



## Equity Division Supreme Court New South Wales

Case Name: The Property Investors Alliance Pty Ltd t/as PIA v Qi (No 2)

Hearing Date(s): On the papers; submissions received 16 and 24 July 2018

Jurisdiction: Equity - Commercial List

Before: Stevenson J

Legislation Cited: Corporations Act 2001 (Cth)

Cases Cited: The Property Investors Alliance Pty Ltd t/as PIA v Qi [2018] NSWSC 977

Category: Costs

Parties: The Property Investors Alliance Pty Ltd trading as PIA (Plaintiff)  
Yang Qi (First Defendant)  
Zhengyu Tong (Second Defendant)  
Rental Master Pty Ltd trading as Rental Master (Third Defendant)

Representation: Counsel:  
T J Dixon (Plaintiff)  
H Grace (Defendants)

Solicitors:  
Rutland's Law Firm (Plaintiff)  
Austin Haworth Lexon Legal (Defendants)

File Number(s): SC 2017/338354

### JUDGMENT

1 I delivered judgment in this matter on 27 June 2018: *The Property Investors Alliance Pty Ltd t/as PIA v Qi* [2018] NSWSC 977.

- 2 The parties are now agreed as to the orders that should be made, and the undertakings to be given, to give effect to those reasons, save as to costs.
- 3 The defendants accept that they must pay the plaintiff's costs.
- 4 The plaintiff seeks an order that the defendants pay costs on an indemnity basis by reason of the "unmeritorious and deliberate" conduct of the defendants in the course of the litigation.
- 5 The plaintiff's complaint is that the defendants, in their Commercial List Response, put in issue matters which were ultimately conceded. Those issues included that the defendants had misused confidential information and diverted the management of 44 properties from the plaintiff's portfolio to the defendants.
- 6 However correspondence between the solicitors for the parties shows that, as early as 7 December 2017, the defendants disclosed to the plaintiff that:

"Our clients have reviewed the records of the Third Defendant, and we advise that a total of forty-three [sic: 44] clients are ex-clients of the plaintiff. We enclose a copy of a list of these clients, along with details as to the sums which have been gained by the Third Defendant by reason of undertaking work for those clients".
- 7 In February 2018 the defendants made available to the plaintiff all the Property Management Agreements that they could locate in relation to those 44 clients. This was done voluntarily, and not in response to any order from the Court.
- 8 In February 2018 the defendants, through their solicitor, foreshadowed to the plaintiff the possibility that they would concede liability.
- 9 Ultimately, liability was formally conceded on 24 May 2018, two business days before the hearing.

10 The proceedings were conducted before me on the basis that liability was no longer an issue and that the first and second defendants' breaches of fiduciary and statutory duties were accepted.

11 As the principal judgment reveals, although the plaintiff was overall successful, the defendants were successful in relation to a number of the issues that were in controversy.

12 I do not see this as a case warranting an order for indemnity costs.

13 The plaintiff will have its costs on the ordinary basis.

14 I order that there be judgment for the plaintiff against the defendants in the sum of \$382,493.

15 I order that the defendants pay the plaintiff's costs.

16 I note the following undertakings given to the Court by the first and defendants:

(1) To not, in any capacity, directly or indirectly, canvass, solicit or otherwise seek the custom, or undertake any work for the clients and properties listed in Annexure A to the document marked MFI 2, other than the 104 clients and properties that were the subject of any account for profits in these proceedings, being the properties listed in Annexure B to MFI 2 until 30 August 2018.

(2) To return, delete or otherwise dispose of any confidential information of the plaintiff in their possession and not to misuse or disclose the plaintiff's confidential information to solicit, canvass or to take on any new work for clients of the plaintiff.

(3) That each of the:

(a) first;

- (b) second; and
- (c) third defendant whether by itself or its servants or agents or howsoever otherwise,
  - (i) will return, delete or otherwise dispose of any of the plaintiff's Confidential Information to the extent that it is in their possession or control;
  - (ii) will not directly or indirectly use, or disclose the plaintiff's Confidential Information to any person, other than for the purpose of complying with these orders and undertakings; and
  - (iii) will disclose to the plaintiff the identifies of any third parties:
    - a. who were provided with the plaintiff's Confidential Information by the defendants; or
    - b. who derived business from the plaintiff's Clients as a result of the use of the Confidential information.

17 I note that in relation to the undertakings referred to in [16(2) and (3)]:

- (a) "Client" means any person listed as the plaintiff's client in Annexure A to MFI 2.
- (b) "Confidential Information" means all data, figures, financials, documents, commercial knowledge, marketing information, and business information relating to: the properties managed, marketed and sold as part of the plaintiff's real estate sales and property management business; and the plaintiff's clients or former clients, and includes the following information:

- (i) lists of the clients in the plaintiff's business, with information including names and contact details for each client;
- (ii) lists of the properties sold by the plaintiff in its capacity as sales agent, with information including addresses and contact details of the buyers and sellers of the properties;
- (iii) lists of the properties under management by the plaintiff, with information including:
  - a. the contact details of the clients who own the properties and the tenants who rent the properties;
  - b. details of the properties including size, features, layout, strata information and internal photographs; and
  - c. details of leasing information including lease expiry dates, rent review dates, and property inspection dates;
- (iv) financial records and documents relating to the properties managed by the plaintiff, including information:
  - a. in tenant trust ledgers such as rental income and disbursements;
  - b. exclusive management agreements with clients including the details of management fees charged by the plaintiff;
- (v) management records and documents relating to the plaintiff's property management business including council rates and charges, statutory charges, strata charges, insurance accounts and property maintenance invoices;

(vi) the information identified in cl 21.4 in each of the first and second defendants' employment agreements dated 21 May 2014 and 15 December 2013 respectively; and

(vii) any other proprietary information of the plaintiff,

whether in documentary, visual, oral, machine-readable or other form together with all copies, extracts, samples, materials, equipment, media, inventions, computer hardware, videos, compact discs, CDs, CD-Roms or other items containing or referring to any of the confidential information which is not in the public domain (except as a result of failure to comply with an obligation to maintain confidentiality), irrespective of how it is known by the defendants or in their possession.

18 I note that:

(1) the plaintiff has elected to seek an account of profits to be paid by way of compensation pursuant to s 1317H of the *Corporations Act 2001* (Cth); and

(2) the defendants acknowledge that the undertakings referred to at [16(2) and (3)] above extend to the third defendant by reason of its direct and indirect association with the first and second defendants.

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