bastion, Octagon and about 10 individual agents who he had previously dealt with. The presentation was only circulated to gauge interest and no contracts or negotiations about commission terms were entered into with those agents.

19. In November 2014 he attended a function arranged by the Canberra Business Chamber and during that function there was a discussion of the sale of the Canberra Casino. At that stage he became aware that a potential purchaser of the casino was a group called Aquis. By December 2014 the Brumbies still had not obtained a naming rights sponsor.

Mr Beagle makes contact with Aquis

20. In November 2014 the plaintiff contacted a partner at Gilbert + Tobin in Melbourne, Mr Pathak, who was acting for Aquis in matters arising from the acquisition of the Reef Casino and Casino Canberra. The plaintiff told Mr Pathak that he had been in the casino industry for a long time and that people at Aquis may want to talk to him. Mr Pathak mentioned to Ms Mellor that he had been contacted by Mr Beagle and suggested that it "might not be a bad idea" to talk to him.

21. As a result of the suggestion, Ms Mellor telephoned the plaintiff who explained that he was a retired gambling consultant in Canberra and that he would like to meet with her

about the acquisition of the Canberra Casino. She indicated that if the deal went through then she was open to talking to him.

22. On 28 November 2014 Mr Beagle again contacted Mr Ready forwarding his earlier email. Mr Ready forwarded the email to Mr Michael King, an employee of or consultant to Aquis, identifying Mr Beagle as a person who had "been bugging me for six months for a meeting with Tony [Fung]." He suggested that Mr Beagle was "retired and not asking for anything other than an opportunity to share some knowledge." Mr King emailed Justin Fung and Ms Mellor saying:

> I think at least you should make an appointment to meet this guy next time you are in Canberra and see what you make of him - you cannot have enough friends in a small town like Canberra and maybe using an 82-year-old might bring us some kudos (or maybe not).

23. On 1 December 2014 Ms Mellor emailed Mr Beagle saying that Mr Ready had passed on his correspondence to her in relation to Mr Beagle's interest in discussing Casino Canberra. She indicated that she and Justin Fung would be in Canberra and sought to arrange a meeting.

24. Mr Beagle rang Ms Mellor on 2 December and had a conversation with her during which a lunchtime meeting between the plaintiff, Ms Mellor and Mr Justin Fung was arranged for 15 December 2014. Ms Mellor described the conversation as lasting 30 minutes. She found Mr Beagle pleasant, but long-winded and hard to follow. The plaintiff sent her a copy of his curriculum vitae. The document provided:

> Am a contented, contributing, resident of Canberra since the late 1960s.
>
> Have presented papers and spoken at numerous national and international University and Gaming forums.
>
> Have given written and oral evidence at the only two Productivity Commission Enquiries into Gambling (1999 and 2009).
>
> Conceived and founded the Australian Casino Association (now, Casinos & Resorts Australasia) in 1992, and was its initial paid Executive Director.
>
> Was a mid level Federal officer for 25 years in Sydney and Canberra.
>
> Have owned and operated my own businesses.
>
> Have worked internationally for Australian and overseas companies.
>
> Have a lifetime interest and have been practitioner in all forms of gambling.
>
> Have been a paid media presenter nationally and internationally.
>
> Am extremely fit, healthy, active and alert.
>
> My extensive background across government and private/public enterprise, coupled with my ability to communicate, have given me the essential "feel" and experience necessary to appreciate the viewpoint of others.
>
> <u>Suggested referees:</u>
>
> Retired Chief Justice Terry Higgins, Anglican Archbishop Canberra & Goulburn Stuart Robinson, Jeremy Lasek Australia Day Council, Ken Randall National Press Club, Ted Quinlan ex Treasurer A.C.T, Dr Wayne Boardman Belconnen, Tibor Vertes lawyer, entrepreneur, business owner Sydney.

25. There was a further call from Mr Beagle on 3 December 2014 in which Mr Beagle continued to emphasise how well connected he was in the Canberra market. This conversation took place after he had contacted the Canberra Business Council

concerning the current status of the City to Lake scheme, a development plan relating to the land between Civic and Lake Burley Griffin. He had been contacted by Dr Tania Parkes of Tania Parkes Consulting and considered it appropriate to pass the information on to Ms Mellor.

26. After the first conversation Mr Beagle emailed Mr Ready indicating that he had had a discussion with Ms Mellor. Mr Ready forwarded the email to Ms Mellor saying:

> Hey Jess… If this guy turns out to be a complete nut… I'll blame Howie!

27. Ms Mellor replied:

> Well, I was patient and tolerant for the first 30 minute called yesterday.
>
> The second call (20 mins) today started to test me …

28. In both conversations Mr Beagle had promoted the extent of his knowledge of the City to the Lake scheme. This was something that Ms Mellor was interested in. On 3 December 2014 she sent an email to him seeing whether there was any possibility of setting up a meeting with the Project Director or someone who could do a presentation to Mr Tony Fung and discuss the project in a little more detail. The nature of the telephone calls had prompted some concern on Ms Mellor's part about the extent of Mr Beagle's connections and, in making the request, she hoped to test whether or not Mr Beagle would be able to provide connections which were useful to Aquis.

29. Mr Beagle continued to call her on occasions after 3 December 2014. It became apparent to Ms Mellor that Mr Beagle was unable to set up such a meeting as he sought to defer discussion of that topic until the face-to-face meeting planned for 15 December 2014.

Plaintiff makes contact with the Brumbies

30. On 2 December 2014 Mr Chester attended a press conference relating to the arrest of David Pocock, the captain of the Brumbies, who had been protesting against the Maules Creek coal mine. During the course of that press conference questions were asked of Mr Chester about the search for a 2015 major sponsor. Some of Mr Chester's answers were reported in the Canberra Times online later that day under the heading "Brumbies search for major sponsor getting desperate".

31. Some of Mr Chester's comments were aired on ABC radio on the morning of 3 December 2014. After that Mr Beagle rang Mr Chester. Mr Beagle indicated that he may be able to assist with obtaining a sponsor, but did not disclose who the potential sponsor was. Mr Chester offered to send him his general sponsorship presentation and obtained his email address so that he could do so. Mr Chester then sent the presentation to Mr Beagle.

The meeting on 4 December 2014

32. On the morning of 4 December 2014 Mr Chester received an email from Mr Beagle in which Mr Beagle sought a meeting to confidentially discuss a possible sponsorship opportunity. Understandably, Mr Chester responded positively.

33. The meeting at the Brumbies headquarters commenced at about 11.15am. The persons present were Mr Beagle, Mr Chester and Mr Edwards. Mr Beagle said that the potential sponsor was a Hong Kong group which he declined to identify. He said he

thought there would be advantages for the group to sponsor the Brumbies. Mr Edwards indicated that he was interested.

34. Mr Chester's evidence was that Mr Beagle said "All I ask is that you look after me if I pull this off" and that Mr Edwards replied "We can work something out". In response Mr Beagle said "I'll continue to talk with them. I'll come back to you."

35. Mr Beagle's evidence was consistent with this in that his recollection was that Mr Edwards said "Jack what's in it for you?" and Mr Beagle said "I'm sure you will look after me if I pull it off". Mr Edwards said "let's see how we go. There will be something in it if we get over the hump". In his oral evidence Mr Beagle said:

> Doug Edwards said, "Jack, what's in this for you?" He said, "Well, a finder's fee perhaps of some sort but basically I think you would look after me if this comes off." He said, "Well, let's see if we can get it over the hump and see what takes place." Mr Chester then said, "We've done this before with a Land Rover sponsorship."

36. Mr Edwards' evidence was that Mr Beagle made reference to a finder's fee and that Mr Chester said that "we paid commission when we obtained a Land Rover sponsorship". In oral evidence he said "a finder's fee was more of an indication of something [that] may happen". He agreed with the proposition that his expectation was that Mr Beagle, having taken the proposal to the potential sponsor would come back to the Brumbies and say "I can deliver. What sort of deal can we work out?". He said Mr Beagle made it quite clear that he didn't represent the organisation but had "a relationship with it". Mr Chester was not aware how close any such relationship was.

37. In relation to this meeting my findings are as follows:

    (a) Mr Beagle said that he had a possible naming rights sponsor for the Brumbies.

    (b) That it was an opportunity that could be beneficial to both parties.

    (c) That the entity was based in Hong Kong.

    (d) That he would expect a finder's fee of some sort or that the organisation would "look after him" if Mr Beagle "pulled it off".

    (e) Mr Chester made reference to having paid commission when the Brumbies obtained a Land Rover sponsorship.

38. By the conclusion of the meeting, from the description given by Mr Beagle, Mr Edwards thought he was talking about Aquis.

39. Shortly after the conclusion of the meeting Mr Edwards told Mr Chester that he had spoken to Gary Rake and reported "he knows of Mr Beagle. He suggested we don't waste too much time on him. So don't." Mr Chester indicated that he would give Mr Beagle the proposal and keep on looking for a sponsor.

40. On the afternoon of 4 December 2014 Mr Chester delivered a hard copy of the sponsorship proposal to Mr Beagle's house. This occurred at about 3.15pm.

41. There was a conflict between the evidence of Mr Beagle and Mr Chester about the delivery of the sponsorship proposal. Mr Chester's evidence was that when he knocked on the door it was answered by an elderly lady who he assumed to be Mr Beagle's wife. He left the sponsor presentation and his covering letter with her. Mr Beagle's evidence was that Mr Chester delivered the proposal to him personally

and that he had told Mr Chester that the potential sponsor he had in mind was the Aquis group who were acquiring the Canberra Casino.

42. In cross-examination, it was put to Mr Chester that he had delivered the sponsorship documents to Mr Beagle himself in his driveway. Mr Chester said that that was not correct and that he could remember the event "very clearly". He said "I can go into more detail if you like, of how I can recall, but definitely not." There was no further cross-examination or re-examination to explore the specific reasons why Mr Chester said he could remember the events very clearly.

43. There are two reasons why I prefer Mr Chester's evidence to Mr Beagle's. First, I accept his evidence that there were particular reasons why he recalled the events clearly. Second, Mr Chester's version of events, which did not involve the plaintiff disclosing to him the identity of the potential sponsor was consistent with the terms of the email which Mr Beagle sent shortly afterwards.

44. At 3.35pm on 4 December 2014 Mr Beagle forwarded a copy of the proposal to Mr Ready. He did this by forwarding the email of 3 December 2014 from Mr Chester to Mr Ready and saying in his email:

> Hi Ben,
>
> I met with the CEO, Dave Edwards and Simon Chester, from the Brumbies this morning and have a package which I anticipate passing on to Jess when she is here for a few days from this Sunday night.
>
> I realise it is premature to be looking at sponsorship when the finality of Aquis and the Canberra Casino is not officially confirmed. Nevertheless, this is a unique opportunity if Aquis wishes to align themselves with the best iconic Canberra brand.
>
> It may be not realised, but rugby is a global game, and the Brumbies games are beamed live into 60 countries. In 2016 Super Rugby will be expanding and the Brumbies will be playing in Singapore and Japan.
>
> If you do get to Canberra in the coming weeks I would welcome the opportunity for you to meet with these passionate people and look at the possibilities that an association with Aquis could bring about.
>
> I have not told the Brumbies who I was obtaining the information for, nor have Aquis been mentioned at all in my dealings with the Brumbies.
>
> Again, many thanks for putting me in touch with Jess and I look forward to meeting you in due course.

