

Ray Hooper

SHIRE OF YORK	
FILE: <i>FI. 203 / HE2. 60013</i>	
OFFICER: <i>RAY</i>	INITIALS: <i>RAY: 60068</i>
30 AUG 2011	
<i>1121507</i>	
REFERRED TO COUNCIL	
DATE	INITIALS

From: Sasha Mignon [SMignon@cslegal.com.au]
Sent: Tuesday, 30 August 2011 10:40 AM
To: Ray Hooper; Pat Mogridge
Subject: Rosmill Pty Ltd v Shire of York (District Court
Attachments: 11245 - Ltr to Shire of York 30 Aug 11.pdf; 11245 - Notice of Appeal.pdf; 11245 - Cost Agreement.pdf

Dear Ray and Pat,

Please find attached correspondence and attachments for your attention.

Should you have any queries, please contact Tim Kennedy on 9476 4499.

Regards,

SASHA MIGNON
 LEGAL SECRETARY



Direct Line: (08) 9476 4488
 Reception: (08) 9476 4499
 Facsimile: (08) 9476 4478
 Email: smignon@cslegal.com.au
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 PO Box 8259, Perth BC WA 6849
 DX 94, Perth

IMPORTANT - This email and any attachments may be confidential and privileged. If received in error, please contact us and delete all copies. You may rely on legal advice and documents received by email when confirmed by a signed CS Legal letter. Before opening or using attachments, check them for viruses and defects. Our liability is limited to resupplying any affected attachments

30/08/2011

30 August 2011

Your Ref:
Our Ref: NJ:TK:slm:11245
Partner: Narinder Jessy
Contact: Tim Kennedy
Email: tkennedy@cslegal.com.au

Shire of York
PO Box 22
YORK WA 6302

Attention: Ray Hooper/Pat Mogridge

By Email: ceo@york.wa.gov.au
& By Email: pat.mogridge@york.wa.gov.au

Dear Ray and Pat,

Rosmill Pty Ltd v Shire of York (District Court App 62 of 2011)

We refer to the above matter.

Please find **attached** a Notice of Appeal dated 22 August 2011 whereby the Appellant is appealing Magistrate Young's decision to dismiss the Appellant's application for a suspension order in the Magistrates Court matters bearing case numbers 112/2010, 113/2010, 118/2010 and 120/2010.

You must now file a Notice of Intention to Appear by no later than **12 September 2011** so that you are able to make submissions in opposition to the Appeal.

In order to have us represent you, please find **attached** for your execution and return a copy of this firm's costs and retainer agreement. Upon return of a signed copy of our Retainer Agreement, we will file a Notice of Intention to Appear on your behalf.

We trust the above is to your understanding and look forward to hearing from you shortly.

Yours faithfully



CS LEGAL

Encl.

Unit 1, 234 Pler Street, Perth WA 6000
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District Court Rules 2005 (WA) Form 6 Appeal Notice (r. 51 (I))

District Court of Western Australia		Appeal No: <i>62 of 2011</i>
Appeal Notice		
Parties	<i>ROSMILL P/L SHIRE OF YAK.</i>	Appellant Respondent
Primary court's decision		
Primary court	<i>MAGISTRATES COURT - MIDLAND</i>	
Case number	<i>NOR/CLM/2010 112/112/118/120 of 240</i>	
Parties	<i>AS ABOVE</i>	
Date of decision	<i>3RD AUGUST 2011</i>	
Judicial officer	<i>MAGISTRATE YUNG</i>	
Decision details ⁱ	<i>JUDGEMENT AGAINST DEFENDANT</i>	
Appeal details		
Notice of appeal	The appellant appeals to the District Court against the above decision	
Grounds of appeal ⁱⁱ	1. <i>SEE ATTACHED APPENDIX A.</i>	
Acts that allows appeal ⁱⁱⁱ	<i>MAGISTRATES COURT (CIVIL PROCEDURE) Section: 110 ACT 2006 (WA)</i>	
Notice to the respondent ^{iv}	If you want to take part in this appeal you must file a Form 8 (attached) under the <i>District Court Rules 2005</i> within 21 days after the date on which you are served with this notice and serve it on the appellant. If you file a Form 8 you must attend a directions hearing at the time and place stated below.	
Last date for appealing	Last date: <i>24-8-2011</i> Is an extension of time needed, Yes/No: <i>NO</i>	
Directions hearing ^v	Date: <i>27th September 2011</i> Time: <i>10:30am</i> Place: <i>District Court</i>	
Appellant's details for service^{vi}		
Name	<i>C. Bell</i>	
Street Address	<i>POSTAL CK RD Box 100</i>	
Telephone	<i>MIDLAND 6956 WA</i>	Fax No:
Email Address	<i>0829 919 920</i>	
Reference No.		
Signature of appellant or lawyer	<i>CBell</i> Appellant/Appellant's lawyer	Date: <i>22-8-2011</i>

