

SUPREME COURT OF QUEENSLAND

CITATION: *Schoch v Mineralogy Pty Ltd & Ors* [2015] QSC 326

PARTIES: **WILLIAM MATTHEW SCHOCH**
(plaintiff)
and
MINERALOGY PTY LTD
(first defendant)
QUEENSLAND NICKEL PTY LTD
(second defendant)
CLIVE FREDERICK PALMER
(third defendant)

FILE NO/S: BS 3185 of 2014

DIVISION: Trial

PROCEEDING: Civil Trial

DELIVERED ON: 19 November 2015

DELIVERED AT: Brisbane

HEARING DATE: 7, 8, 9, 14 and 15 September 2015

JUDGE: Bond J

ORDER: **The order of the court is that:**
The plaintiff's claim is dismissed.

CATCHWORDS: CONTRACTS – GENERAL CONTRACTUAL PRINCIPLES – where the plaintiff and third defendant entered into an oral agreement for the plaintiff to become employed by the first defendant – where the plaintiff alleged oral agreement for remuneration of \$5,000,000 over five years – where the third defendant denied existence of that agreement – whether the plaintiff can establish the existence of agreement as alleged

CONTRACTS – GENERAL CONTRACTUAL PRINCIPLES – where by agreement with the third defendant the plaintiff was transferred from the first defendant to the second defendant – where new employment agreement with the second defendant was reduced to writing and executed by the parties – whether any part of the terms of the initial agreement with the first defendant could survive

COUNSEL: L D Bowden for the plaintiff

S S Couper QC, with N H Ferrett, for the first, second and third defendants

SOLICITORS: The plaintiff appeared on his own behalf
Kilmurray Legal for the first, second and third defendants

Introduction

- [1] Clive Palmer is, and at all material times has been, a prominent public figure. In the business sphere he is a company director and shareholder. In the public sphere he is an active politician, who founded a political party and became a member of the Commonwealth Parliament in 2013.
- [2] William Schoch is a qualified chartered accountant, currently practicing as a consultant. In the period between 10 June 2011 and 8 December 2013 (when his employment was summarily terminated), he worked for Mr Palmer, as an employee of Mr Palmer's corporate entities.
- [3] Mr Schoch says that at the time of his termination he was part the way through a five year contract which provided for an agreed remuneration of \$5,000,000. He says he struck that deal in an oral agreement with Mr Palmer on 8 and 10 June 2011. He claims damages accordingly. Mr Palmer says there was no such deal and, having regard to his status as a public figure, thinks Mr Schoch's claim is effectively an attempt to extort money under the implicit threat of adverse publicity.
- [4] The case turns on whether Mr Schoch can persuade me, on the balance of probabilities, that I should accept his version of events.

Background

- [5] Mr Schoch was born in 1949, making him about 4 years older than Mr Palmer. He has degrees in Law and in Commerce, gained in the early 70's. After a few years working with major accounting firms, he commenced private practice in 1978.
- [6] He did some work for Mr Palmer over the next 5 or 6 years, Mr Palmer being his first paying client. They knew each other socially, although whether the extent of their relationship could be characterised as a friendship is unclear. They lost contact for over 10 years, although they reconnected to some extent in the mid to late 90's when their sons attended the same school, albeit a number of years apart. Mr Schoch did some audit work for one of Mr Palmer's corporate entities for a few years in the late 90's and early 2000's. Otherwise he had not had any significant business relationship with Mr Palmer or any of his corporate entities since the mid 80's.
- [7] In 2006 Mr Schoch sold his home and his accounting practice and commenced work as a consultant, for sale prices of \$2,200,000 and \$1,000,000 respectively. Thereafter he did some work as a consultant for former clients, but his consultancy does not seem to have been particularly successful: from 2006 until May 2011 he earned of the order of \$500,000 plus GST, and that from only one client for one matter. Otherwise he lived off what he had received from the sale of his home and practice in 2006.
- [8] By 2010:
 - (a) Mr Palmer was Chairman and primary shareholder of Mineralogy Pty Ltd and of Queensland Nickel Pty Ltd;

- (b) Mineralogy either directly or through subsidiaries had substantial interests in the mining industry, particularly iron ore deposits in Western Australia and coal deposits in the Galilee basin in Queensland; and
 - (c) Queensland Nickel either directly or through subsidiaries had substantial interests in the mining industry in Queensland and the Hyatt Coolum Resort at the Sunshine Coast in Queensland.
- [9] On 11 August 2010, Mr Schoch sent a letter to Mr Palmer, which had two purposes. First it put out the feelers for an employment opportunity for Mr Schoch. Second, it sought to interest Mr Palmer and Mineralogy in certain oil technology owned by a company in which Mr Schoch had a financial interest. Nothing eventuated in respect of the former. A meeting between the principal of the oil technology company and Mr Palmer came of the latter, but Mr Palmer formed an adverse view of the oil technology company and nothing further eventuated.
- [10] In May 2011, Mr Schoch was still looking for employment opportunities. He had applied for a position as a Chief Financial Officer in response to an advertisement he saw in the newspaper. On 19 May 2011, he also sent a brief letter to Mr Palmer informing him that he was in the market for a full time position. On 8 June 2011, Mr Palmer responded.
- [11] At the base of Mr Schoch's case is his evidence that in a telephone conversation on 8 June 2011 and a face to face meeting on 10 June 2011, an oral agreement was struck between he and Mr Palmer on behalf of Mineralogy, the essential terms of which were (according to the evidence Mr Schoch gave):
- (a) Mineralogy would employ Mr Schoch full time for five years for \$5,000,000, that is \$1,000,000 per annum;
 - (b) Mr Schoch would be paid \$100,000 per annum to start with;
 - (c) as to the balance:
 - (i) "the rest of the money would come in later soon";
 - (ii) "it would be in soon, by the end of the year, that is, by December"; and
 - (iii) "the royalty from Citic Pacific payable to Mineralogy would start by the end of the year, and with that in that would kick in my salary to a million a year"; and
 - (d) Mr Schoch's role, although nominally as CFO of one of Mineralogy's subsidiaries, China First Pty Ltd, would be to help Mr Palmer (who had "lots of deals on the go") "get [the deals] up and get money in".
- [12] Mr Palmer does not dispute that he had a phone conversation with Mr Schoch on 8 June 2011 and a meeting with him on 10 June 2011. He does not dispute that an agreement was struck that Mr Schoch would work for Mineralogy as CFO for China First for \$100,000 per annum, although he says the deal was "plus a discretionary bonus". He rejects the rest of Mr Schoch's version of the conversations as a fabrication, pointing out that no one in the thousands of employees of his companies earned \$1,000,000 per annum, and executives senior to Mr Schoch were earning no more than \$350,000 per annum. As I have already mentioned, Mr Palmer's view is that Mr Schoch's central contention represents an attempt by him to extort a payment under the implicit threat of adverse publicity.
- [13] Mr Palmer says that he made notes of the main points of the deal and gave them to Mineralogy's Finance Director, so that, in accordance with Mineralogy's usual practice, a document could be produced which both parties could sign. Although Mr Schoch's employment file could not be located, an email from the Finance Director to Mr Palmer

dated 22 June 2011 was located. It attached a draft letter of offer to Mr Schoch which corroborated Mr Palmer's version of events because (relevantly) it:

- (a) confirmed an offer of full time employment as CFO of one of Mineralogy's subsidiaries, China First, effective 10 June 2011, terminable by either party giving at least one month's notice in writing;
 - (b) stated that the position carried a remuneration package which provided for a base salary of \$100,000 per annum, plus bonuses to be awarded at the discretion of the Chairman;
 - (c) stated that Mr Palmer would be Mr Schoch's immediate supervisor and would explain his duties and responsibilities; and
 - (d) stated Mr Schoch would need to sign a confidentiality agreement.
- [14] Mr Schoch started work for Mineralogy on 10 June 2011. On 17 June 2011 he filled out and signed –
- (a) an employee details form for Mineralogy's Human Resources department;
 - (b) a tax file number declaration; and
 - (c) a confidentiality deed.
- [15] Notably, the employee details form recorded in Mr Schoch's handwriting adjacent to the space for pay-rate the words "\$100K + Bonus as agreed".
- [16] In February 2012, Mr Schoch's employment circumstances changed when – putting it neutrally for the moment – he was transferred from Mineralogy to Queensland Nickel to work as a Commercial Manager to be located at the Hyatt Coolum. There were some conversations and documents – to which I will return – which shed light on the character of this transfer. Mr Schoch's base salary was increased to \$150,000 per annum. He commenced work at the Hyatt Coolum on about 6 February 2012.
- [17] On 10 March 2012, Mr Schoch executed a written contract of employment with Queensland Nickel, the essential written terms of which provided (relevantly):
- (a) Mr Schoch's role was "Commercial Manager" and "Director of CDLI", effective from 3 March 2011 terminable by either party giving one month's notice in writing and, in certain circumstances, by summary dismissal by Queensland Nickel;
 - (b) Mr Schoch's total annual remuneration was a base salary of \$150,000 per annum plus superannuation and eligibility for participation in the executive bonus scheme (which provided for cash bonuses at the discretion of the Board of Directors);
 - (c) annual leave, long service leave and sick leave entitlements would be transferred from Mineralogy to Queensland Nickel; and
 - (d) the written document constituted the entire agreement between the parties about the terms and conditions of Mr Schoch's employment and replaced all previous agreements, understandings and representations.
- [18] Mr Schoch continued working for Queensland Nickel at the Hyatt Coolum until December 2013. On 1 December 2013, a Queensland Nickel executive advised Mr Schoch by email that his role would terminate, effective as of 31 December 2013. On 8 December 2013, Mr Schoch emailed that executive advising that:

I accepted a 5 year term of employment from 10 June 2011 for a total of \$5 million. So entitlements to payout equals \$5mill less salary to date.

- [19] Mr Schoch said that, within hours of the email being sent, Mr Palmer called forcefully rejecting the suggestion. A short time later, the Queensland Nickel executive emailed Mr Schoch also rejecting the truth of the alleged \$5,000,000 deal, summarily terminating Mr Schoch's employment and advising he would be paid his entitlements.
- [20] It is common ground that, if Mr Schoch is to succeed¹, I must be persuaded that:
- (a) the telephone conversation on 8 June 2011 and the conversation of 10 June 2011 between Mr Palmer and Mr Schoch were in the terms that Mr Schoch alleges; and
 - (b) those conversations resulted in an enforceable agreement to pay a deferred salary totalling \$5,000,000; and
 - (c) one of the following three sets of propositions is true:
 - (i) the conduct of the parties leading to Mr Schoch's transfer to Queensland Nickel in February 2012 resulted in the existence of two contracts: one obliging Queensland Nickel to pay the agreed base salary, and a second obliging Mineralogy to continue to meet the remaining "deferred" salary obligation; or
 - (ii) the conduct of the parties leading to Mr Schoch's transfer to Queensland Nickel in February 2012 resulted in the transfer of all of Mineralogy's obligations (including the deferred salary obligation) to Queensland Nickel, those obligations were then superseded by the written employment agreement of 10 March 2012, and that agreement is liable to be set aside on the basis that Mr Schoch was misled into signing it; or
 - (iii) the conduct of the parties leading to Mr Schoch's transfer to Queensland Nickel in February 2012 resulted in the transfer of all of Mineralogy's obligations (including the deferred salary obligation) to Queensland Nickel, the effect of the March 2012 agreement would have been to supersede them, but neither Queensland Nickel nor Mr Schoch intended the agreement to have effect.
- [21] For reasons upon which I will elaborate below, I agree with the defendants' submissions that Mr Schoch's case must fail. Essentially that is because:
- (a) I think it is more probable than not that the upshot of the telephone conversation on 8 June 2011 and the conversation on 10 June 2011 between Mr Schoch and Mr Palmer was only an oral agreement that –
 - (i) Mineralogy would employ Mr Schoch; and
 - (ii) the remuneration would be at a base salary of \$100,000 per annum plus a discretionary bonus.
 - (b) I am not persuaded by Mr Schoch that the telephone conversation on 8 June 2011 and the conversation on 10 June 2011 between he and Mr Palmer were in the terms that he alleges. In particular, I am not persuaded by Mr Schoch that anything at all was said which an objective third party could have regarded as giving rise to enforceable obligations against Mineralogy of the nature of those for which Mr Schoch contends.
 - (c) The proper conclusion which should be drawn from the conduct between the parties in February and March 2012 is that Mr Schoch's employment agreement with Mineralogy was terminated and a new agreement, recorded in writing, was struck with

¹ Defendants' closing submissions at [1] and plaintiff's counsel's acknowledgement at T5-60 line 42 to T5-61 line 3.

Queensland Nickel. The parties intended the new agreement to take effect. It provided for the manner of Mr Schoch's remuneration and was inconsistent with his case.

- (d) There is no basis for Mr Schoch's contention that that agreement should be set aside because Mr Schoch was misled.

[22] I will deal first with my views as to the credibility of the principal protagonists, Mr Schoch and Mr Palmer. I will then explain the conclusions which I have reached on the three issues of –

- (a) the existence of the June 2011 oral agreement for which Mr Schoch contends;
 (b) the enforceability of the June 2011 oral agreement; and
 (c) the significance of Mr Schoch's transfer from Mineralogy to Queensland Nickel.

The credibility of the principal protagonists

[23] The issues in this trial essentially fell to be determined on the credibility of Mr Schoch. The credibility of Mr Palmer was also in issue, but because Mr Schoch bore the onus of proof, his credibility was the more significant.

Mr Schoch

[24] Senior Counsel for the defendants was severely critical of the credibility of Mr Schoch, submitting that his evidence was inherently unlikely, was contradicted by the contemporaneous written record, and was inconsistent with his own conduct at the time.

[25] I agree. I will elaborate upon my reasons below and also when I examine² the evidence which Mr Schoch gave concerning his transfer from Mineralogy to Queensland Nickel.

Mr Schoch's story was inherently unlikely

[26] Mr Schoch said he sold his practice in 2006 for \$1,000,000. I agree with the defendants' submission that it is unlikely that a practice worth \$1,000,000 would be generating income for its owner at a rate approaching \$1,000,000 per annum.

[27] In the almost five years since selling the practice, Mr Schoch's income seemed to be limited to \$500,000 earned from a single client for a single task.

[28] As at June 2011, Mr Schoch had fallen out with the oil technology company with which he had had a business relationship, his consultancy was not bringing in big money and he had been living off his capital. The result was that he was motivated to obtain a full time job. Mr Palmer said his perception of Mr Schoch at the time was that he was desperate. I accept that Mr Palmer would have viewed him in that way. I think that was probably a fair assessment.

[29] Yet against that background Mr Schoch said that Mr Palmer rang him on 8 June 2011 and the conversation went as follows (emphasis added):

Well, I said, you know, hi, Clive. And he went straight into it. **He said Bill, work for five years for \$5 million. That's a million dollar salary a year. And I said yes, great. Thank you.** And he then went on and he said that should be enough to – so that you can be comfortable. You can – and he went on further to say that that would be enough for you to be able to retire in five years' time, for you and Jen, and we can have peace of mind about that. We could work for him and have a good time in the meantime. And Jen would be happy about that. And I said yes. **Then he went on and said I've got lots of deals on the go, and he said but you can help me get them up and get money in, and I said yes. And he said that – he said that we'd be on a – I'd be on a starting salary to start with, and the rest of the money would come in later soon.**

² See at [81] *et seq.* below.

- [30] Mr Schoch evidence in relation to the face to face meeting two days later on 10 June 2011 was as follows (emphasis added):

Basically, Clive went through all the things that had – that he was on about. He said to me that the fight in Hong Kong – you know, he’s pulled that, but there’s lots of people that are keen to carry on with it, and – so the main thing was the coal opportunity, which was named China First.

Yes?---**And he said to me you can be CFO of China First Coal, and I said yes. Thank you.** And then he – you know, previously had mentioned a few other things that he wanted to have a look at. He did actually mention on that day, I believe, that he had a future issues with the tax, but he didn’t actually say anything more about it. We had a bit of a conversation about the tax, and, because, as you know – well, with my qualifications and experience and dealing with him before that was of interest to me. So, you know, I accepted the position as Chief Financial Officer of the company, which was, basically, a subsidiary of Mineralogy. It was really a project out of Waratah Coal.