45. It is significant that in this email, sent only 20 minutes after the delivery by Mr Chester of the hard copy of the proposal, Mr Beagle stated that the Brumbies have not been told who he was obtaining information for nor had Aquis been mentioned in his dealings with the Brumbies. In oral evidence Mr Beagle said that the statement was in fact untrue and that he had mentioned Aquis to Mr Chester. He said he was dealing with a "long shot proposition" and did not wish to "muddy the waters". Having regard to Mr Chester's evidence I do not accept this evidence and I find that he had not mentioned Aquis to representatives of the Brumbies.

46. Following 4 December 2014 Mr Beagle rang Mr Chester approximately two or three times per week during December. He did not inform him who he was acting for. Mr Chester formed the view that there was little point to these telephone calls.

Mr Apps is engaged

47. Some time between 4 and 8 December 2014 Ms Mellor met with and retained Mr Apps as a communications consultant and public relations advisor for Aquis in ACT. Shortly after their first meeting Ms Mellor instructed Mr Apps to prepare a Stakeholder Engagement Plan to identify stakeholders in the ACT of which Aquis should be aware in relation to its plan to redevelop the Canberra Casino site, as well as the operation of the casino more generally. That document was ultimately provided to Ms Mellor by Mr Apps on 23 January 2015.

Mr Beagle delivers the proposal to Ms Mellor

48. On 8 December 2014 Mr Beagle rang Mr Ready to check that he had received the Brumbies proposal. He told him that he was planning to deliver the proposal to Ms Mellor and appears to have discovered from Mr Ready that she was staying at the QT Hotel. In the evening of 8 December Mr Beagle went to the QT Hotel and delivered the proposal. Ms Mellor's assistant, Anerike Poulter, collected the delivery and spoke briefly to Mr Beagle.

49. Mr Mellor opened the package sometime between 8 and 13 December 2014 when she was on a flight back to the Gold Coast. She did not read the document in any detail, turning to the back page to identify that the asking price for the sponsorship was $1.5 million. She considered that any consideration of sponsorship was premature because the Canberra Casino deal had not yet completed and she considered that Aquis was not interested in such a high priced sponsorship.

50. On 13 December 2014 Ms Mellor emailed Mr Beagle confirming the meeting on 15 December 2014. She said that she had read the documents that he had provided, that she considered it premature to consider such sponsorship at the time and suggested that the issue be discussed further on Monday. In her evidence she said that in dealing with the matter in this way she was just being polite. Her interest for the 15 December 2014 meeting was to gain an understanding of the City to the Lake scheme which Mr Beagle had led her to believe he was somehow involved in. That was an issue which she had an interest in because of the potential for the Aquis group to participate in development projects associated with that scheme.

The meeting on 15 December 2014

51. As had been planned, on 15 December 2014, there was a meeting between Mr Beagle, Mr Justin Fung, Ms Mellor and Ms Poulter. The meeting took place over lunch at the Southern Cross Yacht Club in Yarralumla commencing at 1.00pm. The two areas of difference in the evidence were as to the length of the meeting and the extent, if any, to which Mr Beagle "pitched" the Brumbies proposal to those at the meeting.

52. Ms Mellor said that at the commencement of meeting Mr Beagle handed her a curriculum vitae of a woman who he suggested should be engaged by Aquis as its project manager. Ms Mellor thought that this was misconceived and as a consequence confidence in him from the start of the meeting was low. She found the topics of conversation raised by Mr Beagle at the meeting to be very odd, consisting effectively of random stories which, while amusing at the time, did not instil confidence in her that Mr Beagle had any standing in relation to the City to the Lake scheme. Mr Beagle did not discuss her request for a meeting with the Project Director of that scheme and she

did not pursue that issue. While she could not recall the whole of the conversation she could recall some topics which Mr Beagle did discuss namely:

(a) Mr Beagle formerly running a secret underground casino in Canberra which even the police attended;

(b) Mr Beagle's involvement in "running mobsters out" of the Star Casino in Sydney;

(c) Mr Beagle's suggestion that Aquis should align with all of the clubs in Canberra, a proposal which she considered to be very unrealistic.

53. Ms Mellor ended the meeting as soon as it was not rude to do so. She estimated that the meeting went for about 45 minutes. Following the meeting she directed her assistant, Ms Poulter, to block future calls or contact from Mr Beagle.

54. The plaintiff's evidence about this meeting was that it was a brisk business meeting during which they ate lunch. He estimated that it went for an hour. His description of what was discussed at the meeting was that he first discussed the sponsorship opportunities with the Brumbies before moving on to discuss other matters. The other matters included:

(a) his long association with the Canberra Casino since its inception and with other gambling related activities in Australia;

(b) his assessment of the failings of the Canberra Casino under the present owners;

(c) the document headed "A transformational concept for Canberra", referred to above at [13]; and

(d) the potential for Aquis' participation in the City to the Lake scheme.

55. It is clear that as a result of the meeting Ms Mellor formed the view that Mr Beagle had little useful information or connections which would assist her or Aquis as it moved into the Canberra market. I accept her evidence as to some of the unusual topics that Mr Beagle covered because they are matters which, because of the subject matter, she is likely to have recalled and the telling of such stories is consistent with the manner in which Mr Beagle promoted himself to others as well as in the curriculum vitae in evidence in this case.

56. Although in her affidavit she stated positively that Mr Beagle did not discuss sponsorship proposals for the ACT Brumbies, her oral evidence was that she did not recall that as being part of the meeting. I consider that, having regard to the provision of the proposal by Mr Beagle on 8 December 2014 and the invitation to discuss it further in Ms Mellor's email of 13 December 2014, it is likely that there was some mention of the Brumbies sponsorship proposal at the meeting. However, I do not accept Mr Beagle's evidence that it was the most significant point that he sought to discuss at the meeting. I consider it more likely that the majority of the time was spent by Mr Beagle providing information designed to convey to Ms Mellor and Mr Fung his long experience and knowledge of the casino industry generally and, in particular, the Canberra casino. It would be consistent with Ms Mellor's state of recollection that she did not recall the reference to the Brumbies sponsorship because it was not the central feature of what Mr Beagle sought to communicate, she had a greater interest in finding out if he had any useful information or role in relation to the City to Lake scheme, there

were more unusual things to recall about the meeting and her desire, having lost any confidence in the usefulness of Mr Beagle, to terminate the meeting as soon as it was not rude to do so.

57. So far as the length of the meeting is concerned I consider it likely that it was between 45 minutes and one hour, because Ms Mellor said that she had another meeting scheduled in her diary which she had to attend in the following hour and such a meeting length would be consistent with her loss of confidence in the usefulness of Mr Beagle and desire to leave as soon as possible.

58. Ms Mellor also had a meeting with Mr Apps that day. It is not clear whether that was before or after the meeting with Mr Beagle. In her meeting with Mr Apps, Ms Mellor did not discuss sponsorship proposals. In particular, there was no discussion of Mr Beagle or the Brumbies.

59. In the period from 15 December 2014 until 23 December 2014 Ms Mellor was entirely focused upon completion of the Canberra casino deal which ultimately settled on 23 December 2014.

Mr Chester at work

60. Mr Chester obviously remained under significant pressure to secure a major sponsor for the Brumbies.

61. On 16 December 2016 he received a telephone call from Jamie Wilson, the other director, along with Mr Apps, of Coordinate. Mr Wilson expressed an interest in obtaining information on the Brumbies sponsorship for Guvera, a music streaming company. Mr Chester emailed a copy of his sponsor presentation on 16 December 2014. He was called later by Mr Wilson who queried the million-dollar asking price. Mr Chester said that the price depended on precisely what benefits the sponsor wanted and that it might be possible to do basic naming rights and logo branding for $750,000. On 18 December, Guvera instructed Messrs Wilson and Apps that it was "not interested in sponsoring the ACT Brumbies." Mr Wilson then communicated this to Mr Chester.

62. At about this time Mr Chester did some basic research on Aquis on the internet to get some understanding of the Fungs and their interests. While doing this he found the details of their communications consultant, Mr Ready. On 22 December 2014 he spoke to Mr Ready and, in response to a request for a contact name and number of a person to approach in relation to sponsorship, he obtained the mobile phone number of Ms Mellor. He immediately called her and had a brief conversation with her in which he introduced himself and she asked him to call her later because she was in the process of moving her organisation to Canberra. He indicated that he would.

Events after settlement of the purchase of Canberra Casino

63. On 23 December 2014 Aquis' purchase of Canberra casino settled.

64. On 24 December 2014 Mr Chester returned a missed call from Mr Beagle and was told for the first time of Mr Beagle's connection with the Fung family and Aquis. Mr Chester did not disclose that he had been in contact with Ms Mellor.

65. He called Ms Mellor again on 30 December 2014. Once again, the call was a brief one and he was asked to call back in the new year.

66. On 5 January 2015 Mr Apps arranged a television interview at the Canberra casino to announce Aquis's purchase of, and development plans for, the Canberra casino site. After the interview Ms Mellor had a conversation with Mr Apps about what should be done to improve Aquis' community engagement and brand recognition. Mr Apps referred to Huawei's sponsorship of the Canberra Raiders and Ms Mellor asked whether Aquis should sponsor something like the Brumbies or the Canberra Capitals (a women's basketball team). Mr Apps recommended against the Canberra Capitals but indicated he was aware that the Brumbies sponsorship was available and would be going cheaply. He suggested it might be possible to get it for as little as $600,000 or $700,000. She asked him to arrange a meeting with the Brumbies.

67. Michael Jones, the new chief executive officer, commenced work at the Brumbies on Monday 5 January 2015. That was also Mr Chester's first day back at work. Mr Chester telephoned Ms Mellor again. This was the result of Mr Chester methodically following up on his earlier contact with Ms Mellor rather than as a result of any initiative of Mr Apps. Ms Mellor arranged to meet with Mr Chester and Mr Jones on 12 January 2015.

68. During January 2015, notwithstanding a request to Ms Poulter to block Mr Beagle's calls, he managed to speak to Ms Mellor on a number of occasions. She was reluctant to talk with him because she considered that he was wasting her time.

69. On either 6 or 7 January 2015 Mr Beagle called Mr Chester again and Mr Chester told him that there was a meeting with Aquis on 12 January 2015. Mr Beagle suggested a meeting with him prior to the meeting with Aquis. Mr Chester send an Outlook meeting request to Mr Jones, describing it as a meeting with "Aquis third-party consultant", as at that stage Mr Chester thought Mr Beagle had some connection to Aquis although he did not know what that was.

70. The meeting took place on 7 January 2015 between Mr Beagle, Mr Chester and Mr Jones at the Brumbies headquarters. Mr Beagle described this meeting as lasting for an hour in which he told Mr Jones and Mr Chester:

    (a) about his lifetime interest in all forms of gambling and his experience with various local and overseas companies;

    (b) the ambition of Aquis to be a major international player in the casino industry;

    (c) the fact that Tony Fung had lived in Queensland for 15 years;

    (d) that the business was several generations old and established under British Hong Kong rule;

    (e) the reason for the purchase of the Canberra casino;

    (f) the need for an Australian casino licence;

    (g) the need for Aquis to establish itself as a good corporate citizen and the benefits of an association with the Brumbies for Aquis in dealing with the ACT government;

    (h) about Mr Justin Fung and Ms Mellor with whom he had lunched on 15 December.