Note to Form 6 -

1. Examples:
 - Judgment against defendant for \$40,000
 - Dismissal of claim to recover possession of real property.
2. Set out the grounds in numbered paragraphs.
3. State the short title of the Act under which the appeal is being made.
A copy of Form 8 (Notice of respondent's intention) must be attached to this form when it is served on the respondent.
4. The court will complete this row when the appeal notice is filed.
5. If the appellant is represented by a lawyer, the appellant's details below must be the lawyer's. If the appellant is self-represented, the details must be the appellant's personal details.

APPENDIX A

And Orders be made that:

ALL PREVIOUS JUDGEMENTS BE DISMISSED, WITH COSTS
AND THE MAGISTRATES COURT OF WESTERN AUSTRALIA BE STOOD
DOWN UNTIL IT COMPLIES WITH CHAPTER III OF THE
COMMONWEALTH CONSTITUTION ACT 1900

AND FURTHER TAKE NOTICE that the grounds for this appeal are:

THE MAGISTRATE WAS WRONG IN LAW AND FACT. WHEN
HE FAILED TO RECOGNISE THAT THE MAGISTRATES COURT
ACT AND RULES OF 2004 ARE REPUGNANT TO THE
COMMONWEALTH CONSTITUTION ACT 1900, AND SAT UNDER
THE SAID MAGISTRATES COURT ACT AND RULES 2004
CONTRARY TO CHAPTER III OF THE COMMONWEALTH CONSTITUTION
ACT 1900



22 AUG 2011

CBell
Appellant

TO: The Respondent/s

SHIRE OF YORK

AND TO: ~~His/Her~~ Solicitor/s

CS LEGAL

234 PIER STREET PERTH

6000 WA

District Court Rules 2005 (WA) Form 8 Notice of Respondent's intention (r.53)
Magistrates Court general claim example

District Court of Western Australia		Appeal No:
Notice of respondent's intention		
Parties	Appellant Respondent	
Notice [Tick one box]	<input type="checkbox"/> ^{vi} The respondent intends to take part in this appeal. <input type="checkbox"/> ^{vi} The respondent does not intend to take part in this appeal and will accept any order made by the court in the appeal other than as to costs.	
Grounds for upholding	<input type="checkbox"/> The respondent will argue the primary court's decision should be upheld on the grounds relied on by the primary court in its decision.	
Other grounds for upholding ^{vi}	<input type="checkbox"/> The respondent will argue the primary court's decision should be upheld on the following grounds not relied on by the primary court in its decision – 1.	
Variation ³	<input type="checkbox"/> The respondent applies for the primary court's decision to be varied as follows— The respondent will argue the primary court's decision should be varied on the following grounds – 1.	
Cross-appeal ³	<input type="checkbox"/> The respondent also appeals against the primary court's decision and will rely on the following grounds – 1.	
Last date for appealing ^{vi}	Last date: Is an extension of time needed? Yes/No	
Respondent's details for service^{vi}		
Name Street Address Telephone Email address Reference No.	Fax No:	
Signature of respondent or lawyer	Respondent / Respondent's lawyer	Date:

Notes to Form 8

1. ^{vi} If this box is ticked, complete one or more of the next 5 rows and the respondent's details for service.
2. ^{vi} If this box is ticked, ignore the next 5 rows and complete the respondent's details for service.
3. ^{vi} Set out the grounds in numbered paragraphs.

COST AGREEMENT

OFFER

This is an offer by CS Legal to **Shire of York of PO Box 22, York WA 6302 ("Client")** to enter into a cost agreement pursuant to the Legal Profession Act 2008.

If you accept this offer, CS Legal will provide services to you as outlined in the schedule of this offer on the terms and conditions set out in this offer.

This offer may be accepted by:

1. your signature on this offer where indicated;
2. if you are a corporation, the signature of at least one director of the company; and
3. a notice or letter in writing from you stating clearly that you accept the offer and signed by you or a director (if a company); and
4. instructions received from you to carry out work in relation to the matter for which this offer relates.