All right. Look, a couple of other things. **Did he say what your salary would be?--- Yes. He did. He said the starting salary would be \$100,000.**

All right. Well, did you question him about that?---Well, you know - - -

Well, he previously mentioned a million?--- Pardon?

He’d previously mentioned a million, had he not?--- Well, that’s right. I agreed to five million for five years, and he’d said on the Wednesday there’ll be a starting salary and the rest soon. And on the day that I went in, that is, on the Friday, he said that it would be in soon, by the end of the year, that is, by December.

What would be in soon?---Well, the royalty. **He said that the royalty from Citic Pacific payable to Mineralogy would start by the end of the year, and with that in that would kick in my salary to a million a year. And I said great.**

- [31] It is not obvious from that evidence that the obligation to pay at \$1,000,000 per annum was conditioned on anything at all, let alone anything which Mr Schoch might have done. I make the following observations:

- (a) If one has regard to the words which Mr Schoch actually attributes to Mr Palmer, the liability to pay the \$5,000,000 over five years was absolute and not actually conditioned upon anything at all. It would start to be paid at a rate of \$100,000 per annum, but that would change by December 2011, when an event which was expected to bring an increased cash flow (namely the commencement of receipt of Citic Pacific royalties) was expected to occur. Mr Schoch does not give evidence that Mr Palmer said anything which would indicate that if the expected event failed to eventuate, the payment would simply stay at the rate of \$100,000 per annum.
- (b) That evidence contrasts starkly with the complexity of Mr Schoch’s pleaded case (a case for which he must have been the source of instructions) which was that the material terms of the contract were conditioned upon an event occurring to bring “money in” to the Palmer Group. Paragraph 5 of the pleading suggested that the material terms of the contract were:
 - (a) that the plaintiff would work for and be paid by the first defendant, but would also work for or be engaged in tasks for any company within the Palmer Group as directed or allotted by the third defendant from time to time,
 - (b) that the term of the said employment contract was for 5 years commencing as from Friday the 10th June 2011 and terminating on the 9th June 2016, unless extended by the parties,
 - (c) that the plaintiff was to be paid the total salary of \$5,000,000 for that 5 year period of employment, at the rate of \$1,000,000 per year,

- (d) that until any one event occurred to bring "money in" to the Palmer Group such as the expected royalty of about \$500,000,000 per year (variable on the market price) from the export of product from the Sino Iron Mine & Processing Plant in Western Australia or from the completion of deals in progress from time to time and as otherwise defined in paragraph 6 (g) below, the plaintiff would commence work on 10% of the agreed annual salary amount being a starting base salary of \$100,000 per annum to be moved up by a deferred 90% salary payment to the full annual salary, expected to be soon after the start date and within about six months, before the end of 2011,
 - (e) that, when any one event happened to bring "money in" to the Palmer Group, the plaintiff would be paid by the first defendant the deferred salary amount so as to ensure that the plaintiff received \$1,000,000 per year for each year of the 5 year term of the contract, provided always that the plaintiff was to be paid the sum of \$5,000,000 in total by the end of the 5 year period,
 - (f) that, as an incentive to earn the full salary earlier through his own efforts than otherwise might be the case, when any one event happened to bring "money in" to the Palmer group in respect of which the plaintiff had been allotted a task by the third defendant, the deferred 90% salary payment to bring the annual salary up to \$1,000,000 would take place,
 - (g) that the expression "money in" means and includes cash inflow to the Palmer Group in whatever way, shape or form including by way of cash inflow from the iron ore royalty, equity capital investments, the sale of assets, joint ventures, litigation or settled litigation, from any transaction that resulted in a realised profit, new income producing projects, dispute resolution settlements, and included money outflows saved from corporate restructuring or "right sizing" but excludes income from normal operating businesses, such as sales turnover of the second defendant, unless that income related to or arose out of an allotted task.
- (c) The pleaded "money in" condition was not justified by the evidence of Mr Schoch, or any other evidence in the trial. The contrast between his pleaded case and his actual evidence is another reason to form an adverse view about Mr Schoch's credibility.
- (d) However, despite not giving evidence which would justify the pleaded "money in" condition, it became clear during cross examination that - at least in Mr Schoch's own mind (even though it was not founded on anything Mr Palmer said) - his entitlement to the increase in salary was conditioned upon something occurring, it was just something occurring which had no particular reference to his own efforts. The relevant passage was as follows (emphasis added):

So is it right to say your recollection of the conversation with Mr Palmer on the Friday is that the source of money coming in, which would lead to your salary kicking up to a million dollars a year, was the royalty payments from the Sino Iron project?--- Well, yes, at that stage that was the main source. Of course it was.

No. Sorry, let's be clear. I'm talking about what you say Mr Palmer said to you. As I understand your evidence from yesterday, what Mr Palmer said to you was that the source - not the main source, not a possible source, not an alternative source, but the source was the royalty payments from the Sino Iron project, correct?--- No. He didn't categorically put it that - that the source of it was that. I mean, I had the starting salary - I mean, obviously, I had to work on various tasks and things, but his source of - of money to pay me, it was structured so that when he got money in, I got money in. That's all. It was - it was a structuring exercise for him.

Well, do you say that Mr Palmer told you that, or that's something you inferred from what he said to you?--- Well, no, look, he - you know, he - he mentioned that the Sino Iron royalty, you know, was - was coming in and as - and, yeah, and when that was in I'd get paid. Yes.

All right. So - - -?--- And soon, because it was expected pretty shortly but, you know, by the end of December.

All right. So, again just so I'm clear, at the end of your conversation with Mr Palmer - -
-?--- On the 10th.

- - - on the 10th of June - - -?--- On the Friday, yes.

- - - **on the 10th of June, your understanding was that your starting salary will be \$100,000 a year. Is that right?--- That's correct.**

And that salary would soon increase to a million dollars a year?--- That's correct.

And that would be soon because Mr Palmer's expectation was that the royalty stream from the Sino Iron project would commence soon. Is that right?--- Well, I'm not sure what his expectation of it was, but his expectation was soon.

All right. **And then so is it fair to say it was your understanding that your entitlement to have your salary go to a million dollars a year was not dependent on anything you did either in terms of what work you'd do or the outcome of it. Is that right?--- Well, he didn't say that. I mean, obviously, he wanted me to work my backside off.**

All right. But as – as you understand it, in your evidence, your entitlement to be paid a million dollars a year was not linked to any work you did or the outcome of any work you did. Is that right?--- Well, on the 10th, no, because he mentioned all these different tasks, all these things that he had – opportunities that he had and he would have said – he said that to me on the basis that, you know, I could be his number two. I could help him out and get all those deals up. So I – I had no doubt in my mind that I would be doing lots of different tasks and I think from my belief, my understanding of it was, was that I was starting off at a salary – a starting salary because the other money hadn't come in, his float had failed to get up, but he had all these people coming to him saying that don't worry about the float, we'll deal with you direct, and he wanted somebody like me to be able to assist him to get those guys [a]cross the line. You know, by the float failing he saved himself \$170 million in commissions. Here was me, you know, he got me for five million.

Sorry, just let me understand what you say. Let's work backwards. Mr Palmer never said anything to you about saving \$170 million in commissions, correct?--- No, he didn't.

He didn't say anything linking the \$5 million you say he told you he'd pay you with savings he might have made from the failure of his float. Correct?--- He didn't say that, but I know that's the way he worked after dealing with him for 34 years.

All right. I'm going to stop you?--- Okay.

I just want to stick with what he told you for a moment, if I may?--- Yes. Certainly.

He never at any stage said, "You're worth \$5 million, Bill, because of the outcome of the work that you're going to produce for me," did he?--- No, he didn't say that. But that's why I was there, I was clear about that.

