

Court order made for transfer of \$1.6m or delivery of gold bars for security in sale of business dispute - a first in WA

06 July 2018

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In the current environment where franchisors are coming under the scrutiny of both the courts and the media, HopgoodGanim Lawyers has been successful in obtaining damages for their client following a franchise business purchase.

HopgoodGanim was successful in obtaining a substantial award of damages in a judgment against former founding owners of the Jean Pierre Sancho bakery and franchise business in Western Australia.

HopgoodGanim's client purchased the business from the defendants, against a background of misleading and deceptive statements including the understatement of the payroll expenditure and the overstatement of revenue receivable from franchise royalties.

These misleading statements meant the purchaser paid a price significantly above its market value and sought damages.

Throughout the court case, the former business owners continually failed to comply with the freezing and other orders of the Court and made false statements about assets.

The HopgoodGanim team responded quickly to the actions of the former owners by successfully obtaining freezing orders and further orders from the Court, including, what is thought to be a first in Western Australian, a springing order compelling the defendant former owners to transfer to the Court property (gold bars) held overseas or lodge funds pending judgment. Orders were also made preventing travel outside Australia and requiring the surrender of their passports.

The former business owners ultimately failed to comply with a number of these orders, including the order for the lodgement of gold bars or funds, which resulted in HopgoodGanim successfully obtaining summary judgment for their client in October 2017, with damages to be assessed at a further hearing.

The hearing for assessment of damages was heard over three days in May 2018 and on Monday 2 July 2018, HopgoodGanim's client was awarded damages of more than \$1.2 million including interest.

HopgoodGanim Lawyers' explains why this proceeding should be of particular interest to the WA legal and business community.

"What makes this particular case novel were the defendants' continual disregard for the Orders of the Court in what appeared to be attempts to avoid liability to pay a future judgment."

"This required the HopgoodGanim team to take fast, proactive steps, make urgent applications to the Court for orders to quickly protect our client's interests by taking whatever steps were necessary and available to minimise the defendants' ability to dissipate their assets and avoid liability."

"This included obtaining an order that the defendants transfer gold bars located overseas or pay \$1.6 million into HopgoodGanim's trust account, which we believe was the first of its kind made in Western Australia."

“The defendants’ failure to comply with this order ultimately led to final judgment, which meant that there was no need for our client to further prove liability of the defendants.”

Acting for HopgoodGanim Lawyers at trial was HopgoodGanim’s [Litigation and Dispute Resolution](#) Consultant, Gordon Ritter, QC.

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