71. Mr Chester described this as being quite a strange meeting. He said that Mr Jones asked Mr Beagle what he could tell him about Aquis and his relationship with them. Mr

Chester said that while Mr Beagle had appeared organised at the 4 December meeting, at this meeting he came with a briefcase and spent approximately 10 minutes telling stories about his involvement in the casino industry. He did not explain how he knew the Fung family and only gave general information about them which was less detailed than the information Mr Chester had been able to obtain from the internet. Mr Chester described Mr Jones as being an aggressive character who said to Mr Beagle "I can see that you don't have any actual connection" and terminated the meeting.

72. On 8 January 2015 Mr Beagle exchanged emails with Mr Jones. Mr Beagle suggested that Mr Jones might be interested in looking at the City to Lake website, that "if Aquis can be involved and somehow linked to the Brumbies this could provide massive positive publicity for both organisations" and that "perhaps some of your Board members could provide some insight/input to this prior to next Monday's meeting?" Jones replied courteously saying that "we are keen to discuss the possibilities of a fully engaged sponsorship, however, we need to stay focused on our core business and not tell [Aquis] how to run their operation".

73. Mr Beagle also sent a follow-up email to Mr Chester to which Mr Chester replied simply "Thanks John".

74. In the light of this cordial correspondence on 8 January 2015, I find that the meeting on 7 January, although perceived by Mr Chester as strange, was not terminated with the abruptness that his affidavit would suggest. However, I accept his evidence about the nature of the information provided by Mr Beagle, the manner in which Mr Beagle conducted the meeting and the impression that it gave to Mr Chester. I do not accept Mr Beagle's evidence that the meeting went for as long as an hour as that appears to be inconsistent with Mr Chester's description of how the meeting progressed.

75. On 12 January 2015 there was a meeting between Ms Mellor, Mr Jones and Mr Chester. That took place at the Brumbies offices on the campus of the University of Canberra. Ms Mellor got a tour of the premises and a slideshow presentation which ended with proposed sponsorship figures of about $1.2 to $1.3 million. Ms Mellor, probably influenced by the advice that she had been given by Mr Apps, said that the prices were more than she had been anticipating. Mr Jones indicated that the Brumbies were "not prepared to discount the brand" and as a consequence the meeting came to an end. She left without much hope that an agreement would ultimately be reached.

76. Following the meeting Ms Mellor contacted Mr Apps and asked for his written advice as to the appropriateness of Aquis sponsoring the Brumbies. She received advice from Mr Apps on 14 January 2015. The advice was provided in the form of a document titled "ACT Brumbies Sponsorship Opportunity-Background and Considerations Report". The report was 10 pages including the background on Super Rugby, the history of the Brumbies, what would be expected in relation to the 2015 season, past sponsorship of the Brumbies and an assessment of the benefits of sponsorship including tangible and intangible benefits. It also assessed further opportunities and "strategic considerations". It gave guidance as to the appropriate negotiating range for the cost of the sponsorship.

77. Following receipt of Mr Apps' report (the date is unclear) Ms Mellor telephoned Mr Jones and asked him to put something in writing about the sponsorship proposal so she could take it to the Aquis board.

78. On 17 January 2015 Mr Beagle telephoned Mr Chester and indicated that he was ringing to find out what happened at the meeting with Aquis. Mr Chester referred to the involvement of Coordinate in assessing the merits of a sponsorship of the Brumbies. Mr Chester asked Mr Beagle about the figures on the last page of the sponsorship proposal which he had provided to Aquis and Mr Beagle rang back to provide them.

79. On 23 January 2015 Mr Jones sent a document entitled "Aquis Sponsorship Proposal" to Ms Mellor. The same day Ms Mellor responded by email indicating that the asking price was too high. The email and subsequent exchanges between Ms Mellor and Mr Jones demonstrate a polite dance between the parties seeing if the difference between their cost positions could be bridged. By email on 28 January 2015, Ms Mellor indicated that she thought the value of the sponsorship was around $700,000-$800,000 and certainly less than $1 million.

Negotiations with iiNet

80. About this time Mr Chester was hopeful of obtaining a sponsorship deal with the internet company iiNet. On 25 January 2015 Mr Jones and Mr Chester travelled to Perth to meet the chief commercial officer and sponsorship manager for iiNet. The meeting was positive and Mr Chester was confident that a major sponsorship agreement would be reached with iiNet. However, the relevant officers asked for time to consider the proposal. The evidence does not disclose what happened later in relation to this possible deal, although it is clear that it did not eventuate prior to the agreement with Aquis.

Activities of Mr Beagle between 15 January and 10 February 2015

81. After speaking with Mr Chester on 17 January 2015 Mr Beagle took it upon himself to contact Mr Apps. His evidence was that he did so in order to see if he could assist with preparing the proposal to be sent to the Aquis board in Hong Kong. A meeting was arranged for 27 January 2015. At the meeting Mr Beagle gave Mr Apps a letter and curriculum vitae. Mr Apps told Mr Beagle that Aquis was moving away from the deal because the Brumbies were asking too much. His evidence was that Mr Apps told him that Coordinate had been attempting to obtain a naming rights sponsor for $650,000.

82. Mr Apps described the meeting somewhat differently. After describing his background and interest in the industry Mr Beagle indicated that his purpose was to seek to get a meeting with the Fungs because Mr Beagle said that he was well connected with people at the Christchurch Casino and that would provide a good case study about what was possible in Canberra. Mr Apps explained that Mr Beagle may have misunderstood the role that he played as a communications advisor to Aquis. In his affidavit he could not recall any discussion of the Brumbies during the meeting and if they were discussed it was only in passing. He described the meeting with Mr Beagle as "rather extraordinary".

83. I prefer the evidence of Mr Apps as to what occurred at this meeting. It appears to me unlikely that Mr Apps would have disclosed the negotiating position of Aquis or his views of the likely value of the sponsorship to Mr Beagle, a stranger. I do, however, accept Mr Beagle's evidence that he provided his curriculum vitae. The content of the covering letter on the CV is consistent with Mr Beagle promoting himself as a person who could assist the new owner of the casino to reinstate poker machines. The content of the document is consistent with Mr Apps' recollection of the meeting because it contains no reference to the Brumbies or sponsorship of them. It is unlikely

to have been perceived by Mr Apps as a professional document and this makes it even less likely that Mr Apps would have disclosed confidential information about the value of the Brumbies sponsorship to Mr Beagle. The covering letter included:

> The question of the Canberra Casino being viable only on the basis of having Electronic Gaining Machines (EGMs) or pokies is not valid nor has it ever been.
>
> I believe that EGMs can be incorporated in the new Canberra Casino with the concurrence of the government and the approval of the Club industry. And without undue upset to club patrons.
>
> The above comments may appear to be unrealistic, naive and foolish to sum. However there are proven ways to make of the NEW Canberra Casino a very welcome addition to the local scene. In doing so, benefiting the wider entertainment, accommodation, travel, tourist and dining industries.
>
> I believe I have the experience, enthusiasm, knowledge and the most essential ingredient of all, "THE FEEL" to assist in bringing this about and would welcome the opportunity to further discuss this with you and your organisation.
>
> As one of only two individuals who gave evidence in favour of a casino in Canberra to the original 1977 enquiry, I have closely followed the fortunes of Casino Canberra since it was first given approval in 1991. Since then I have introduced two parties to Casinos Austria with the prospect of purchasing the casino. Neither party is preceded due to the unrealistic price asked. Possibly this price was influenced by the original payment by Casinos Australia [sic] of $19.5 million for the licence?
>
> I have had extensive dealings since 1992 with Greg Jones, Chief Executive ACT Gambling and Racing Authority and believe I am favourably regarded by him.

84. On 28 January 2015 Mr Beagle's evidence was that he rang Mr Chester and reported upon his meeting with Mr Apps saying that "Aquis is moving away from the Brumbies deal because you are asking too much" and that the sponsorship price quoted to Mr Apps was only $650,000. Mr Chester did not give evidence of this conversation or contradict Mr Beagle's evidence. Having regard to my acceptance of Mr Apps' evidence as to what occurred on 27 January 2015, I do not accept that Mr Beagle provided this information to Mr Chester.

85. Following the meeting with Mr Apps, Mr Beagle sent him an email on 29 January 2015. This email was not included in Mr Beagle's affidavit but was included in Mr Apps' affidavit. The email annexed what appears to be a transcript of a press release from the Canberra casino in 1993 stating that it had attracted more than 400,000 players, many from Sydney, in less than six months from its opening date. The email also suggested that Mr Beagle would be prepared at his own expense to confidentially accompany Mr Andrew Barr, the Chief Minister, to Christchurch in New Zealand to visit the Christchurch casino. He said "I realise what I am suggesting is right out of left field, however if [the Chief Minister] could see what Christchurch is doing it could give him a practical vision of [what] can be achieved in Canberra."

86. Mr Apps sent an email reply to Beagle on 31 January 2015. He indicated that he was unsure of his ongoing role with Aquis and that Ms Mellor was the key player in terms of redevelopment. He also said that he had a couple of meetings with the Chief Minister this week and would see what the outcome of those interactions were and "look to see if there might be an opportunity to engage him and others in the Christchurch case study."

87. On 2 February 2015 Mr Beagle called Mr Apps again, left a message for him and then sent an email seeking a meeting with him to meet "a close friend who owns the largest

facility of its kind in the ACT" who was "passionate about Canberra, particularly in The City To Lake proposal". Mr Apps met with Mr Beagle again on 6 February 2015. Mr Beagle brought with him Ron Watkins who was introduced as the owner of the Big Splash water park in Macquarie. Mr Beagle promoted Mr Watkins as someone who wanted to be involved in the City to the Lake project and who considered that instead of the proposed artificial beach there should be a "Wet and Wild style water park" that could be tied in to the casino so that it would benefit the Fungs and Aquis. Mr Apps said that he could not help Mr Beagle with this. Mr Beagle then raised Mr Apps' connection with the Canberra Brave ice hockey team and suggested that there may be opportunities to incorporate an ice rink as part of Mr Watkins water park idea in the city. Mr Apps said that he was not able to play any role in such a plan.

88. Following the meeting Mr Apps phoned Ms Mellor enquiring about who Mr Beagle was. Ms Mellor said words to the effect "Oh my God. He is driving us crazy. All he does is call and waste our time. You have to ignore him, or else he just won't stop calling."

89. Mr Beagle left messages for Mr Apps on 9 February 2015 and 11 February 2015. It is clear that Mr Beagle was acquiring a reputation within Mr Apps' office as the telephone message recorded by a staff member said "Your friend and confidant of the gambling world John Beagle called to set up a meeting ASAP with regards to Phillip". Later on 11 February 2015 Mr Apps received an email from Mr Beagle in which he again sought a meeting with the Fungs. Mr Apps sent a reply indicating that he was going overseas shortly and his diary was completely booked. He indicated that he did not have much sway with the Fungs.