[32] Mr Schoch developed a scenario in which, it was submitted on his behalf, Mr Palmer's making him such an offer made sense. His hypothesis was this:

- (a) In June 2011 Mr Palmer had embarked upon an ambitious attempt to float a company on the Hong Kong Stock Exchange. That attempt ultimately failed. Had it succeeded it would have been made Mr Palmer one of the wealthiest men in Australia.
- (b) Mr Palmer sought to embark upon an alternative strategy essentially to achieve the same result. Privately and without the assistance of formal brokers and other advisers, he would seek to get buyers or joint venturers for the two primary assets the subject of the failed float, namely Mineralogy's "China First" coal project in Queensland's Galilee Basin and its iron ore project in Western Australia.
- (c) Part of that strategy was that Mr Palmer would use his trusted friend Mr Schoch to achieve what others could not. \$5,000,000 to his trusted friend would be insignificant when compared with the money he stood to make.

[33] The problem with that scenario was that there was nothing in the evidence which demonstrated that any objective assessment of Mr Schoch's skills and business acumen would lead a business person like Mr Palmer to have such a high regard for him, either at all, or in the particular circumstances in which the offer was made. Indeed, Mr Schoch's income during the almost 5 years of his consultancy would suggest the contrary.

[34] Mr Palmer was, at the time, alert to Mr Schoch's position. His view appears in the following passage, which I accept accurately describes what he thought at the time:

And I'm putting to you that, on the same day as the newspaper article, you rang Mr Schoch, because you thought that he would be somebody useful in advancing these projects?--- Well, firstly, that's not true. My view at the time was Mr Schoch had not had any success in his - any commercial career. And he'd previously visited us with some people who were trying to tell us technology for looking at oil through the crust of the Earth. We'd given that package to engineers and they had - came back and said they were a technical fraud, and that's why we didn't employ Mr Schoch in 2010. And we didn't hold that against him, because he was only an accountant. He didn't know they were fraudsters.

Well, nothing much happened between 2010 and 2011. Why employ him all of the sudden?-- Because he got more desperate, he was unemployed - - -

I see?--- - - - and he had a family to support..

[35] Moreover, Mr Palmer rejected that notion that Mr Schoch was somehow a cheaper equivalent of the type of advisers that he had had in the failed IPO in the following passage, which rejection I accept to be true. Having rejected the cross-examination suggestion of Mr Schoch's version of the conversations, the questions and answers went as follows:

Yeah. Couldn't possibly have said this?--- It's just fabrication.

Well, Mr Palmer, you're a good salesman. That's exactly the sort of thing that you'd say to someone if you were attempting to convince them to take up a position, isn't it?--- Mr Schoch wrote to me. I didn't write to him. No one earns a million dollars in our thousands of employees. His immediate boss only earns \$350,000 at - at QNI, and his boss at Waratah earns around 250,000. He was petitioned for bankruptcy in 2006. Why would we offer him something like that? It's just rubbish.

Because you saw an opportunity to continue on with the Resourcehouse transaction, and you thought you needed some help?--- The resource transaction was handled by Raymond Tam in Hong Kong, former Vice President of J.P. Morgan. Bill Schoch has had no merchant banking experience in his entire life.

This was not necessarily a merchant banking role that you were offering him, was it?--- It was an accounting role - - - Yes?--- - - - which he had experience for - ticking boxes.

[36] To my mind, it is inherently unlikely that Mr Palmer would make an offer to Mr Schoch at the alleged quantum, whether it is analysed at \$5,000,000 for five years or \$1,000,000 per annum for a five year term. That was more than anyone else in Mr Palmer's group was earning and more than twice as much as executives senior to what was proposed to be Mr Schoch's position³.

[37] Further, there was nothing in the previous business or personal relationship between Mr Schoch and Mr Palmer or in Mr Palmer's view of Mr Schoch's personal skills or qualifications which would suggest any likelihood that Mr Palmer would take such an extraordinary step. Mr Schoch's suggestions to the contrary were exaggerated and I do not accept them. The fact of the matter is, as I have mentioned, that apart from one audit engagement, there had been no significant financial relationship between the two for over

³ The proposition would not be much diminished if I were prepared to accept (which I would not be without some corroborative evidence) Mr Schoch's evidence that he had knowledge of a Palmer executive who was paid \$500,000.

25 years. That Mr Palmer would ring Mr Schoch up and make him the offer which Mr Schoch said he did, is an inherently unlikely proposition.

- [38] And even if I was prepared to accept the proposition that Mr Palmer was inclined to pay Mr Schoch the suggested amount, the notion that Mr Palmer would in June 2011 have needed to structure the obligation to pay that amount of salary in a conditional way for cash flow reasons seems unlikely in view of his unchallenged evidence that at that time his group had a cash flow of \$600 million per year and he, being the owner, could move funds where he liked. And even if he had been motivated to structure an obligation to pay an additional \$900,000 per annum to an employee by making the obligation conditional on the occurrence of events which would bring “money in”, I think it is inherently unlikely that he would do so without also conditioning that obligation on the employee having been causally involved in the occurrence of the bringing in of the money.

Mr Schoch’s story was contradicted by the contemporaneous record

- [39] Inherent unlikelihood was not the only problem for Mr Schoch. The contemporaneous record was not consistent with his version of events, and his attempts to explain away the inconsistencies made matters worse for him.
- [40] First, although Mr Schoch’s case turned on both the phone conversation on 8 June 2011 and the face to face conversation on 10 June 2011, he nevertheless said he thought he had a deal after the end of the conversation on 8 June 2011 for employment at a salary of \$5,000,000 over five years. Yet later that day in an email to an associate he wrote “Clive just rang and offered me a full time job ... salary plus bonus” and “Meeting him 8.30am Friday. Fingers crossed.” This is inconsistent with the notion of a deal already having been struck, but I do not see that as particularly important. That a witness might conflate the details of conversations which were two days apart when giving evidence four years later would hardly be a surprise. Much more significant is the description of the offer as “salary plus bonus”. This is inconsistent with Mr Schoch’s version of the agreement and consistent with Mr Palmer’s version.
- [41] Second, and I think most importantly, was the employee details form which Mr Schoch filled out for Mineralogy’s Human Resources department on 17 June 2011 which (adjacent to the space for pay-rate) contained the note in Mr Schoch’s handwriting of the words “\$100K + Bonus as agreed”. I make the following observations:
- (a) Reference to a base salary “+ Bonus” was consistent with the email referred to in the previous paragraph and consistent with Mr Palmer’s version of the agreement.
 - (b) The reference to “\$100K + Bonus as agreed” was inconsistent with Mr Schoch’s version of the agreement. I agree with the defendants’ submissions that Mr Schoch’s explanations for that notation and his attempts to reconcile it with his case bordered on the bizarre.
 - (c) It must first be noted that Mr Schoch was not unsophisticated in matters of legal obligation and business: he had a law degree and had been a chartered accountant for over 28 years. It must then be noted that the quantum of the remuneration said to have been agreed with Mr Palmer gave Mr Schoch ten times what he had earned as a consultant over the previous five years. Indeed, it was probably much more than he had been earning in his accountancy practice at the time of its sale. Finally it must be noted that Mr Schoch said that in making the note he was conscious of the fact that he had an oral agreement with Mr Palmer, that he thought Mr Palmer was not a healthy man, and that he thought he had to document the deal. The only logical reason for that course was so that he would be able to demonstrate his lucrative entitlement to

someone other than Mr Palmer, in the event that Mr Palmer was not there to back up Mr Schoch's version of events.

- (d) Against that background, the notion that writing "\$100K + Bonus as agreed" was an attempt by Mr Schoch to document his version of the deal is a ridiculous one. On Mr Schoch's version of the deal, the \$900,000 per annum was not a "bonus" on any sensible use of that word. And even if, to Mr Schoch's mind, it had been, given –
- (i) the quantum of the total remuneration compared to his previous income levels; and
 - (ii) his motivation to be able to demonstrate his entitlement to someone other than Mr Palmer, if some health problem meant Mr Palmer was not there to back up his story,

surely, having documented the quantum of the base salary, if there was any truth to his story he would have documented the quantum of the bonus which was 9 times the amount of the base salary? He could easily have done so by writing "+ \$900K Bonus as agreed".

