



EXECUTIVE STRATEGIES

Selling Your Business and Protecting Your IP

The Importance of Strong Legal Representation when
Negotiating Large Contracts

Prepared by:

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About Zac Herps

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Known for strategic and focussed legal solutions, Zac represents individuals, family groups and businesses, high net wealth and family office clients as well as substantial listed and unlisted Australian and International companies.

Zac and his team have expertise in a number of areas including Commercial and Corporate, Employment and Industrial Relations, Property and Projects, IP, Agribusiness, Litigation and Debt Recovery, Insolvency and Restructuring, Family and Asset Protection and Estate Planning.

He enjoys engaging with clients to gain an in-depth understanding of their operations, business drivers, pain points and needs in developing a tailored legal strategy focused on the clients objectives, solutions and outcomes.

He is a strong advocate for educating clients and is always looking for opportunities to share knowledge and to develop resources to best support them.

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.

Hillhouse Legal Partners guided Steve through a range of legal issues that led to Steve selling his business for a great price, maintaining his intellectual property for future endeavours and ensuring that his family was protected through sensible but secure estate planning.

The services Steve delivered for his large multi-national corporate clients were complex and involved specialist intellectual property advice and software products. Steve had a growing concern about his legal exposure and realised he needed expert and specialist advice when he was negotiating his terms of engagement with his clients.

Steve had never sought legal advice on any matters relating to contracts, warranty claims, protecting his business or personal assets and most importantly, protecting his significant intellectual property (IP) relating to the custom software he had developed. Steve had recently turned 50, was married to Jane (also not her real name) and Steve and Jane had two adult children when they met their financial advisor.

Steve and Jane met with a specialised financial adviser, who recognised that their family's financial security might be compromised in the event of claims in relation to Steve's business undertakings and such claims may also impact the family's personal financial affairs.

Steve's financial adviser realised a multi-disciplinary advice approach that considered financial planning, business, tax and legal matters was necessary for achieving the best outcome for Steve and Jane. We were recommended as Steve's legal advisor due to our considerable experience working with a range of commercial entities from large corporations to people like Steve and our expertise in contract law and negotiation, protection of intellectual property and estate planning.

Overview / Needs Assessment

Our initial briefing was a coordinated planning session organised by Steve's financial adviser who had identified risks that could adversely impact Steve and Jane's livelihood and assets 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 Steve and Jane and also allowed their other advisors to appreciate and consider the legal aspects of their particular circumstances.

As part of our service to Steve and Jane we were able to review existing contracts and advise on previous trading issues which may have given rise to claims, as well as protecting Steve's IP and recommending and implementing structures for Steve's business and his and Jane's asset protection and estate plan.

Steve and Jane's questions included:

- What would happen if Steve's business entity was involved in law suit or had a claim against it; would his and Jane's assets be exposed?
- Could Steve or Jane 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 Steve continue to work and if so for whom?
- Could Steve 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 post graduate study which would, in part, build upon and make reference to the IP he had developed and proposed to sell. An unexpected trade offer within 12 months brought the couple's plans forward and our attention as their legal advisors turned primarily to the business sale transaction.

Our Process

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

Our considerable commercial experience allowed us to properly and expertly advise and support Steve throughout the sale transaction. As Steve was mostly concerned about protecting the funds he would receive from the sale of the business, our advice specifically and strategically addressed asset protection measures, warranty claims, reducing warranty and retentions obligations. We advised Steve on the best course of action for him and negotiated with the purchaser's legal representatives as to terms and conditions of the formal sale agreement.

Through our negotiations, agreement was reached with the purchaser that Steve would continue to work for the purchaser after settlement. Our role was to ensure that Steve's interests were protected and his goals after settlement could be achieved. The terms negotiated by us with the purchaser allowed Steve to continue to work while undertaking his further study and most importantly Steve's IP would be protected once his engagement with the purchaser was over.

Working in collaboration with Steve's professional advice team's accountant, we advised on the appropriate structures and plans for Jane and Steve to hold their assets so as to best protect them from any claims by creditors or any other legal challenges in a tax effective manner.

The Outcome

Our commercial knowledge and experience coupled with our legal expertise 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.

Steve's business sold within 12 months. Steve continues to work for the purchaser and is enjoying an attractive remuneration package. He is also furthering his studies. His IP is protected and the proceeds from the sale of the business have been managed in a tax-effective manner.

Our advice relating to warranty claims and retentions led to more cash being available to Steve and Jane sooner. In conjunction with the advice provided by the financial adviser and accountant these

monies were contributed to superannuation as so strengthened Jane and Steve's retirement position.

All of these actions have hopefully ensured financial security for Steve and Jane now and in their retirement.

We also advised Steve and Jane on matters relating to their wills and estate plan and how best to protect and seamlessly pass on the legacy they have created to their children.

For further information about this case study and our role in providing legal advice for executives in health, biotechnologies, pharmaceuticals, construction, technology and the mining and resources industries, please contact Executive Strategies on +61 7 3007 2080 or via

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