Agreement is reached with Aquis

90. Notwithstanding that the negotiations had, by 28 January 2015, stalled, Ms Mellor and Mr Justin Fung were invited to the Brumbies' season launch at the Regatta Point function centre. Ms Mellor was impressed with the season launch and as a consequence, reconsidered whether Aquis should sponsor the Brumbies. On 9 February 2015 she emailed Mr Jones to enquire as to whether a sponsorship was still available. Because of her reignited interest, a dinner was arranged at a restaurant in the New Acton precinct for the evening of 9 February 2015. Ms Mellor and Mr Fung attended for Aquis and Mr Chester and Mr Jones attended for the Brumbies. Mr Jones indicated a minimum price of $1 million. Ms Mellor spoke about the issue with Mr Tony Fung in Hong Kong who indicated that he would like to think about things overnight. On 10 February 2015 Mr Jones emailed her the basic points of the proposed sponsorship. She spoke again to Mr Tony Fung and he directed her to accept the proposal made by Mr Jones. In concluding the deal it appeared to be significant that the Brumbies first game was to be played against the Queensland Reds, that Aquis had struggled to progress substantial development plans which it had hoped to pursue in Queensland and that the Aquis logo could appear on the Brumbies' jerseys for that game.

91. Ms Mellor's evidence was that in reaching agreement she did not take into account any advice of Mr Beagle or ever mention Mr Beagle to Mr Tony Fung. To the contrary, because of her opinion of Mr Beagle, she considered his suggestion that Aquis sponsor the Brumbies was a consideration against such a course of action.

92. The sponsorship agreement was formally announced at a media conference on 11 February 2015. Mr Chester emailed Mr Beagle asking him to call. Mr Beagle rang

back and spoke to Mr Chester as he was on his way to the media conference. Mr Beagle's evidence was that after being told of the news he said "This is great but what happened? I thought Aquis had gone cold on the deal". At that stage Mr Chester had no expectation that Mr Beagle would consider himself involved in the deal but emailed him as a matter of courtesy. Mr Chester emailed rather than called him because he had not kept his telephone number.

93. A formal agreement to give effect to the sponsorship was only executed on 19 June 2015.

Mr Beagle asks for payment

94. On 12 February 2015 Mr Beagle left a message for Mr Chester who called him back. Mr Beagle requested his finder's fee. Mr Chester said that he would be handling that and offered him tickets for the upcoming game. Mr Beagle indicated that he was in Leeton for the weekend. On 17 February 2015 Mr Beagle spoke to Mr Chester again and said that he wanted 10% of the sponsorship amount. Mr Chester said "that is ridiculous" and that he would need to come in and have a conversation with Mr Jones if he was going to make such a demand. As a consequence a meeting was arranged for 18 February 2015.

95. Mr Beagle's evidence about what occurred at that meeting was recorded in a "report" that he prepared the day after the meeting.

96. Mr Chester's evidence was that Mr Jones told Mr Beagle at the meeting that "you've got to be kidding". He said that they had met with Mr Beagle out of courtesy and Mr Beagle was not a sports agent. Mr Jones said that as a result of his previous experience he knew what was involved with obtaining sponsorships. Mr Chester referred to the Land Rover sponsorship, but that was a payment to a recognised agent who did all the negotiating and work. Mr Jones said that as a gesture he could probably offer $5000 for Mr Beagle's time.

97. Mr Beagle's "report" included greater elaboration of what occurred at the meeting, but was generally consistent with Mr Chester's evidence. It provided:

> Jones stated that the Brumbies had been made aware of Aquis through the ACT Government and other sources and they would have been in touch with them had I not initiated my contact with the Brumbies.
>
> I told Jones, after some discussion, that the reason the ACT Government was probably aware of Aquis coming to Canberra was because of my confidential concept proposal I provided to Dave Dawes and Gary Rake of the Chief Minister's Department in June last year. I then showed Jones a copy of that document and he read it. I stated very plainly that I was of the opinion that the ACT Government, i.e. through the Chief Minister's Department, was not aware of the Aquis possibility until I alerted them to it.
>
> I explained how this proposal was forwarded to Mssrs Rake and Dawes on the insistence of Jeremy Lasek, who had been the Chief Minister's Chief of Staff, who I had contacted on Saturday 9th June to ask his opinion of my proposal. Jeremy, who had only recently left the Chief Minister's Department, thought it was outstanding and, without any urging from myself, insisted that it should be sent immediately, i.e. today Saturday 9th, to Rake and Dawes.

Subsequent agreement with Aquis

98. The agreement reached in principle, which was announced on 11 February 2015 and subject to a formal agreement executed on 19 June 2015 (the 2015 Agreement), was

for an initial one-year period with two option periods. It was an agreement between the defendant and Aquis Developments Pty Ltd. The option was required to be exercised by 1 September 2015. In fact, the first option was not exercised and instead a new agreement was negotiated between the defendant and Aquis Entertainment Ltd dated 14 January 2016 (the 2016 Agreement). The 2016 Agreement had the same structure as the 2015 Agreement but was with a different entity. It required a payment of $1 million plus GST in the initial term and had two option terms. Under that agreement, if the option was to be exercised it needed to be exercised by 1 September 2016. That date fell within the hearing of the present proceedings and the position identified by the defendant was that the option had not been exercised by that date. The evidence of Ms Mellor was that the parties were in negotiations.

Expert evidence

99. The plaintiff called expert evidence from Ms Kim Skildum-Reid. She prepared two reports, the first dated 20 May 2015 and the second dated 26 May 2016. Amongst other things she describes herself as a corporate sponsorship consultant. She has been working in that field in Australia for 24 years. She provides advice and sometimes training or other capacity building to corporate clients, government clients and sponsorship seekers. She does not act as a sponsorship broker herself. On occasion sponsorship brokers may be her clients. I accept that there is an area of specialised knowledge relating to the obtaining of corporate sponsorship. I accept that Ms Skildum-Reid has specialised knowledge in that area as a result of her experience in consulting in relation to corporate sponsorship over at least 24 years.

100. In her first report she recorded her "recommendation" as to the appropriate level of remuneration for the plaintiff in the circumstances associated with the obtaining of sponsorship by Aquis for the Brumbies. The report identified that it is standard practice to remunerate an individual or agency who contributes materially to the sale of a sponsorship as a percentage of the value of that sale. A person who does so is a sponsorship broker. The primary value of the sponsorship broker is to provide access to and credibility with company decision-makers. The percentage of remuneration generally ranges from 10-35% depending on the circumstances. There are two primary ways that broker commissions are calculated for multi-year sponsorships:

    (a) A percentage that reduces year on year until it reaches zero. This is the more common method.

    (b) An "Evergreen" commission where the commission rate remains the same over the entire life of the sponsorship.

101. The report also set out Ms Skildum-Reid's understanding of the facts and assumptions which led to her "recommendation" as to the level of remuneration. These facts and assumptions were the subject of detailed submissions by the defendant and I will refer to the facts and assumptions when I consider below what weight can be given to her opinion.

102. She calculated appropriate remuneration as $700,000, arrived at in the following manner:

    (a) 20% of $1.4 million for the first year;

    (b) 15% of 1.4 million for the second year;

(c) 10% of 1.4 million for the third year;

(d) 5% of 1.4 million for the fourth year.

103. She described a number of positive and negative factors as being at play in reaching her opinion. I will return to these various factors later in these reasons.

104. The report did not disclose how those positive and negative factors were deployed in reaching the quantum of the remuneration which she suggested or the breakdown of the remuneration over the various periods of the sponsorship.

105. The second report dated 26 May 2016 arose from the review of certain documents which had been disclosed by the defendant to the plaintiff. Those were the actual sponsorship agreements between Aquis and the defendant as well as a "Sponsor Introduction Agreement" between IMG, an agency company, and the defendant dated 26 July 2012. Apart from the additional documents, she relied upon the same facts and assumptions as in her earlier report.

106. The actual sponsorship agreements had not been available at the time when she produced her first report. Therefore the first report was based upon the publicly announced value of $1.4 million per annum for a total of six years being a total value of $8.4 million.

107. The 2015 Agreement was a one-year agreement (2015) with two options, the first being two years (2016-2017), the second being three years (2018-2020). The sponsorship amounts were:

(a) 2015: $1 million;

(b) 2016-2017: $1.2 million, $1.3 million;

(c) 2018-2020: a negotiated annual fee of between $1.2 million and $1.6 million.

108. The 2016 Agreement was a new contract entered into for the 2016 calendar year with the same structure as the earlier contract, namely one year of sponsorship for $1 million and two option periods for sponsorship at the same rate as set out in the earlier agreement except covering the period out to 2021.

109. The IMG agreement provided for IMG to facilitate introductions to specified companies, Land Rover, Haier, Fisher and Paykel and "any other companies agreed in writing by the parties from time to time". It ran from 26 July 2012 until 30 June 2013. It was a broker agreement providing for a commission on all sponsorships sold to the above companies by the Brumbies during that period "regardless [of] the extent that IMG [was] involved in the sale discussions or at all". The agreement specified an amount of 12.5% plus GST commission on the gross sponsorship revenue for each year of the term plus a commission of 6% plus GST on gross annual sponsorship revenue for any renewal, extension or subsequent agreements. The agreement required payment "regardless to the extent that IMG has been involved in the sale discussions or at all".

110. Ms Skildum-Read considered the IMG agreement constituted a "precedent" and she therefore expressed the opinion that "the appropriate remuneration level" was at the rates set out in the IMG agreement, namely, 12.5% for the first year, 6% for the subsequent agreement and 6% for any subsequent year of that subsequent agreement. By this means she concluded that the appropriate level of remuneration was $587,000 plus GST and that the plaintiff would be entitled to 6% of the gross

annual sponsorship revenues on any contract renewals with Aquis. The figure of $587,000 plus GST was arrived at as follows:

(a) 12.5% of the $1 million for 2015 (the 2015 Agreement);

(b) 6% of the $1 million for 2016 (the 2016 Agreement);

(c) 6% of $1.2 million for the second year of the 2016 Agreement;

(d) 6% of $1.3 million for the third year of the 2016 Agreement;

(e) 6% of an estimated $1.4 million per year average for years four to six of the 2016 Agreement.

111. She identified that this outcome corresponded closely with the reducing percentage figure methodology that she had adopted in her earlier report when applied to the actual sponsorship amounts under the two agreements. Applying that methodology the total was $535,000 plus GST arrived at as follows:

(a) 20% of $1 million for the first year;

(b) 15% of $1 million for the second year;

(c) 10% $1.2 million for the third year;

(d) 5% of $1.3 million for the fourth year.

112. The report identified the total figure on the assumption that the options available to Aquis would be exercised and hence the revenue would be forthcoming. Although the report did not say so, the reference to "gross annual sponsorship revenues" would suggest that if the option was not in fact exercised then no commission would be payable.

113. The report did not identify that the rate set out in the IMG agreement was a customary rate for such arrangements. However, it was within the band of broker commission rates identified in her first report.

Law

114. The relevant principles that need to be applied are usefully synthesised in the decision of Vickery J in *Vasco Investment Managers Ltd v Morgan Stanley Australia Ltd* [2014] VSC 455; (2014) 108 IPR 52 (*Vasco*). At [337] to [344] his Honour summarised the principles as follows:

> *Principles of quantum meruit*
>
> 337 The following principles apply to an action in quantum meruit, as derived from *Pavey & Matthews Pty Ltd v Paul* (1987) 162 CLR 221 ('*Pavey*'), *Brenner v First Artist Management Pty Ltd* (1993) 2 VR 221 ('*Brenner*'), *Lumbers v W Cook Builders Pty Ltd (in liq)* (2008) 232 CLR 635 ('*Lumbers v Cook*') and the cases cited therein :*Update Constructions Pty Ltd v Rozelle Child Care Centre Ltd* (1990) 20 NSWLR 251; *Planche v Colburn* (1831) 8 Bing 14; 131 ER 305; *Sabemo Pty Ltd v North Sydney Municipal Council* [1977] 2 NSWLR 880; *Horton v Jones [No 1]* (1934) 34 SR (NSW) 359; *Graham and Baldwin v Taylor, Son and Davis* (1965) 109 SJ 793; *The Commonwealth v Amann Aviation Pty Ltd* (1991) 174 CLR 647; *Way v Latilla* [1937] 3 All ER 759.
>
> 338 Vasco's claim under this head is a claim in restitution arising out of services performed.