- (e) Mr Schoch tried to suggest that the reason he did not take a course which actually documented the real level of the agreed remuneration was that he wanted to use some sort of code. This was somehow related to the fact that he was conscious of a need to keep the amount confidential from the payroll staff at Mineralogy. But that made no sense for two reasons. First, he had already said that he was motivated to document the deal because of concerns about Mr Palmer's health. If so, how does a code help? Second, he stated that his expectation was that Mr Palmer would document the deal or that the payroll staff would take the matter up with Mr Palmer, and Mr Palmer would then tell them. If so, again, what is the point of a code?
- (f) I reject Mr Schoch's explanation of what he wrote on the employee details form.

[42] Third, is the email from the Mineralogy Finance Director to Mr Palmer dated 22 June 2011 to which I have referred at [13] above. Although of lesser significance than the previous document (because its author was not present during the relevant conversations), it is nevertheless consistent with Mr Palmer having given some instructions to appropriate Mineralogy staff of what had been orally agreed with Mr Schoch (as Mr Schoch in fact expected he would do) and with those instructions having been consistent with Mr Palmer's version of events and inconsistent with that of Mr Schoch.

[43] Finally, there is the written contract of employment with Queensland Nickel which Mr Schoch executed on 10 March 2012 and to which I have referred at [17] above. For present purposes, it suffices to note that, as suggested by the defendants, the principal features of that document are inconsistent with Mr Schoch's version of events. It purported to be an entire agreement. There was no five year term for \$5,000,000, no \$1,000,000 per annum salary. The salary was \$150,000 plus a discretionary bonus and the arrangement was terminable by either party on one month's notice. Unless he was misled into signing the document or the contract was a sham – and, as I will address later in this judgment, neither possibility was true - then the document is inconsistent with Mr Schoch's version of events.

[44] The upshot of the foregoing is that there was no contemporaneous record in evidence which was consistent with Mr Schoch's version of events. Rather the contrary was the case and the contemporaneous records favoured Mr Palmer's version of events.

Mr Schoch's story was inconsistent with his own conduct

- [45] I mentioned at [18] above, that in December 2013 Mr Schoch's email reaction to his termination as an employee of Queensland Nickel was to mention his five year \$5,000,000 deal.
- [46] It is a curiosity, to say the least, that even on Mr Schoch's own evidence, that was the first time since 10 June 2011 that Mr Schoch had ever made reference orally or in writing to such terms of remuneration to anyone at Mineralogy or Queensland Nickel, including to Mr Palmer.
- [47] I have already mentioned some aspects of Mr Schoch's conduct which were inconsistent with his story, namely the note he wrote on the employee details form in June 2011 and the fact that he was prepared to execute the Queensland Nickel contract in March 2012. Even if one could overlook those issues, it is strange that Mr Schoch never enquired of anyone, let alone Mr Palmer, why he had not yet been paid his \$1,000,000 salary. After all, on Mr Schoch's version of events, he thought that it was owed to him once the time limit of the end of December 2011 had passed.
- [48] Although there were other matters raised by the defendants as reflecting poorly on Mr Schoch's credit, I think that only one needs to be mentioned, namely the startling evidence concerning Mr Schoch's decision to run for Parliament in the September 2013 Federal election. I make the following observations:
- (a) Mr Palmer asked Mr Schoch to nominate as a candidate for Fisher as a member of Mr Palmer's political party in about April 2013 and Mr Schoch agreed to do so.
 - (b) He was confronted in cross-examination with the difficulty that his apparent willingness to embark on that course might have for his alleged five year \$5,000,000 deal in the following passage (emphasis added):

Now, did you – when deciding to stand as a candidate for Fisher – give any thought to the effect on your employment agreement if you were elected?--- Well, as far as I was concerned it was just another task allocated by Clive.

So do you suggest that you thought that if you got elected to federal parliament, Clive would still pay you \$5 million over five years?--- Well look, the chance of me getting elected to parliament I thought was absolutely zero. I'm not a political animal. I have no political interests really. It was just another task of Clive. Clive had big – big projects to get up and needed government – state government, federal government, international government support. So one of the – his strategies is the political process because he needs – he needs – he needs support for what – for what he does and I was happy to participate in that process.

If you had an agreement to be paid \$5 million over five years, it would be an obvious question to ask Mr Palmer, wouldn't it, what would the effect on my agreement be if I was elected to parliament. Pretty straightforward question [indistinct] isn't it?-- Look, I – I – look, it's not in my nature to go into those sorts of things. I mean, I had an agreement for \$5 million over five years. Even if I gave him back the – if I was elected – whatever that salary was, I was happy to do that.

No. No. No. Sorry. Understand – what I understand, your answer seems to be in two parts. The second part of that, being happy to do that, suggests that you somehow thought you'd still be paid \$5 million if you were occupying a seat in federal parliament. Is that what you're saying?--- Well, if – if – if the conditions that I was hired on came about, it's quite normal. But if you're working in a thing and you take on a professorship or something and you get paid, you – you kick that money back to the employer. And that's what I believed.

I just want to be crystal clear about this. You say that when you agreed to stand as a candidate for federal parliament, your belief was that if you were elected you would still be paid \$5 million over five years and that your salary from the

Commonwealth of Australia would be paid back to your employer. Is that what you're saying?--- Yes.

- (c) This evidence was either a fabrication by Mr Schoch in an attempt to reconcile his actual contemporaneous conduct with the case he advanced before me, or the revelation of surprising lack of insight into what constitutes ethical or lawful conduct in relation to very serious matters. For present purposes it suffices to note that Mr Schoch's concession that he did not raise any of this with Mr Palmer, means that his agreeing to run for Parliament in 2013 was another exemplar of conduct inconsistent with his story.

[49] I find that Mr Schoch's conduct – at least up until his December 2013 email assertion of the five year \$5,000,000 deal - was not consistent with his version of events. On the other hand, it was entirely consistent with the Mr Palmer's version of events, namely that there was –

- (a) an oral deal for \$100,000 base salary plus a discretionary bonus; and
 (b) consequent upon a transfer to Queensland Nickel, a written contract for a \$150,000 base salary plus a discretionary bonus.

Conclusion on Mr Schoch's credibility

[50] I do not regard Mr Schoch to be a credible witness.

Mr Palmer

[51] Mr Palmer's evidence of the critical conversations in June 2011 was as follows (emphasis added):

Do you recall whether, at some time after receiving this letter of May 2011, you telephoned Mr Schoch?--- I did, yeah.

All right. Do you recall when that was?--- That was in early June – 6th or 8th – or round – round – round the 8th, I think.

All right?--- I telephoned him to see if he wanted to come in for an interview.

All right. Can you tell me, as best you can recall, what you said and what Mr Schoch said in the phone conversation?--- **Well, the – I – I called him, and the – the purpose of my call – I conveyed to him – was to see whether he wanted to come in and have a discussions about his letter about the possibility of any positions with our company, and I said that it would have to be a – a – a start and see how you went sort of situation. He discussed with me what we were doing – about the Resourcehouse float and – he'd read about it – and I'd said that our business was going well, that we had a revenue of about six to seven hundred million dollars a year within the group. And then, I think, we made a time for him to come in – discussed how he would get there, and as I lived in the western suburbs I agreed to pick him up to come in to have a talk.**

Right. And on what day did he come in to have a talk?--- I think it was about the 10th, you know, that – that – that – or around that time – that I collected him on the way to work one morning to come into our office.

All right. Again, can you tell me, as best you can recall, the conversation between you and Mr Schoch in your office on the – **the 10th of June?---** **Well, I discussed with him that we didn't have any particular job available at that time, but we'd be happy to put him on to see how he went – on a casual basis – and we offered him a salary of \$100,000 a year, plus a discretionary bonus. I wrote down the main points with him and – see whether he was happy with that, and he indicated he was happy with that to start with. And I then gave that to our accountant, Derek Payne, to prepare an employment letter.**

All right. And can I stop – pause there. Did you discuss with Mr Schoch on the 10th – when you'd taken him into the office – what job he might have to start with?--- **Well, I said he'd be – looking at his accounting background, that he'd be working on the China First project, which was a project with one of Mineralogy's subsidiaries, Waratah Coal, and that he'd be reporting to – to Nurie Harris, that was the Managing Director of that**

Company, and be doing a – mainly an accounting function, or assisting where he could, and acting as a dogsbody.

