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Case Study



We needed representation that would level the playing field when negotiating large contacts.

Our client owned and operated a specialised software services firm providing custom solutions for the mining and resources sectors. We'll call him Steve, for privacy reasons. Here we outline how we guided Steve through a myriad of legal issues to arrive at selling his business for a great price, maintaining his intellectual property to meet his future goals and set up his estate planning for the benefit of future generations.

The work Steve delivered for his clients, who were mostly large multi-national corporations, was complex and involved specialist intellectual property. Steve had a growing concern about his legal exposure and realised he needed informed representation that would level the playing field so that he could proactively protect himself, and his business when negotiating large contracts or defend his assets should he ever need to do so.

Steve had recently turned 50, was married to Jane and had two adult children when he began putting his financial affairs in order.

He had met with a specialised financial adviser, who recognised that Steve's financial security might be compromised in the event of claims in relation to his business that could adversely impact his personal financial affairs.

At that time, Steve had never sought legal advice on any matters relating to contracts, warranty claims, protecting his business and personal assets or, importantly, protecting his significant intellectual property (IP) relating to the custom software he had developed.

Steve's financial adviser realised a multi-disciplinary advice approach that considered financial planning, business, tax and legal matters was necessary for achieving outcomes. We were recommended as Steve's legal advisor due to our considerable experience working with large corporations in the mining and resources sectors and our expertise in contracts law, estate planning and matters involving intellectual property.

Overview / Needs Assessment

Our initial briefing was a coordinated planning session organised by Steve's financial adviser who had identified several risks that could adversely impact Steve and Jane's livelihood should they become involved in legal action, or if one (or both) of them were to pass away unexpectedly. This joint approach allowed us to quickly gain an insight into all of the various challenges facing our client and also allowed his other advisors to appreciate some of the legal aspects of various issues.

Reviewing existing contracts and advising on previous trading issues which may have given rise to claims were among the most pressing legal advice requirements, as well as protecting Steve's (IP) and ensuring sound structures for business and asset protection.

Steve's questions included:

- What would happen if the entity had a creditor claim; would their assets be exposed?
- Could they separate their assets to a different service entity?
- Would it be possible for Steve's IP to be held in a separate non-operating entity?
- Once the business sold, could he continue to work post-settlement?
- Could he retain some or all of his IP without affecting the overall sale value of the business?

Steve had also indicated his desire to begin preparations for retirement. While his immediate requirement was to mitigate risks, his three-year goal was to sell his business and complete his PhD which would, in part, build upon and make reference to the IP he had developed. An unexpected trade offer within 12 months brought the couple's plans forward and our attention as their legal advisor turned to the business sale transaction.

Our Process

Armed with background information provided by Steve and Jane's financial adviser and accountant, we met with the couple to clarify and prioritise their legal requirements.

Our considerable commercial experience allowed us to advise and support Steve throughout the sale transaction. However, as Steve was mostly concerned about protecting the funds he would receive from the sale of the business, our advice specifically addressed asset protection matters, warranty claims, reducing warranty amounts and retentions. We determined the best course of action for Steve and communicated with the purchaser's legal representatives to agree on terms and formalise them in the sale agreement.

As Steve would continue to work for the purchaser post settlement, we provided support and advice relating to the terms of his remuneration package. The terms negotiated allowed Steve to continue to work while undertaking his PhD. Importantly, we provided advice that would protect Steve's IP once his engagement with the purchaser was complete.

Working in collaboration with his professional advice team's accountant, we advised on structures suitable for holding assets both to protect Steve and Jane from creditors and other legal challenges, and in a manner where they may benefit from available tax concessions that would include making distributions to their adult children.

The Outcome

Our commercial knowledge and experience enabled the sale transaction to proceed smoothly. Collaborating with Steve's financial adviser and accountant from the outset, coupled with open and informed communication with the purchaser's representatives allowed any road blocks that could have slowed down negotiations and delay settlement to be cleared quickly.

The business sold within 12 months. Steve continues to work for the purchaser and is enjoying an attractive remuneration package. He is also working on his PhD. His IP is protected and proceeds from the sale of his business have been managed in a tax-effective manner which provides financial security for him and Jane in their retirement. Our advice relating to warranty claims and retentions led to more cash being available to Steve and Jane sooner. In alignment with advice provided by the financial adviser and accountant these monies were contributed to superannuation as strengthening their retirement position was another important consideration for them.

Having also advised Steve and Jane on matters relating to their wills and estate, they are now confident that the legacy they have created will also be protected and pass seamlessly to their beneficiaries upon their passing.

For more information about this case study and our role in providing legal advice for mining and resources executives, professionals and business owners, please contact Resources Unearthed on +61 7 3007 2000.

Resources Unearthed is a solutions hub that connects senior executives, established professionals and business owners in mining and resources with proven specialist advisers.