339 The law may impose an obligation to make restitution on a *quantum meruit* basis, under what I will call the first class of case, where the plaintiff proves:

a. Actual or constructive acceptance of the benefit of the provider's goods or services by the recipient;

b. The recipient of the goods or services should have realised that the provider expected to be paid; and

c. It would be unjust for the recipient to take the benefit of the goods or services provided without paying a reasonable sum for them.

340 A second class of case falling under the umbrella of a claim in quantum meruit is the long-established and well-recognised category of cases constituted by claims for work and labour done or money paid at the *request* of another.

341 In both classes of case, the law imposes an obligation independent of contract to pay a fair and reasonable sum for the goods or services, founded on the principles of restitution for unjust enrichment.

342 A third class of case giving rise to a claim described as *quantum meruit* is where goods or services are provided under an existing and enforceable contract which contains an express or implied term to pay a fair and reasonable sum for them, but such sum is not quantified. The action is directed to determining the fair and reasonable sum payable.

343 The claim in the present case falls into the first class of *quantum meruit* claims, although given the findings as to work done by Vasco at the request of Morgan Stanley, the claim may equally fall into the second class of case.

344 Under the first (and indeed the second) class of case, there is no requirement that a 'benefit' for the purpose of this rule of restitution in a claim for payment for services must be an economic benefit. Nor is there a requirement that the provider of the services show that any benefit has arisen as a direct consequence of a particular service rendered. In a claim based on restitution for the benefit of services provided, the question of whether the services constitute a benefit must be considered from the perspective of the recipient, and it is the services themselves which fall to be considered, not the end product of those services.

345 The cause of action seeking relief in *quantum meruit* in the first class of case (cf. the second class of case) does not call for specific proof of the making of an express or implied request by the recipient of the goods or services. Rather, the making of a request, which is a common factual component in these cases, may provide evidence of a benefit conferred on a recipient. It may also provide evidence of the acceptance of the services that were requested. Further, work done in conformity with a request will in most cases sufficiently satisfy the requirement, stemming from principals of unjust enrichment, that a recipient should not unjustly benefit from the services provided without paying reasonable compensation for them.

346 The provider of the services in the first class of case must prove that the services were not provided as a gift, or on the basis that payment should not be made unless a pre-condition has been met and that condition remains unfulfilled.

347 The court is not concerned with the <u>actual</u> state of mind of the parties when considering whether payment ought to have been contemplated in the first class of case. The appropriate enquiry is whether the recipient of the services, as a reasonable person, should have realised that a person in the position of the provider of the services would expect to be paid for them. Where the services are provided pursuant to a request made in a normal commercial relationship with a person whose business it is to provide those services for reward, this requirement will usually be satisfied.

348 The circumstances which may satisfy the element of injustice sufficient to impose an obligation under the first class of case to make fair and just restitution will vary from case to case. In *Angelopoulos v Sabatino* (1995) 65 SASR 1, 12-13, Doyle CJ noted nine factors which were held in that case to give the acceptance of the relevant

services the necessary character to support the claim. But these are by no means definitive or exhaustive. Some elements or variants thereof may appear in some cases which justify relief, others may not.

(Footnotes included as text, emphasis as in original.)

115. His Honour then addressed the submission made by the defendant in the case that it was only by establishing a cause of action in unjust enrichment that the plaintiff could succeed. His Honour rejected that contention saying (at [354]):

> However, an analysis, framed exclusively as a cause of action in unjust enrichment terms, is misplaced in this case. A claim for *quantum meruit* is a free standing claim arising in specific circumstances, while unjust enrichment has been identified in Australian law as a legal concept unifying a variety of distinct categories of case: *Lumbers v W Cook Builders Pty Ltd (in liq)* (2008) 232 CLR 635 [85]. It is not identified as a principle which in itself can provide a sufficient basis for direct application in particular cases, however compelling it may be as a theoretical justification for the law to operate to provide restitution in response to particular indicia.
>
> (Footnotes included as text, emphasis as in original.)

116. His Honour held (at [358]) that although quantum meruit may derive its underlying theoretical justification from the concept of unjust enrichment, a claim in quantum meruit falls squarely into the categories of claim where the law has recognised an obligation to make payment when certain well-defined circumstances arise.

117. His Honour then went on to deal with how an appropriate restitutionary sum on quantum meruit should be determined. At [359] to [365] His Honour said:

> 359 When considering a *quantum meruit* claim, the Court's task is not to assess damages for breach of contract, but to ascertain what is fair and reasonable compensation for the benefit of the services performed, requested and accepted actually or constructively by the recipient: *Brenner v First Artists' Management Pty Ltd* [1993] 2 VR 221, 262, 265 (Byrne J); *Pavey & Matthews Pty Ltd v Paul* (1987) 162 CLR 221, 262 (Deane J). In assessing the appropriate quantum of restitution in a *quantum meruit* claim, the principles gleaned from the cases are:
>
> a) The enquiry is not primarily directed to the cost to the plaintiff of performing the work, since the law is not compensating that party for loss suffered'; however, the actual cost should not be ignored: *Brenner v First Artists' Management Pty Ltd* [1993] 2 VR 221, 262 (Byrne J).
>
> b) Any price or commission agreed between the parties may be received as evidence of the value the parties themselves put on the services performed, even where the services have not been totally performed, but the agreed amount is not determinative of the matter: *Brenner v First Artists' Management Pty Ltd* [1993] 2 VR 221, 263 (Byrne J), referring to *Pavey & Matthews Pty Ltd v Paul* (1987) 162 CLR 221, 257.
>
> c) '[I]n many cases, the appropriate method of assessing the benefit of the work is by applying an hourly rate to the time involved in performing those services', and 'the court may have regard to the rate of remuneration which is commonly accepted in the industry', taking into account 'the standing of the person performing the services, the difficulty of the task, [and] the fact that the services required imagination and creativity which may be difficult to discern in the end product': *Brenner v First Artists' Management Pty Ltd* [1993] 2 VR 221, 263 (Byrne J).
>
> d) '[I]n the case where the services are of such [a] kind that it is difficult or impossible to assess the number of hours involved or to itemise the precise services, the court is entitled to make a global assessment or to reduce or increase the remuneration which can be proved with some certainty in order to reflect the fair and reasonable value': *Brenner v First Artists' Management Pty Ltd* [1993] 2 VR 221, 263 (Byrne J), referring to *Commonwealth v Amman Aviation Pty Ltd* (1991) 174 CLR 64, 83.

e) Where it is customary, in a particular industry, for the services to be recompensed on a commission basis, calculated on an event the court may have regard to what is a reasonable commission and apply it, if appropriate, subject to adjustment where the relationship has been terminated before the service provider has completed the tasks which produced the event: *Brenner v First Artists' Management Pty Ltd* [1993] 2 VR 221, 264 (Byrne J), referring to *Way v Latilla* [1937] 3 All ER 759, 764 (Lord Atkin).

f) Further, adopting the principles referred to by the Court of Appeal (Comprising Maxwell P, Kellam JA and Whelan AJA) in *Sopov v Kane Constructions Pty Ltd (No 2)* (2009) 24 VR 510, in a situation where a *quantum meruit* claim arises where an existing concluded contract has been terminated, given that 'the *quantum meruit* remedy rests on the fiction of the contract's having ceased to exist ab initio, that contract can have no "continuing influence" when the value of the work is being assessed on a *quantum meruit*.': *Sopov v Kane Constructions Pty Ltd (No 2)* (2009) 24 VR 510, 517 ([21]). In such a situation the *quantum meruit* remedy ignores the bargain which the parties struck, and ignores the rights accrued under the contract up to the date of termination: *Sopov v Kane Constructions Pty Ltd (No 2)* (2009) 24 VR 510, 517 ([21]). The contract price is relevant on a *quantum meruit*, but not because of any 'continuing influence' of the contract. The price is merely a piece of evidence, showing what value the parties attributed – at a particular time – to the work which the claimant was agreeing to perform: *Sopov v Kane Constructions Pty Ltd (No 2)* (2009) 24 VR 510, 517 ([21]). It may be taken into account as relevant evidence in the body of evidence to be considered by the court in assessing a reasonable sum. However, it needs to be born in mind that the contract price is struck prospectively, based on the parties' expectations of the future course of events. A *quantum meruit*, on the other hand, is assessed with the benefit of hindsight, on the basis of the events which actually happened: *Sopov v Kane Constructions Pty Ltd (No 2)* (2009) 24 VR 510, 518 ([26]).

g) As the New South Wales Court of Appeal observed in *Renard Constructions v Minister for Public Works* (1992) 26 NSWLR 234, 276-278, there is no conceptual difficulty in the notion that the 'fair and reasonable' value of the benefit conferred may exceed any price for which the service provider contractually agreed to provide the services or carry out the works in question (276-8 (Meagher JA)). Restitutionary liability is independent of contract.

h) It is well-established that the value of the services or work done can be proved by evidence of costs actually and fairly and reasonably incurred: *Sopov and Anor v Kane Constructions Pty Ltd (No 2)* [2009] VSCA 141 at [30]-[31]. But proof of the appropriate quantum is not confined to such evidence.

i) Restitution may also include an entitlement to a margin for profit and overhead: *Sopov v Kane Constructions Pty Ltd (No 2)* (2009) 24 VR 510, 520 ([34]-[37]). As stated by the Court of Appeal in *Sopov*, the existence of the entitlement to a profit margin is consistent with the restitutionary objective of measuring the value of any benefit conferred. The inclusion of a margin for profit and overhead means that the calculation approximates the replacement cost of the work or services and is an appropriate index of value to ascertain what it would have cost the principal to have had this work or the services carried out by another in comparable circumstances: *Sopov and Anor v Kane Constructions Pty Ltd (No 2)* [2009] VSCA 141at [34-37].

360 By analogy, commercial negotiations towards a contract, which has not been concluded may also provide a piece of evidence (albeit usually of lesser weight than the situation where a contract has actually been entered into), which may show what value the parties attributed – at a particular time – to the work which the claimant was proposing to perform. But once again such evidence would need to be assessed bearing in mind that the price negotiated towards an incomplete contract would be considered prospectively, based on the parties' expectations of the future course of events. A *quantum meruit*, as has been stated, is assessed with the benefit of hindsight on the basis of the events which transpired.

361 The facts of the *Brenner* case also illustrate the position that 'where the services are of such [a] kind that it is difficult or impossible to itemise [them] precisely ... the court is entitled to make a global assessment or to reduce or increase the remuneration [that] can be proved with ... certainty in order to reflect fair and reasonable value': *Brenner v First Artists' Management Pty Ltd* [1993] 2 VR 221, 263, citing *Commonwealth v Amann Aviation Pty Ltd* (1991) 174 CLR 64, 83. The Court must do the best it can with the evidence, despite in some cases 'the scanty material' which may be available: *Brenner v First Artists' Management Pty Ltd* [1993] 2 VR 221, 271 (and, more generally, 267 and 270).