- [52] Mr Schoch's counsel suggested that it sounded against acceptance of Mr Palmer's evidence that Mrs Schoch's unchallenged evidence of hearing one side of the conversation on the 8th was inconsistent with Mr Palmer's version of events. Certainly the tenor of Mrs Schoch's evidence was inconsistent with Mr Palmer's evidence that there was a lengthy discussion between the Mr Schoch and Mr Palmer on the 8th on the matters Mr Palmer described. On the other hand Mrs Schoch said the conversation took maybe six or seven minutes which is itself inconsistent with the brevity attributed to the conversation by Mr Schoch. At worst for Mr Palmer he has conflated some details of the conversation on the 10th with the conversation on the 8th. I do not think any damage has been done to his evidence by the inconsistency.
- [53] Another alleged inconsistency was said to be found in Mrs Schoch's evidence that Mr Palmer was insistent that he speak to her husband to such an extent that he was prepared to wait while she trudged down six flights of stairs to give her husband the telephone handset. Mr Schoch's counsel suggested that this demonstrated urgency on the part of Mr Palmer was inconsistent with Mr Palmer's position that he was just doing Mr Schoch a favour. I disagree. That was not how the evidence struck me. I do not think there is any inconsistency.
- [54] Mr Palmer's version of events was consistent with relevant contemporaneous evidence, namely Mr Schoch's own note placed on the employee details form of 17 June and the email from Mineralogy's Finance Director of 22 June. And his version of events was inherently more likely than that of Mr Schoch.
- [55] There were some aspects of Mr Palmer's evidence which I found troubling. In particular, there were occasions in which he made gratuitously adverse remarks concerning Mr Schoch, and where the remarks seemed to me to be calculated to belittle Mr Schoch or to exaggerate his unimportance⁴. It struck me that this conduct was probably a response to Mr Palmer's view that Mr Schoch's case was an attempt to extort monies from him. It did, however, reflect badly on Mr Palmer.
- [56] However, despite those matters, I found Mr Palmer to be a credible witness in relation to the circumstances of the oral engagement in June 2011. To my mind his credit on these matters was not significantly damaged by cross-examination.

The existence of the June 2011 oral agreement for which Mr Schoch contends

- [57] For the reasons I have articulated in the remarks I have made concerning the credibility of the two principal protagonists, I do not accept Mr Schoch's version of the events which occurred during the two conversations which he had with Mr Palmer in June 2011. I prefer that of Mr Palmer.
- [58] Accordingly, I find that it is more probable than not that, during a telephone conversation between Mr Schoch and Mr Palmer on 8 June 2011 and a face to face meeting on 10 June 2011, Mr Palmer offered Mr Schoch a job as CFO of Mineralogy's subsidiary China First with a starting salary of \$100,000 per annum plus a discretionary bonus and Mr Schoch accepted that offer.
- [59] I reject Mr Schoch's evidence that Mr Palmer's offer was that Mineralogy would employ Mr Schoch for five years for \$5,000,000 that is \$1,000,000 per annum. I reject the proposition that anything along those lines was said either during the telephone conversation on 8 June 2011 or during the face to face meeting on 10 June 2011.

⁴ For example: T4-13 lns 16-18; T4-5 lns 20 – 27; T4-28 line 27; T4-31 line 31;

- [60] One of the questions which has troubled me is why Mr Schoch would advance the case he has. Indeed, counsel on his behalf submitted that the fact that a man with the qualifications and experience of Mr Schoch had advanced such a complicated story, was a fact in his favour.
- [61] The defendants answer to the question is simple: Mr Schoch's story was an extortion attempt which has been exposed by the trial. However I am not prepared to make that finding. Mr Schoch did not strike me as a person who had embarked upon a calculated fraud.
- [62] I think it is possible that Mr Palmer made statements to Mr Schoch as to how well Mr Palmer's businesses were going. Mr Schoch may have gained a favourable impression of his chances of earning a significant bonus or bonuses. He may have somehow convinced himself that he had been promised such a bonus or bonuses and then the rest of his evidence became an attempt to reconstruct reality into a form which matched his (false) starting point. The evidence does not permit me to conclude that this is what happened, or, whether there is some other better explanation for his conduct other than that which the defendants would support.
- [63] Ultimately I have not reached a satisfactory answer to the question I have posed at [60]. But I do not think I have to. The critical consideration is that I am not persuaded by Mr Schoch that anything at all was said which an objective third party could have regarded as giving rise to enforceable obligations against Mineralogy of the nature of those for which Mr Schoch contends.
- [64] The result is that Mr Schoch's claim must fail.

The enforceability of the June 2011 oral agreement

- [65] Had Mr Schoch come up to proof on his pleaded case concerning the "money in" condition (quoted at [31](b) above) there would have been a real question of whether a promise to pay subject to such a condition was sufficiently certain to be enforceable and, if it was, whether the condition had been met. The pleaded condition is a very odd one because of the definition attributed to "money in". There is no particular quantum involved. Would the condition have been satisfied by \$1 coming in, \$100 coming in or \$1,000,000 coming in? If the evidence had justified the alleged terms, there would have been a real doubt as to whether one could conclude an enforceable obligation to pay the deferred amount at all.
- [66] To my mind, however, the issues of certainty, enforceability and whether the condition had been met were more hypothetical than real. If I had accepted Mr Schoch's version of events over that of Mr Palmer, I could not have found that the agreement had the terms pleaded in paragraph 5 of the statement of claim because Mr Schoch's evidence of what was actually said and done at the time the alleged contract was struck did not support that pleaded case. I agree with the defendants' submission that there is no proper process of construction which could give to the words which Mr Schoch said were used, the meaning attributed to them in paragraph 5(g) of the statement of claim.
- [67] Mr Schoch's statements concerning his understanding of the conditional nature of the deal came closest to supporting something like the pleaded case. However his subjective understanding is irrelevant to the proof of the terms of a contract, even if I had been prepared to accept his evidence.
- [68] If I had been persuaded of the truth of Mr Schoch's evidence concerning the relevant conversations with Mr Palmer, that evidence would have tended to support an absolute and unconditional promise to pay \$5,000,000 over five years, the timing of which was affected only by the fact that the salary would be paid at the rate of \$100,000 per annum until

December 2011 when it would change. There would have been no particular enforceability issue with that case. Of course, that was not the case pleaded.

- [69] Ultimately, these speculations are not to the point. Mr Schoch has not persuaded me to accept his version of what transpired during the two conversations with Mr Palmer. There was no enforceable obligation to pay as he had suggested in his evidence, let alone as he had pleaded in his statement of claim. It is unnecessary to embark on an analysis of whether the condition alleged in the statement of claim had been met.

The significance of Mr Schoch's transfer from Mineralogy to Queensland Nickel

- [70] Email chains in evidence before me reveal that a problem developed with the management of the Hyatt Coolum such that Mr Palmer's relevant entities were having problems accessing relevant financial information. A decision was made that an employee had to be located at the Hyatt Coolum to be a commercial representative and joint signatory for all payments and to be a conduit of information to and from the relevant Palmer entities.
- [71] The person selected to do so was Mr Schoch. As I have mentioned, he was transferred to and later signed an employment contract with Queensland Nickel.
- [72] A problem for his case was how any part of the deal he said he had with Mineralogy could survive the cessation of his employment by Mineralogy and the commencement of employment by Queensland Nickel. Hence the three possibilities earlier mentioned, namely:
- (a) the conduct of the parties leading to the transfer to Queensland Nickel in February 2012 resulted in the existence of two contracts: one obliging Queensland Nickel to pay the agreed base salary, and a second obliging Mineralogy to meet the deferred salary obligation; or
 - (b) the conduct of the parties leading to Mr Schoch's transfer to Queensland Nickel in February 2012 resulted in the transfer of all of Mineralogy's obligations (including the deferred salary obligation) to Queensland Nickel, those obligations were then superseded by the written employment agreement of 10 March 2012, and that agreement is liable to be set aside on the basis that Mr Schoch was misled into signing it; or
 - (c) the conduct of the parties leading to Mr Schoch's transfer to Queensland Nickel in February 2012 resulted in the transfer of all of Mineralogy's obligations (including the deferred salary obligation) to Queensland Nickel, the effect of the March 2012 agreement would have been to supersede them, but neither Queensland Nickel nor Mr Schoch intended the agreement to have effect.
- [73] It is appropriate to examine first the contemporaneous documentation concerning the transfer and then to examine what the parties said about it.