The terms of this offer are as follows:

1. Scope of work

The services to be provided by CS Legal ("Matter") and the scope of the services are as described in Item 1 of the Schedule to this Agreement ("the Schedule") and any other work or services performed for you on your instructions after entering into this Agreement.

2. Who will do the Work

- 2.1 The solicitor (and other professional personnel) who will have day to day responsibility for your matter, and the director supervising are named in Item 2 of the Schedule.
- 2.2 If for any necessary reason there is a change in the professional personnel handling or supervising your matter we will inform you of the change.

3. Our Charges

- 3.1 Our charges are set out in Item 3 of the Schedule. The rates may be reviewed during the period of our retainer. You will be notified in writing of any such review.
- 3.2 You also pay out of pocket expenses that we meet on your behalf ('disbursements'). See Item 4 of the Schedule for details of some specific charges. We will obtain your consent before incurring any substantial expenses on your behalf.
- 3.3 You will also pay us an amount equal to any goods and services tax which is levied or payable on our fees and disbursements.
- 3.4 Urgent and/or particularly complex matters may attract a higher rate. We will discuss this with you should the circumstances arise.

4. Accounts

- 4.1 We will normally send you an account at the end of every calendar month, however, we can send you, and you can request, an account at any time.
- 4.2 Our accounts are payable within **10 days** of the date stated on the account.
- 4.3 If you have a query regarding an account, please contact the lawyer handling the matter.
- 4.4 If you have any difficulty paying in accordance with our terms please contact our Accounts Department on (08) 9476 4499 immediately to discuss appropriate arrangements.
- 4.5 If our costs or money on account of our costs (see 4.7 below) are not paid in accordance with our terms, or as otherwise agreed, we may suspend any further work until payment. If non-payment continues, or if we can not get adequate instructions from you, we may stop acting for you (see 9.2 below).
- 4.6 If any account is unpaid for more than 30 days we may charge interest on the outstanding balance at the rate provided for under the Legal Profession Act being the percentage specified by the Reserve Bank of

Australia as the cash target rate plus 2 percentage points as at the date of the account.

4.7 We may from time to time ask you to deposit money with us on account of anticipated costs. This money will be held in our trust account or invested at interest on your behalf if you so instruct us. Failure to pay this money can lead to the same consequences as failure to pay an interim or final account (see 4.6 above), save that we will not charge interest. If applicable, the initial amount of money which we require on account of anticipated costs is set out in Item 8 of the Schedule.

4.8 Money invested in trust accounts does not earn interest for you. You agree that we are not responsible for the financial return (whether by way of interest or otherwise) or for any loss resulting from the placing of your money in an investment account.

5. Engaging Services On Your Behalf

5.1 From time to time it may be necessary to engage an independent expert or consultant on your behalf in order to properly manage a matter for you (eg barrister, valuer, accountant). When the need arises we will:

- (a) first confer with you about the need for such an expert and any preferences you may have;
- (b) obtain a cost estimate from the expert;
- (c) require you to provide us with sufficient funds, in advance, to cover the anticipated cost; and
- (d) then engage that expert in writing in accordance with this firm's standard expert terms and conditions.

5.2 The names (or categories) of consultants or experts that we currently consider may be need to be engaged are as set out in Item 9 of the Schedule.

6. Trust Account Authority

6.1 By signing this retainer agreement you also authorise us to make payments as necessary from the trust account maintained by us on your

behalf for such things as our costs, disbursements and counsel fees, as well as any other payments authorised by you.

6.2 Further, you also authorise us to retain and use any settlement sum or costs that we may recover on your behalf to pay any outstanding costs or disbursements that may be owing to us as well as any outstanding counsel fees or other costs or disbursements incurred on your behalf.

7. Audit Reviews

Please be aware that your file may be subject to an external review by a quality practice auditor, tax auditor or trust auditor to ensure that we are adhering to our obligations at law or quality practice procedures, when implemented. Results of these reviews are strictly confidential and will not be released to any third party apart from the auditing entity.

8. Retention Of Files

8.1 All files and documents that we retain on your behalf will be stored in a secure environment to ensure that confidentiality is maintained at all times, even after file closure.

8.2 Your file will be archived and stored for a period of 8 years from the date of file closure.

9. Ending This Agreement

9.1 You may bring this Agreement to an end at any time by giving written notice to us. You will remain responsible for all costs which we may properly charge under this Agreement up to the time we receive your written notice.

9.2 We may bring this Agreement to an end and stop acting for you if:

- you do not comply with this Agreement;
- we form the opinion, on reasonable grounds, that mutual confidence and trust do not exist between you and us; or
- we consider on reasonable grounds that, by continuing to act for you, we may breach professional conduct rules.