362 In *Andrew Shelton & Co Pty Ltd v Alpha Healthcare Ltd* (2002) 5 VR 577, 608 ('*Andrew Shelton*'), Warren J (as her Honour then was) reinforced the 'principles to be applied in assessing the appropriate restitution to be made in [cases] of unjust enrichment' in the terms referred to by Byrne J in *Brenner* [1993] 2 VR 221, 262-265.

363 Her Honour said (*Andrew Shelton & Co Pty Ltd v Alpha Healthcare Ltd* (2002) 5 VR 577, 608):

> First, the task of the court is to make an assessment of fair and reasonable compensation for the benefit of the services performed by a plaintiff and accepted by a defendant.
>
> Secondly, the court is not engaged in a task of compensating for loss thus the actual cost or loss to the plaintiff in providing the subject services is not a primary consideration.
>
> Thirdly, where the subject services were provided in an industry where it is customary to pay for services on a commission basis, the court may consider a reasonable commission and apply it as a measure of restitution subject to any appropriate adjustment. (*Andrew Shelton & Co Pty Ltd v Alpha Healthcare Ltd* (2002) 5 VR 577, 608.)

364 The *Andrew Shelton* case was one where a fee based upon a percentage of the final contract price for the transaction was considered to be appropriate by the Court, but, it should be noted, in circumstances where the provider of the services was instrumental in facilitating the transaction in question to a successful conclusion: *Andrew Shelton & Co Pty Ltd v Alpha Healthcare Ltd* (2002) 5 VR 577, 608-609.

(Footnotes included as text, emphasis as in original.)

118. I adopt these principles in deciding this case.

119. It is also useful, in order to understand how these principles are to be applied, to refer to the facts of *Vasco* and of *Andrew Shelton & Co Pty Ltd v Alpha Healthcare Ltd* [2002] VSC 248; (2002) 5 VR 577 (*Andrew Shelton*).

120. *Andrew Shelton* involved a financial adviser who was assisting parties contemplating the sale and lease back of hospital assets worth around $20 million. Although the adviser had acted previously for a bank to work up a proposal, the issue in the case was whether or not it was entitled to be remunerated for the assistance that it provided to one of the parties after the bank and another company that had previously retained it no longer wished to participate. During a period of approximately one month, the financial adviser presented the commercial scenario and assisted in getting the parties to a point where the detail could be finalised. When the agreement in principle was reached the financial adviser was told that its assistance was no longer necessary.

121. Warren J approached the matter by considering whether an enrichment or benefit had been conferred, whether it had been freely accepted by the defendant and then by determining the restitution that was required to be made. The assessment of whether an enrichment or benefit was conferred by the activities of the financial adviser involved a detailed consideration of the facts in relation to the various ways in which the

financial adviser submitted that its activities had conferred a benefit on the defendant. In that case the production of a terms document outlining the features of the proposed transaction was a turning point and enabled the defendant to expedite the negotiations between the parties: [2002] VSC 248 at [121]. The financial adviser brought "a particular acumen, initiative and a direction" from which the defendant benefited: [2002] VSC 248 at [122]. The financial adviser also provide a benefit because he provided a "prepared commercial scenario" and brought a level of knowledge of relevant matters and a capacity to put an "advanced commercial package to the parties" that was critical. In her Honour's opinion the adviser "constituted the adhesive whereby [the parties] embarked on the path to their ultimate signing of a contract" and the adviser maintained the "commercial momentum the parties needed": [2002] VSC 248 at [125].

122. Her Honour found that there was free acceptance of the services and accepted expert evidence that those kinds of services would have been remunerated by a percentage of the value of the overall deal. She made an award based on that evidence.

123. *Vasco* was in some ways similar. It involved a proposal developed by a real estate investment management firm for the recapitalisation of a distressed property fund which had approximately $1.2 billion worth of assets. The recapitalisation scheme was a complex one and it was disclosed on a confidential basis to the investment bank known as Morgan Stanley. The proposal was worked up in conjunction with Morgan Stanley. A particular fee structure had been proposed including a percentage based success fee. On a number of occasions the person with carriage of the matter at Morgan Stanley had indicated general agreement with the fee structure. The deal was ultimately successful but, after the person with whom the advisory company had been dealing left Morgan Stanley, the investment bank did not pay any fees.

124. Vickery J set out the statement of principles which I have quoted above. His Honour was satisfied that Morgan Stanley had made various requests of Vasco to perform services in the relevant period and that Morgan Stanley had accepted those services. One element of his Honour's reasoning was that the fact that the requests were made by Morgan Stanley lent weight to the conclusion that the services were of benefit to Morgan Stanley. He found that Vasco's services were provided to Morgan Stanley "pursuant to requests made in a normal commercial relationship and that Vasco was a company whose business it is to provide those services for reward." Further, the services were provided in the context of discussions as to the mode of payment including the payment of a success fee. In those circumstances Vasco had a reasonable expectation that it would be paid a success fee and Morgan Stanley should have appreciated that the work was not done gratuitously. As a consequence it should have realised that Vasco expected to be paid for its services on the base of a success fee when the transaction was completed.

125. In relation to whether it would be unjust for Morgan Stanley to accept the services without payment, his Honour said that the principals of Vasco "spent considerable time and ... expense, both to prepare the Plan and then in presenting it to Morgan Stanley and responding to Morgan Stanley's various requests for the provision of further information on the preparation and presentation of documentation requested by Morgan Stanley including the expression of interest …": [2014] VSC 455 at [374]. His Honour found that Morgan Stanley took advantage of those services and was enriched thereby and hence it would be unjust that Morgan Stanley have the benefit of Vasco services without paying for those services.

126. There was no evidence as to the number of hours worked by Vasco or any itemisation of the precise work involved. There was evidence that it was customary in the industry for services to be recompensed on a success fee basis calculated on the aggregate purchase price ultimately settled upon. The expert evidence was of a particular percentage range and his Honour assessed a fair and reasonable remuneration based upon that range. The alternative expert evidence was that the market value of the services was zero because the services carried out were simply part of a "pitch" which might lead to the execution of a formal engagement letter with specific fee terms. His Honour did not accept that approach because the evidence in the case included numerous requests made by Morgan Stanley for further work to be done to refine the proposal and present it to Morgan Stanley not only for its consideration but also for its use in preparing an expression of interest for the target entity. Further, the relevant person at Morgan Stanley gave various assurances as to payment which gave rise to the inference that Morgan Stanley itself regarded the services being provided as being of value to it.

Plaintiff's submissions

127. The plaintiff submitted that he had satisfied all the elements of a true quantum meruit claim:

    (a) a request for the services;

    (b) services performed;

    (c) knowledge on the part of the defendant that the plaintiff expected to be remunerated for his services;

    (d) benefits to the defendant as a consequence;

    (e) it being unjust in the circumstances for the defendant to retain those benefits without making appropriate remuneration commission based on the relevant industry norm.

128. As will be apparent, in addressing the matter in this way the plaintiff identified his satisfaction of the requirements of Vickery J's first and second class of case. That was because the plaintiff identified both a request for services (the second class of case) and the free acceptance by the defendant of a benefit (the first class of case). The plaintiff submitted that it was unnecessary for the purposes of the present case to draw a distinction between Vickery J's first and second category of case.

129. The plaintiff placed particular reliance upon paragraph [344] of the decision in *Vasco* where Vickery J said:

> There is no requirement that a "benefit" for the purpose of this rule of restitution in a claim for payment for services must be an economic benefit. Nor is there a requirement that the provider of the services show that any benefit has arisen as a direct consequence of a particular service rendered.

130. I note, however, that Vickery J did go on to say that "in a claim based on restitution for the benefit of services provided, the question of whether the services constitute a benefit must be considered from the perspective of the recipient, and it is the services themselves which fall to be considered, not the end product of those services."

131. Having regard to the manner in which the plaintiff put his submissions I will assess each of the elements that the plaintiff submitted had been satisfied, notwithstanding

that, depending upon whether the case is approached as Vickery J's first or second category of case, not all of the elements so identified are required to be satisfied.

Request for services and performance

132. The meeting on 4 December 2014 is sufficient to constitute a request for services. The extent of that request was that Mr Beagle would pass on the sponsorship proposal to his unidentified potential sponsor and would promote it to the extent which he saw fit. There are no subsequent requests for services.

133. Mr Beagle did, in fact, pass on the sponsorship proposal and promote it to some extent. In that sense it can be said that the services were provided. However, they appear to have been provided as an adjunct to Mr Beagle's broader goals of seeking to persuade Aquis of his own capacities, to obtain a meeting with Mr Tony Fung and to persuade Aquis of the merits of his "transformational proposal" relating to the Canberra casino.

134. As Vickery J's first category of case makes clear, the fact that there was only a limited request for services may not be a limitation on the plaintiff's claim. However, in my view, the limited nature of the request is a factor of significance in determining whether, ultimately, it is unjust that the plaintiff remain unremunerated for his work.

Whether the defendant should have realised that the plaintiff expected to be paid for his services

135. So far as Mr Edwards and Mr Chester were concerned Mr Beagle was a Canberra resident with some connection with a potential sponsor. The identity of the potential sponsor was not revealed nor was the extent of any connection with Mr Beagle. There was no evidence that Mr Beagle was in the business of procuring sponsorships or indeed in business of any form.

136. The discussion of any fee or reward at the meeting was non-specific. There are two potentially inconsistent elements in the evidence of what was discussed.

137. On the one hand, the reference to a "finder's fee", there being "something in it" and "you will look after me" are all consistent with any reward being some nominal payment or gratuity to be worked out subsequently.

138. On the other hand, the reference by Mr Chester to the Land Rover deal – which the evidence discloses involved a 12.5% fee even where the agent was not the cause of the sponsorship – is consistent with a completely commercial sponsorship arrangement.

139. It is clear that the Brumbies were open to the possibility of payment of a fee either of the kind that would be payable to a commercial sponsorship broker or a nominal fee depending on the circumstances. As at the 4 December meeting they were unclear as to the value or prospects of what was being proposed, but also desperately in need of a sponsor.

140. The references in the meeting to "pulling it off" or getting "over the hump" are consistent with any fee or reward being:

    (a) dependent upon sponsorship being secured; and

    (b) Mr Beagle making (at least) some positive causal contribution to that outcome.

141. I do not accept that the nature of the discussion was such that the Brumbies should have realised that the plaintiff expected to be paid even if he made no causal contribution to obtaining a sponsorship. In this regard, I consider that Mr Chester's reference to the Land Rover sponsorship involved a recognition of the possibility of payment of a fee to a third party who assisted in securing sponsorship and did not involve any recognition that the defendant expected to make payments to Mr Beagle in any of the circumstances in which payment would have been required under the IMG agreement. Had the position been that either party considered the arrangement to be of such breadth, there would have been no reason for Mr Beagle to have kept the identity of his potential sponsor to himself.

Benefits to the Brumbies

General observations

142. It is not essential for the purposes of the cause of action that a benefit or a particular benefit be demonstrated to have arisen because of the provision of particular services. Cases in Vickery J's second category, involving a request, are illustrative of the proposition that the request itself gives rise to an inference that the services are of benefit because otherwise a request would not have been made. As *Brenner v First Artists' Management Pty Ltd* [1993] 2 VR 221 (*Brenner*) illustrates, the value and benefit may be provided by "oiling the wheels" even when a direct causal link to a particular benefit cannot be identified: see *Brenner* at 265.