The documentation

- [74] On 2 February 2012 Mineralogy's Finance Manager circulated an email regarding Mr Schoch's employment to the following affect:

I have been instructed by Clive to advise that current Mineralogy employee, Bill Schoch is to be administratively transferred to Queensland Nickel as Commercial Manager to be located at Hyatt, Coolum. Bill will take up his post the week commencing Monday 3 March 2012.

Alan, I will forward Bill's personal details for HR shortly.

- [75] Shortly thereafter Mr Schoch emailed the Mineralogy company accountant requesting reimbursement for an iPad which Mr Palmer had requested that he get. Mineralogy's company accountant emailed Mr Schoch stating "I believe that you are now working for

QNI, in that case can you please request your reimbursement to them”. When asked in cross-examination whether he did make a request for reimbursement to Queensland Nickel after receiving that email, Mr Schoch confirmed that he had.

- [76] On about 23 February 2012 Mr Schoch filled out the following forms –
- (a) an employee details form addressed to Human Resources Queensland Nickel Pty Ltd identifying Mr Schoch as “new employee transfer frm Mineralogy Pty Ltd”;
 - (b) a new tax file declaration form; and
 - (c) a choice of superannuation fund form identifying his employer as Queensland Nickel Pty Ltd.
- [77] Then on Friday 2 March 2012 Mr Schoch emailed Derek Payne, the Finance Director of Mineralogy concerning his pay slip stating “I presume QNI take over from here 3 March 2012 ... & QNI are aware of the change to the base rate offered by Clive?”
- [78] Mr Payne’s response was “Yes, should all work out. Let me know if you think it is incorrect. Your accrued entitlements for leave have been transferred to QN”.
- [79] The final relevant step in the documentation is the March 2012 contract with Queensland Nickel, to which I have earlier referred.
- [80] I observe that thus far the contemporaneous record reveals conduct and documentation consistent only with the cessation of Mr Schoch’s employment with Mineralogy, the commencement of his employment with Queensland Nickel, and the intentional documentation in writing of the terms of that employment.

What the witnesses said

- [81] Mr Schoch said that on the morning of 2 February 2012 before Mr Payne’s email was circulated Mr Schoch got a message from Mr Palmer’s personal assistant that Mr Palmer wanted to see him. He went to the boardroom and Mr Palmer said to him words to the effect of “I am going to increase your salary by \$50,000 up to \$150,000 and you are going to get paid by Queensland Nickel now”. He responded “Okay”. He said nothing further was said. Mr Schoch said that the following Monday (2 February was a Thursday) he basically quit his office at Queen Street, packed up everything and moved to the Hyatt Coolum to start work.
- [82] Prior to the contract being signed neither Mr Palmer nor anyone else on behalf of the Palmer Group of companies had suggested to Mr Schoch that he would be asked to sign a contract with Queensland Nickel.
- [83] He attended a Queensland Nickel meeting at Avica Resort on the Gold Coast on the weekend of 10 and 11 March 2012. The meeting was for the purpose of introducing new cadets into the Queensland Nickel organisation.
- [84] When Mr Schoch returned to the meeting room after lunch he found that someone had placed on the meeting table a whole collection of envelopes with people’s names on them. One of the envelopes was marked to Mr Schoch’s attention.
- [85] Mr Schoch opened the envelope and saw the contract that he ultimately signed. He looked at clauses 1, 2 and 3 including the clause that cross-referenced to the schedule which contained the information I have recorded at [17] above. He knew CDLI to be a real estate holding company which was not operating. He noticed the reference to \$150,000 which matched what Mr Palmer had told him on 2 February. In his evidence in chief Mr Schoch described the process in this way:

And away I went pretty quickly to the 150, because I had made inquiries to make sure that that was all done. And sure enough, there it was – a 150 and it matched exactly what Clive told me on the 2nd of February. So I was happy about that. And the date was the same – to the 3rd of – the 3rd of March. So I thought, well, okay this is the – well, so that's what I did. My belief was that this was just the end of a chain of paperwork adjusting my – you know – my – my old contract with – you know – with Clive as varied. Just like filling out all the administrative paperwork that I'd done before.

When you signed that contract, did you have in mind anything which had been previously said to you?--- Well, definitely. I mean, because Clive hired me and, as far as I was concerned, I wasn't ever asked to go through HR or all those sorts of things. As far as I'm concerned, the – the – the contract was with Clive and if Clive wanted to change my contract, he would have told me. So I thought, well, okay, this is – this is in line with what he – he told me on the 2nd of February. And – you know – because of our previous relationship, etcetera, I sort of thought, well, okay, Clive's a – says what he does and does what he says and that's good enough for me. So - - -

Did you - - -?--- I looked through the rest of the document. I didn't see anything that was – you know – it was just all standard type stuff before. You know, there was nothing there that really made me – you know – sort of – well, it – it didn't jump out at me. No. Nothing jumped out at me.

Did you consider what effect that this document had upon your agreement of the 8th of June 2012?--- Well, yes. I thought it basically was the end of a chain of administrative paperwork to document it all the way through as far as I was concerned. That's all – that's all I thought it was. Also, you know, I – I was well aware that Clive had said that – that I was being transferred up to – just for payroll purposes – up to Queensland Nickel. In other words, I'd still be doing everything that I was doing before, but that Queensland Nickel would be paying my wages. And I didn't care who paid my wages. If this was paperwork required to implement that, that'd be it.

- [86] In cross-examination Mr Schoch said that he did not understand from the email of 2 February 2012 that Queensland Nickel was to become his employer. Mr Schoch said that the email concerning the reimbursement for the iPad was not done by him because he thought Queensland Nickel was his employer. When pressed in cross-examination why he would sign the forms that plainly identify Queensland Nickel as being his employer the following exchange took place:

Can I take you, please, to page 651. Page 651 and 652 is a Queensland Nickel employee details form; is that right?--- That is correct.

And it's signed by you at page 652 on the 23rd of February 2012. Correct?---Correct.

And it records, amongst other things, that you were a new employee being transferred from Mineralogy in the top left-hand corner of page 651. Correct?---Well, that's what the form says, yeah, on the title. Correct.

That's what the form says. And then the details are all completed and you've signed the form?---That's correct.

Now, do you say that you signed the form in the firm belief that Queensland Nickel was not your employer; is that right?---I signed the form to get the \$50,000 extra salary that I understood that – that Queensland Nickel was paying.

So, just let me understand this, are you saying you signed this form knowing its content to be false in that Queensland Nickel was not to be your employer; is that right?---Clive had said to me that the – you're going to be paid out of Queensland Nickel now and so I've signed this form because that was part of the process. Where I was to be paid from, I didn't really mind as long as I was paid.

I'll ask you my question again. Please answer it. Are you saying you signed this form knowing it to be false because Queensland Nickel was not to be your employer?---Well, you know, I – I – look, I don't like the word – the use of the word false. I'm - - -

I know you don't. That's why I'm asking - - -?---I'm – I'm uncomfortable about - - -

- - - Mr Schoch, to see what you – if you’re going to tell me the truth. You knew Queensland Nickel was your employer, didn’t you?---No, I didn’t. I – you know, what I did know was that Queensland Nickel were going to be paying my – my salary and – and my reimbursements and that they were simply the payer but – but not the real employer.

I don’t want to prolong this too much. Go to page 654, which is also part of exhibit 15. Choice of superannuation fund standard choice form. That’s signed by you on the 23rd of February 2012?---Correct.

The employer’s name is Queensland Nickel Proprietary Limited?---That’s correct.

And did you sign that knowing that form to be - - -?---I did.

- - - false as well, Mr Schoch?---Yes, I did. I did.

You knew?---Yes.

This is the case, isn’t it, Mr Schoch: you think it’s important to your case now to maintain that Mineralogy remained your employer because that’s the way in which you think you can maintain your claim to \$5 million. Correct?---No, that’s – that’s the facts of the matter as – as – as, you know, explained to me on the meeting of the 2nd of February, you know, by Clive. So it’s not a – so that’s the reason that – you know, I mean, I follow directions, I follow deals that are done and that’s what – that’s – I was just following through.