If we bring this Agreement to an end you remain responsible for all costs which we may properly charge under this Agreement up to the date we send you written notice that we are ending this Agreement.

10. Variation of Agreement

This Agreement cannot be varied except by writing.

11. Disputes

If a dispute arises under this Agreement, the dispute may be referred to arbitration by either you or us. Unless we agree with you as to the choice of arbitrator, the arbitrator is to be appointed by the President of the Law Society. Both you and we may use legal representation at any such arbitration.

COSTS DISCLOSURE

This costs disclosure is provided pursuant to the Legal Profession Act 2008.

1. BASIS OF CALCULATING PROFESSIONAL FEES

1.1 Hourly rates

If the fee quoted in this offer provides for an hourly charge rate, we will charge the hourly rate (and proportionately for part of an hour) as set out in Item 3 of the Schedule for all work we carry out on your behalf.

In calculating the time spent doing work, our minimum charge is for 1 unit which represents 6 minutes. This minimum unit is applied irrespective of the actual time spent on an individual task.

1.2 Cost Determination

If a costs determination applies to the services to be provided under this offer, a copy of the same will be attached. The costs determination (if one applies) is a determination by the Legal Costs Committee of Western Australia of the maximum amount that can be charged for the provision of legal services of the kind contemplated by this offer by a solicitor **where there is no written cost agreement between the solicitor and the client.**

The purpose of providing this information is to enable you to assess the fees charged by us against the relevant cost determination.

1.3 Disbursements

We claim re-imbusement for charges for disbursements including photocopying, faxing, delivery fees, searching, couriers, postage, telephone, Counsel fees (if you have instructed us to brief Counsel), lodgement fees of Courts/Tribunals and other fees and costs paid on your behalf in order to enable us to perform the work.

Our usual disbursements charges are set out in Item 4 of the Schedule and may vary from time to time.

2. Estimate of Legal Costs

The estimate of the total legal costs in the Matter is set out in Item 5 of the Schedule. The estimate will be based on the instructions received from you and may be revised in the event that your instructions change or the scope and nature of the work changes.

Where it is not reasonably practicable to give an estimate, a range of estimates will be set out in Item 6 together with a explanation of the major variables affecting the calculation of the cost estimates.

3. Billing Intervals

Unless a fixed fee is quoted, an account will be rendered at the end of every calendar month.

If a fixed fee is quoted, an account will be rendered on completion of the work. If the scope, nature, complexity or duration of the work changes and an hourly charge is imposed pursuant to the terms of the offer, an account may be rendered at the end of every calendar month.

4. Interest Rate

The rate of interest rate is the benchmark rate that provided for under the Legal Profession Act being the percentage specified by the Reserve Bank of Australia as the cash target rate plus 2 percentage points as at the date of the account Unless a fixed fee is quoted, an account will be rendered at the end of every calendar month.

5. Litigation

Legal Costs If You Are Successful

A court may order, at the end of the litigation, that the unsuccessful party pay the successful party's costs. If you are successful in the Matter, the court may order the other party to the litigation pay some of your costs. These costs are known as party and party costs and are calculated by applying the court scale applying to your Matter.

If the court orders that the other party pay some of your legal costs our estimate of the legal costs you will recover is set out in Item 7 of the Schedule.

If the court does order costs in your favour you must be aware that this order gives you the right to recover some of your costs from the other party. It does not affect your responsibility to pay our legal costs.

The costs you recover may not cover the whole of our legal costs. If you cannot recover the costs from the other party (for example, if a party goes into liquidation or is bankrupted) then you will still be responsible for our legal costs.

Legal Costs If You Are Unsuccessful

If you are unsuccessful in your Matter the court will most likely order that you pay some of the other party's legal costs. Our range of estimate of the amount is set out in Item 7 of the Schedule.

In addition to the payment of the successful party's costs as estimated above, you will also be responsible for our legal costs.

6. Interest

The rate of interest rate is the benchmark rate that provided for under the Legal Profession Act being the percentage specified by the Reserve Bank of Australia as the cash target rate plus 2 percentage points as at the date of the account Unless a fixed fee is quoted, an account will be rendered at the end of every calendar month.

7. Contact Person

If you wish to discuss legal costs please contact one of our directors, Richard Wensley and Narinder Jessy.

8. Jurisdiction

The law of Western Australia applies this cost agreement and both parties agree to submit to the jurisdiction of the courts of Western Australia.