143. However, in the present case the services provided were minimal and the alleged benefit very large. It is thus a case which invites analysis by reference to benefits obtained. If it is analysed by references to services provided, rather than benefits obtained, then the appropriate remuneration would inevitably be modest.

144. Whichever analysis is adopted, the nature of the benefit, if any, that has been caused or contributed to by the provision of the services will be significant for the assessment of whether or not an injustice would arise if the plaintiff was not paid because there is a significant difference between causally potent services and causally irrelevant services. If the services were causally potent ones there is a better case for saying that denial of remuneration would give rise to an injustice than if the services were causally irrelevant. If the services were causally irrelevant then any claim to injustice would arise as a result of the devotion of time and resources by the plaintiff rather than by reason of the accrual of a benefit to the defendant.

145. The services provided and the benefit associated with those services can be characterised in two different ways.

146. First, the services might be characterised as simply the provision of the Brumbies' sponsorship proposal to the unidentified potential sponsor and promoting that sponsorship to the potential sponsor in an unspecified way. This is the most limited and mechanical characterisation of the services and benefits. It does not necessarily require the activities to have any causal consequence. To the extent that they did, then the appropriate characterisation would be the second category outlined below.

147. Second, the services could be characterised as a material contribution to the ultimate sponsorship arrangement in a multitude of ways. It may be limited to an initial contribution in making the connection between two otherwise unconnected parties. The benefit provided would be the intangible value provided by "planting the seed" in

the mind of the potential sponsor. It may have a value even if the provider of the initial connection is not later involved in the working out of a particular sponsorship arrangement. Alternatively it may extend to situations where the effective cause of the obtaining of sponsorship is the activities of the agent.

148. In my view, although, so far as the evidence discloses, Mr Beagle was the first person to directly make the connection between Aquis and sponsorship of the Brumbies, that alone is not sufficient to demonstrate that the services that he provided materially contributed to the ultimately obtained sponsorship. Similarly, by placing reliance upon Ms Skildum-Reid's second report, the plaintiff was seeking to be put in a quantum meruit case in a position equivalent to that achieved by IMG under what was in effect an exclusive agency agreement. In my view, if the position is that Mr Beagle objectively made no causal contribution to the obtaining of the sponsorship then the mere fact that a sponsorship arose is not sufficient to give an entitlement to remuneration. In the absence of some statement or undertaking by the benefitting party that would alter the position (not present here), it is not possible to achieve an outcome equivalent to an exclusive agency agreement.

Mr Beagle's contribution

149. In order to assess what, if any, contribution Mr Beagle had, it is necessary to make some general observations about the role that he played, before moving to a more detailed examination of the causally significant transactions leading to the agreement on 10 February 2015.

150. The general observations are necessary in order to understand the complexion to be put upon Mr Beagle's activities. The unusual feature of the case is that there was only a limited explanation for Mr Beagle's motivations. I accept the submission of counsel for the defendant who explained the position as follows:

> It needs to be said that Mr Beagle is a bit of a one of a kind in this sense, that he comes across as a person who sees the world and his position in it in a particular way and that's to be respected, but it isn't the way the rest of the world sees things. That's illustrated by the fact that everybody who he came in contact with, on the evidence, found that he ended up wasting their time and that he was, in the words of one or two, a little bit odd.

151. As pointed out earlier in these reasons, it is not possible to determine any precise chronology of Mr Beagle's professional activities within the gambling industry. Nor is it possible to determine with precision when he retired. As I pointed out above, the activities which he described are consistent with him being an active retiree. However, he clearly maintains an interest in gambling, entrepreneurial activities and the development of Canberra. He clearly is enthusiastic and persistent. He did not appear to be motivated by money, but instead by the potential for having his ideas taken up and being "a player". However, at least so far as the transactions described in the evidence in this case are concerned, the manner in which he pursued those interests was such that he was not perceived by those with whom he dealt as having a valuable contribution to make. He appears to be perceived as someone who was attempting to insert himself into an area of discourse in circumstances where his motivations were not clear and the value of his contribution perceived to be limited by those with whom he dealt.

152. That can be illustrated by reference to his interactions with Ms Mellor and Mr Apps, Mr Beagle's two contacts on the Aquis side of the sponsorship equation. The plaintiff tracked down Ms Mellor as a result of his methodical attempts to make contact with

Aquis. He was sufficiently persuasive as to his knowledge and connections for Ms Mellor to get in touch with him in December 2014. However, after the initial contact, his conversations with her on 2 and 3 December led her to lose confidence in the value of his knowledge or experience and advice. That was confirmed by what she saw and heard at the meeting on 15 December 2014. After that she had identified him as a nuisance even though she remained, in her dealings with him, completely polite (and would not, but for this case have disclosed her opinion). It was that view which led her to attempt to avoid his calls.

153. The trajectory was the same with Mr Apps. Mr Beagle made initial contact with Mr Apps and managed to procure a meeting with him. The purpose of the meeting was to attempt to procure a meeting with Mr Fung. After that meeting he raised the suggestion, perceived to be an unusual one by Mr Apps, that he accompany the Chief Minister on a tour to the Christchurch casino. He was then able to persuade Mr Apps to have a further meeting upon the promise to bring "one of Canberra's leading entrepreneurs" to the meeting. During that meeting Mr Apps made it clear that he could not assist Mr Beagle or Mr Watkins. At this point Mr Apps was wondering what was going on and made the telephone call to Ms Mellor. After that he attempted to minimise contact with Mr Beagle although he was, at all times, courteous and friendly.

Causal impact?

154. The causal impact, if any, of Mr Beagle's activities can be objectively assessed by reference, in particular, to his dealings with Ms Mellor, Mr Apps and Mr Chester.

155. The starting point is that he had no existing relationship with Aquis. He said as much in his June 2014 Transformational Proposal: see [13] above. He sought out contacts within Aquis via its lawyer and communications advisor. This was in order to advance his Transformational Proposal. As at the point of first contact with Ms Mellor, he sufficiently "pitched" his own knowledge, experience and contacts so that Ms Mellor considered he would be a useful person to at least meet in the early phase of Aquis' engagement with Canberra. However, from that point on his credibility with Ms Mellor declined because of her perception that he was wasting her time on the phone, the uninvited delivery of the Brumbies' sponsorship proposal to her hotel and the absence of substance in what he said at the lunch meeting on 15 December 2015. After that, despite her attempts to avoid Mr Beagle's call, he did get through to her on occasion and she was of the view that he was wasting her time. She conveyed her views to Mr Apps on 6 February 2016: see [88] above. On the other hand when she did need advice about the merits of sponsorship arrangements in order to promote the interests of Aquis she sought advice from Mr Apps who ultimately provided advice in a businesslike way in written form: see [66] and [76] above. Therefore, so far as Ms Mellor was concerned, Mr Beagle had no positive impact on the Aquis side of a potential sponsorship deal. The only possible impact that he might have had was in "planting the seed" of the idea of sponsoring the Brumbies, an issue that I will return to below.

156. So far as Mr Apps was concerned, Mr Beagle had no relevant impact in relation to the potential sponsorship of the Brumbies. I have found above that even at the first meeting on 27 January 2015, the issue of Brumbies sponsorship was only dealt with in passing, Mr Beagle's principal concern being to obtain a meeting with Mr Fung, most likely to pursue his broader Transformational Proposal rather than in order to promote the Brumbies. So far as Mr Apps' formal assessment of the value of sponsoring the

Brumbies, which was provided to Ms Mellor on 23 January 2015, Mr Beagle had no impact whatsoever.

157. On the other side of the equation was Mr Chester. I have not accepted Mr Beagle's evidence that he told Mr Chester of the identity of his potential sponsor on 4 December 2014. However, I accept Mr Edwards' evidence that he worked out the likely identity of the potential sponsor by the end of the meeting. Following the meeting Mr Chester was instructed by Mr Edwards not to waste too much time on Mr Beagle. However, the position of the Brumbies, and Mr Chester, was such that he could not afford to alienate any person with potential to assist in solving his biggest problem, namely, the absence of a major sponsor for the upcoming season. He had calls from Mr Beagle throughout December, but nothing of significance. On 7 January 2015 the meeting with Mr Chester and Mr Jones went the same way as the meeting with Ms Mellor and Mr Fung on 15 December 2014. Mr Jones and Mr Chester formed the opinion that so far as Aquis was concerned Mr Beagle had no relevant connection and no information beyond that which was already available. After that, while Mr Beagle exchanged emails with Mr Chester and Mr Jones on 8 January and spoke to Mr Chester on 17 January, he had no relevant contact with the Brumbies until 28 January 2015. I have not accepted Mr Beagle's evidence that on 28 January 2015 he passed on information from Mr Apps about the asking price. However, even if he had passed on Mr Apps' comments that the Brumbies were asking too much and that a sponsorship price quoted to Mr Apps was only $650,000, both of these things were things that Mr Chester already knew. That was because Mr Chester had previously been involved with Mr Apps in relation to the Guvera proposal and because he was aware of the state of negotiations with Aquis. After that the only contribution of Mr Beagle was to express surprise when, as a matter of courtesy, Mr Chester had informed him of the deal shortly prior to the public announcement.

158. Notwithstanding these conclusions it remains possible that, despite the reaction of the key players to Mr Beagle, he planted a seed in the mind of Ms Mellor which ultimately grew and bore fruit. While such a scenario is certainly possible I do not consider that is what occurred in this case. That is because by the time Mr Beagle met with Mr Chester and Mr Edwards on 4 December 2014, the sponsorship plight of the Brumbies was well and truly public knowledge. The headline that had caught Mr Beagle's attention and led to his initiative of talking to the Brumbies was "The search for major sponsor getting desperate". The article reported that "the ACT Brumbies say their search for a new major sponsor is getting desperate and they need something locked down within the next 10 days." For the potential sponsors or agents the likelihood was that, as a result of Mr Chester's efforts and the 300 copies of his sponsorship proposal that had been circulated, there would have been a significant level of awareness of the availability of that sponsorship even without the Canberra Times publicity. Thus, if anything had previously been obscure about the search for a sponsor, following the Canberra Times article that obscurity was gone.

159. The next significant point was that Aquis and Ms Mellor operated in a businesslike fashion when moving into the Canberra market and sought assistance with public relations from Mr Apps at Coordinate. That assistance extended to advice such as that obtained by Ms Mellor on 5 January about how to promote the Aquis brand. That involved consideration of sponsorship and Mr Apps was clearly familiar with the potential for sponsorship of the Brumbies by reason of his engagement by Guvera which, only a few days before Christmas, had finally indicated that it was not interested.

160. Because of the notoriety of the search by the Brumbies for a major sponsor and the businesslike manner in which advice was sought from Mr Apps, it is clear that the same advice would have been received from Mr Apps whether or not Mr Beagle had been involved. So far as Ms Mellor was concerned, Mr Beagle's advocacy of the Brumbies' proposal was not attractive to her and it is clear that up until Christmas and the move to Canberra she was focused on achieving settlement of the purchase of the Canberra casino and moving the business to Canberra.

161. So far as Mr Chester and the Brumbies were concerned, he made contact with Aquis not through any contact that Mr Beagle might have provided to him but instead by contacting Mr Ready and obtaining a mobile number for Ms Mellor. Consistently with what I have said about Ms Mellor's focus up until Christmas, she postponed any engagement until the new year. I consider it likely, having regard to the public announcement of the acquisition of the casino on 5 January 2015, that even if Mr Chester had not methodically tracked her down prior to Christmas, he nevertheless would have made contact with her in the new year. That would have been the case even without any earlier suggestion from Mr Beagle that Aquis might be a potential sponsor.