9. Legal Cost – Your Right to Know

You have the right to –

- negotiate a costs agreement with us;
- receive a bill of costs from us;
- request an itemised bill of costs after you receive a lump sum bill from us;

- request written reports about the progress of your matter and the costs incurred in your matter (at no cost to you);
- apply for the costs agreement to be set aside;
- accept or reject any offer we make for an interstate costs law to apply to your matter;
- notify us that you require an interstate costs law to apply to your matter.

For more information about your rights, please read the fact sheet titled Legal Costs – your right to know. You can ask us for a copy, or obtain it from the Legal Practice Board (or download it from the website of the Legal Practice Board or the Law Society of Western Australia).

In addition to the above, we will notify you of any substantial change to anything included in this disclosure.

SCHEDULE

Item 1 Scope and Services

Matter:

Respond to Appeal Proceedings No. 62 of 2011 against Rosmill Pty Ltd in the District Court of Western Australia.

Scope:

The scope of the work which is to be done and the services to be provided to you are as follows:

1. File Response;
2. Prepare for Hearing;
3. Attend Hearing/Directions

Item 2 Persons Involved in your Matter

The following people will work on your matter:

Name	Position
Narinder Jessy	Director
Tim Kennedy	Associate

The director supervising the matter will be: Narinder Jessy

Item 3 Charges

- A. Our legal costs will be charged by reference to our hourly rates as set out below

Current Hourly Rate

Qualification	Hourly Rate (range excluding GST)
Director	\$400.00 per hour
Litigation Consultant	\$350.00 per hour
Associate	\$320.00 per hour
Senior Solicitor	\$320.00 per hour
Solicitor	\$200.00 per hour
Para-Legal	\$150.00 per hour
Secretary	\$80.00 per hour
Junior Clerk	\$70.00 per hour

The relevant cost determination is attached.

Item 4

Disbursements

Photocopying	\$1.00 per page
Long distance telephone calls	Charged at the standard Telstra/Optus rate (by reference to the relevant company used)
Facsimile transmissions	\$3.00 per page

Item 5

Costs Estimate

Estimates up to and including Pre-Trial Conference (excluding pleadings, preparations for trial, applications for summary judgment, bankruptcy or insolvency proceedings additional enforcement proceedings):

\$11,000.00 to \$13,500.00

Item 6

Basis of Costs Estimate

Nature of Work	Estimated Time Required	Estimated Value (excluding GST)
Prepare, File and Serve Notice of Intention To Appear	1 hour	\$275.00
Prepare, File and Serve Answer in Response, if deemed necessary	4 - 8 hours	\$1,100.00 - \$2,200.00
Attendance at Directions Hearing (per appearance)	1 - 2 hours	\$275.00 - \$550.00
Prepare, File and Serve Appeal Books	4 - 8 hours	\$1,100.00 - \$2,200.00
Preparation for Hearing and Attendance at first day of Hearing	n/a	\$5,000.00
Attendance at subsequent days	n/a	\$2,000.00
Settling and	1 - 2 hours	\$275.00 - \$550.00

Extracting Orders		
Attending to taxing costs, drawing bill of costs	3 hours	\$825.00

As proceedings have not been served, the provision of cost estimates is a difficult and imprecise exercise, as those estimates will vary greatly depending on the circumstances that arise. We will provide you with further estimates as to costs of additional enforcement options, bankruptcy and insolvency proceedings and additional defended processes extent reasonably possible, will endeavour to ensure the accuracy of those cost estimates.

Item 7 Estimated Recovery Costs If Successful and Costs Payable If Not Successful (on estimates provided)

50% recovery of your costs if successful

Between \$15,000.00 and \$50,000.00 if unsuccessful

Item 8 Moneys on Account

Initial payment to CS legal Trust Account; \$ N/A

Trust Account Details:

Name: CS Legal Trust Account No. 2

BSB: 036 001

Account No.: 333 565

Item 9 Independent Experts/Consultants

At this stage it is not necessary to engage independent experts or consultants however should those services be required, your instructions will be sought.

Please note that in the future, it may be advantageous to retain the services of a suitably experienced barrister to provide advice regarding the appropriate settlement range to be applied to the division of matrimonial assets.

ACCEPTANCE

We acknowledge having received a copy of the Costs Agreement and Costs Disclosure from CS Legal and confirm that we have read, understood the terms and conditions of the offer.

We hereby accept the offer by CS Legal for the provision of services as set out in the Costs Agreement on the terms and conditions set out in the costs agreement.

For
Shire of York

Client Name

Date