162. As a consequence, whether causation is considered from the point of view of:

    (a) "planting the seed": cf [147] above;

    (b) "oiling the wheels": cf [142] above;

    (c) making a "material contribution' to the ultimate deal in the sense that the expression is used in causation in tort; or

    (d) being the "effective cause" of the ultimate deal in the sense that that expression is used in real estate agency contracts: cf *Moneywood v Salamon Nominees* [2001] HCA 2; (2001) 202 CLR 351 at [27]-[30],

    I do not consider that any of the activities of Mr Beagle had any positive causal effect on the ultimate transaction.

Is it unjust for the defendant to accept Mr Beagle's services without payment?

163. In those circumstances, can it be said that it would be unjust if the plaintiff was denied remuneration? The injustice might arise from the making of the request for services or from the free acceptance of the benefit of the services.

164. In my view, whichever approach is adopted it could not be said to be unjust. That is because the contribution of Mr Beagle had no causal effect upon the obtaining of sponsorship either by planting the seed of an idea or positively assisting with the process leading to the ultimate deal. Thus, it cannot be said that the benefit obtained by the Brumbies was a material contribution to obtaining a very valuable sponsorship. This means that the source of the injustice must arise from the request for and provision of the services. Clearly the Brumbies perceived there to be a benefit in having their proposal put before potential sponsors. Given that they were not told who the sponsor was, that value lay in either having their proposal put before a potential sponsor who would not otherwise have had it or having a person of influence promote the proposal to the potential sponsor. However, in the absence of any causal effect, how are services provided by Mr Beagle to be valued?

165. In my view, the services had no market value because the services involved were a kind of speculative effort undertaken in order to test whether an opportunity can be realised. They involved a short term devotion of a small amount of effort in order to test whether the potential sponsor was interested. (This was a characterisation of the work similar to that rejected by *Vasco* at [394]-[398] in the circumstances of that case.)

166. If, contrary to my view, the appropriate characterisation is a request for non-speculative services, that is, services not contingent upon there being a positive result causally contributed by Mr Beagle, then the only value that can be attributed to them is the value of the time spent by Mr Beagle in identifying the opportunity to Aquis. The actual devotion of resources by Mr Beagle appears to have been minimal and motivated, in part, by his pursuit of his other, broader goals. There was no evidence that demonstrated the value of the services might be remunerated if Ms Skildum-Reid's percentage fee basis was not accepted. In my view, if they were not undertaken on a speculative basis, they could clearly not be valued at more than the amount of $5000 which Mr Beagle was offered by Mr Jones on 18 February 2015. I note that this offer was made at a time when the extent of Mr Beagle's efforts and the absence of any positive contribution to the sponsorship was not as clear as it is now.

167. Even if the market value for the services provided was not zero, I do not consider that it would be unjust to deny him remuneration for the time that he spent performing the mechanical tasks involved in communicating the Brumbies' sponsorship proposal to Aquis. That is because of the following factors:

    (a) the non specific nature of a "finder's fee" or being "looked after";

    (b) the fact that any discussion of fees was in the context of Mr Beagle's actions being causally significant in securing a major sponsor;

    (c) the lack, upon an objective assessment, of any causally related benefit arising from Mr Beagle's activities;

    (d) the absence of evidence as to an alternative basis for calculating reasonable remuneration, such as upon an hourly rate;

    (e) the absence of information as to the time spent by Mr Beagle beyond the limited times disclosed in the evidence;

    (f) the fact that Mr Beagle did not perform any services as part of a business;

    (g) the broader goals of Mr Beagle in making contacts and promoting his views in his Transformational Proposal; and

    (h) the making and refusal of an offer more generous than any likely assessment of reasonable remuneration.

168. In my view the case is clearly distinct from *Vasco* and *Andrew Shelton* where the circumstances in which services were provided readily disclosed that an injustice would arise if the beneficiary were permitted to take the benefit that was founded to arise as a result of the services without paying for them.

Assessment of expert evidence

169. In case I am wrong in my conclusions that there is no injustice in denying him remuneration for his services, I should address the submissions of the parties in relation to the expert evidence of Ms Skildum-Reid.

170. The ultimate submission of the plaintiff was that an appropriate level of remuneration would be $250,000. That was calculated on the basis of the rate of commission identified in the IMG agency agreement, namely 12.5%, being applied to the sponsorship amounts of $1 million paid by the Aquis group in each of the years 2015 and 2016.

171. That submission was largely based on accepting the rationale for reasonable remuneration articulated in Ms Skildum-Read's second report in circumstances where there was no evidence of the value of the sponsorship agreements beyond 2016.

172. However, even if my conclusions above had been different, I would not have found Ms Skildum-Read's reports to provide a reliable basis for the assessment of reasonable remuneration. That is essentially for two reasons.

173. First, I am not satisfied that the claim for reasonable remuneration arising out of the circumstances of the 4 December 2014 meeting should be assessed by reference to commercial rates of commission provided to sponsorship brokers. That is because there is a significant difference between the position of the plaintiff, being an unknown retiree who seeks a "finder's fee", and a significant agency such as IMG which is asked to target opportunities for sponsorship with identified major companies. The situation is different from cases where the services are clearly provided on a commercial basis and hence the remuneration for those services is appropriately assessed by reference to the fees that would generally be payable to persons acting on a commercial basis in the relevant area. Each of *Andrew Shelton, Vasco* and *Brenner* involved a party providing services as part of a business. It was therefore possible to demonstrate a customary commercial basis for remuneration of such persons. That is not the case here because Mr Beagle was not performing services as part of a business.

174. Second, I am not satisfied that the opinion of Ms Skildum-Read is based upon assumptions which have been established. There was a significant degree of uncertainty as to precisely where the "facts and assumptions" identified in her first report had come from. Several critical matters were clearly not derived from the terms of her letter of instructions. While she appears to have had access to information similar to that provided in Mr Beagle's affidavit, the affidavit was only produced well after the date of her first report. Significantly Ms Skildum-Read assumed that Mr Beagle was a trusted advisor of Aquis with credibility and expertise which was recognised at the highest level of Aquis' Australian operations. Such an assumption is clearly inconsistent with the facts as I have found them above. Relevantly the matters identified in the report and my conclusions in relation to them are as follows:

    (a) The report refers to Mr Beagle having established at an early stage his "expertise and credibility". Mr Beagle did not at any point establish his expertise or credibility with Aquis. Rather, the point at which he had most credibility with Aquis appeared to be before Ms Mellor had any dealings with him when she considered that he may have useful information or insights. However, her dealings with him on the telephone and then in person on 15

December led her to characterise him as a nuisance and seek to avoid further communications with him.

(b) The report assumes that he had been contacted by Ms Mellor who requested a meeting to discuss issues and opportunities relating to the recent acquisition of Casino Canberra because he was a "trusted advisor at the highest level in Aquis' Australian operations". Plainly this is inconsistent with the facts as I have found them. Ms Mellor had been pointed in Mr Beagle's direction by Mr Pathak and Mr Ready. She was prepared to meet him to see if he had useful information about the City to the Lake scheme. However, the willingness to meet with someone in a new market in order to see if they might be useful does not warrant the characterisation given to the situation by Ms Skildum-Reid.

(c) The manner in which she described the arrangement of the meeting of 15 December 2014 suggested that it was Ms Mellor who sought the meeting as a result of Mr Beagle's delivery of the proposal to her at the QT Hotel. She said:

> Mr Beagle delivered the proposal to Aquis at the QT Hotel in Canberra on 8 December 2014.
>
> A follow-up meeting for 15 December 2014 was called by Ms Mellor for Mr Beagle and the key decision makers, Fung, Mellor, and Anerike Poulter, Executive Assistant to Ms Mellor.

However, the meeting was not a meeting following upon the delivery of the proposal but rather a meeting that had already been organised prior to the delivery of the proposal and prior to Mr Beagle having any knowledge of the proposal.

(d) The report described the information provided by Mr Beagle at the meeting on 7 January 2015 as follows: "This intelligence would have been critical to the Brumbies' ability to close the sale, and do it in an expedited manner." That characterisation is inconsistent with the evidence of Mr Chester which I have substantially accepted about what occurred at this meeting. Mr Beagle was perceived as being disorganised and providing no information that Mr Chester had not already been able to obtain by basic internet research. It is not clear why Ms Skildum-Reid assumed or found that the "intelligence" would have been "critical" to closing the sale.

(e) The report assumed that at the meeting on 7 January 2015 Mr Beagle reiterated his request for a finder's fee and Mr Jones acknowledged that Mr Beagle was entitled to remuneration. This was one of the facts she was asked to assume by the letter of instructions from the plaintiff's solicitors. Mr Beagle did not give evidence that would support this and there is no other evidence consistent with this fact or assumption.

(f) The report assumed that between 17 January and 28 January 2015 Mr Beagle "had numerous telephone conversations with Chester and provided insight and assistance at Chester's request." This was one of the facts she was instructed to assume in the letter of instructions from the plaintiff's solicitors. The evidence is inconsistent with Mr Beagle having provided any "insight and assistance" during this period. The extent of Mr Beagle's evidence was that he spoke to Mr Apps and had a meeting with him on 27 January 2015 and that

on 28 January 2015 he reported to Mr Chester on his conversations with Mr Apps. However, I have not accepted this latter evidence. Even if I had it would be inconsistent with the fact or assumption in Ms Skildum-Reid's report.

175. The inadequate foundation for her opinion extended to her identification of various factors in favour of higher levels of remuneration. She included amongst her considerations:

    (a) "The critical importance of Mr Beagle's position as a trusted advisor to Aquis on broader Canberra and casino related issues allowed for direct access to the decision makers…"

    (b) The generic proposal was of low quality and that "[t]his would increase the reliance on Mr Beagle to verbally build a strong business case for Aquis sponsorship …"

    (c) "Although the Brumbies took over the primary role in negotiations from 12 January, Mr Beagle continued to offer the Brumbies advice and insight throughout the negotiation period."

176. None of these considerations are consistent with the facts. Mr Beagle was not a trusted advisor to Aquis so as to give direct access to the decision makers. Mr Beagle did not build a strong business case for Aquis' sponsorship. He did not provide "advice and insight" in the period after 12 January 2015.

177. As a consequence I would not have been satisfied that Ms Skildum-Reid's report established a customary level of remuneration for a person in Mr Beagle's position or that, even if it did, the facts or assumptions that formed the basis for the opinion have been established. As a consequence, I would not find it to be reliable evidence of what would be reasonable remuneration for the services provided.

Orders

178. The orders of the Court are:

    1. Judgment be entered for the defendant.

    2. The proceedings are listed on 22 September 2016 at 9.30am for any argument in relation to costs.

    3. The parties are to disclose to each other the terms of any costs order sought and any additional evidence to be relied upon in relation to costs by 4 pm on 21 September 2016.

I certify that the preceding one hundred and seventy-eight [178] numbered paragraphs are a true copy of the Reasons for Judgment of his Honour Associate Justice Mossop.

Associate:

Date: 16 September 2016

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Amendments

19 September 2016 Correct hearing date to include "29" before "30, 31 August" Page 1