That’s just nonsense, Mr Schoch, isn’t it? It’s just complete nonsense; do you agree?---Absolutely not. The – all these documents are just payroll administration thing. It’s – you know, to me – you know, this is just evidence of outsourcing of payroll administration, administrative stuff, to the company that’s going to pay my wages and account for my, you know, entitlements and all that sort of stuff that are current. So it’s not false in that sense at all. You’ve asked me is it false: I don’t believe it false in the sense that it was explained to me and agreed to me by Mr Palmer.

Well, just let me be clear about what you say was explained to you by Mr Palmer. Mr Palmer did not say to you, on the 2nd of February, “Mineralogy will remain your employer but you’ll be paid by Queensland Nickel,” did he? He said I will increase your salary by \$50,000. He didn’t – and he said but you’ll be – it’ll be paid by Queensland Nickel.

Is it your position, Mr Schoch, that throughout the time of your employment, by whoever it was, from February or March 2012, Queensland Nickel became liable to pay your base salary to you but Mineralogy remained liable to pay you the \$5 million over five years; is that your position?---Well, I hadn’t really turned my mind to that. As I said earlier, it was up to Clive as to where the money came from to pay his obligations. But – so I hadn’t turned my mind to that, no.

So the – just so I’m clear: the furthest your thought process has got was the view that Queensland Nickel was never your employer; is that right?---Yes. It was just my payroll employer.

- [87] I do not accept Mr Schoch’s explanation. I do not accept that, subjectively, in February and March 2012 he had any view other than that Queensland Nickel had become his employer in lieu of Mineralogy and that he had signed a contract governing the new employment relationship. His evidence to the contrary before me is not capable of being reconciled with the documentation, including documentation which he specifically filled out. My view was that his evidence in the passage I have quoted was motivated by his appreciation that it was adverse to his case that he had apparently accepted in contemporaneous documents signed by him that his employment had been transferred from Mineralogy to Queensland Nickel.
- [88] It is appropriate to have brief regard to the evidence which sounds on the question of whether Mr Schoch was misled into signing the March 2012 contract with Queensland Nickel.
- [89] There was no suggestion in Mr Schoch’s evidence that anyone had represented anything at all to him about the need to sign the document, other than by the mere placement of the document on a table together with documents addressed to other people. It was obvious from his evidence that no one from Mineralogy or Queensland Nickel or any one at all on

behalf of Mr Palmer's group of companies was placing him under any pressure to sign the document and indeed nobody told him that he had to sign the agreement on the day he saw it. He accepted that if he had wanted to, he could have consulted lawyers about the document. He was pressed again on the proposition the document was obviously an employment agreement with Queensland Nickel and reiterated the explanation I have already rejected that there was some distinction between Queensland Nickel taking over the payroll administration of his employment with Mineralogy and Mineralogy being regarded as his real employer.

- [90] His evidence in this regard was almost risible. Despite the fact that he acknowledged he read the document before he signed it (and the form of the document is unambiguous), he refused to accept that it must have been abundantly clear to him that it was a written agreement between Queensland Nickel as employer and him as employee. When pressed as to what part of the document could have indicated to him that it was not properly described in that manner, he pointed only to the fact that the location identified on the front page of the document namely "Palmer Nickel and Cobalt Refinery" was incorrect. I reject his evidence as to the state of his belief at the time.
- [91] Despite not having articulated any proposition of being misled in his evidence in chief, he did during cross-examination endeavour to say he had been misled by "a series of payroll administration activities" to a position where he "... thought that this was just the end of that chain of payroll changing over to the payroll employers". The proposition was encapsulated in the following exchange (emphasis added):

Just explain to me what it was about the activities between the 2nd of February and the 10th of March 2012 which misled you about that?---Okay. Well, Clive called me into his office after the Hyatt Coolum exchange of four emails where I – where he gave me notice of a task to be done and I said right, right. So that means acceptance in the way Clive and I deal with each other. So I met with him. He said I'm going to increase your salary by fifty. This was into the next year, of course, when otherwise I should have gone to the million. So the extra fifty was welcomed. Then he said that – I'm going to transfer you over to Queensland Nickel. They're going to pay you a salary now and, basically, he did not mention that the salary arrangements were going to change and that, as far as the million dollars a year, when other conditions happened, and he did not mention to me that he intended to put a document in front of me that, you know, did not say that. He said that this was just a payment of salary and that's it. And then, straight away, I received an email back which said that I was being administratively transferred up there. And that was consistent with what Clive had told me but a few minutes before. So I had it in – I had what Clive said verbally and it was confirmed in writing by the, you know, CFO there. And then there was a chain of administrative paperwork which came my way. So I duly signed it, duly sent it back and all that sort of stuff. And, in between there and there, Clive – even though I was staying at his home, even though I drove to the – Avica with him, he did not mention that he was going to change the terms in this way.

Just want to ask you, before we move on [indistinct] aspect of that. **So when Clive said to you, "I'm going to transfer you over to Queensland Nickel," you took that to mean Mineralogy was going to stay - - -?---No, he didn't say - - -**

- - - your employer; is that right?--- - - - he was going to transfer me. He said - - -

That was the evidence you just gave, Mr Schoch - - -?---He said - - -

- - - that Clive said he was going to - - -?---He said I'd increase - - -

- - - transfer you over to Queensland Nickel?--- - - - your salary by 50,000 and Queensland Nickel will pay it. There's a difference.

Well, the transcript will speak for itself.

- [92] In my view, when Mr Schoch said that Mr Palmer was going to transfer him over to Queensland Nickel and that Queensland Nickel would then pay his increased salary, that

was the truth. When Mr Schoch insisted moments later that he had not said that Mr Palmer had said he was going to transfer him over, that was because Mr Schoch was conscious that the concept of “transfer” was antithetical to his case. There was nothing misleading in the “payroll activities”. They were conduct consistent with what Mr Palmer told him. So was the subsequent fact of the execution of the written contract.

[93] Mr Palmer for his part gave evidence about the transfer which I accept:

And, again, can you tell me as best you can recall and, obviously- - -?--- Yeah.

- - - exact words if you can – if you can’t – the substance and effect of what you said and what he said in that discussion?--- Well, I said – he said to me that he – he – he said to me he’d be interested in additional financial reward if he went up there. He was finding it difficult on his \$100,000 and I said, “Look, Bill, I’m” – “I’m happy to increase it 150,000 if you want to go up there and see how it goes and” – “and that” – “that’s the only other option we’ve got to keep you employed”, and he said, “Well, I’d be interested in that”, and I – and I think I – I said something like let me know and he was going to confirm it the next day or two which he subsequently did.

All right. What role did you have in mind for Mr Schoch at the resort when you spoke to him?--- At the time the Hyatt was in operation of the resort and Morris Holland was the Chief Executive Officer working for us but under the directions of Hyatt and we were concerned about what was happening up there so we wanted to send him up there to look at the records, see what was going on and tell us what was happening.

All right. Now, when you had your discussion with Mr Schoch was Queensland Nickel referred to?--- Yes. It was – it was – it was referred to that was the company taking it over.

All right. And did you have any- - -?--- Or the group rather, sorry. Not the company.

Did you have any discussion with Mr Schoch about who his employer would be going forward?--- The Queensland Nickel and that that was the person who had offered him the job and he’d be reporting through their infrastructure to Daren Wolfe, I think it was the company secretary then, and the managing director of that company.

All right. Did you communicate to the human resources staff of either Mineralogy or Queensland Nickel as – that change of employment of Mr Schoch?--- Well, I – when Mr Schoch said he was interested in that job I contacted Derek Payne, who was the – I said that Bill Schoch was finishing up with us. We’d terminated his appointment but he was taking a job for – with QNI and for him to send all – all information that they required to assist them. I then contacted the – Queensland Nickel and I advised them that Mr Schoch’s position – I said we’d agreed a salary of \$150,000 and I left it with them to confirm his appointment and to prepare the documentation for it.

[94] Mr Palmer signed the eventual contract of employment that Mr Schoch had executed on 12 March but did not have any role in that document being presented to Mr Schoch for his signature.

Conclusion concerning the transfer

[95] The execution of the March 2012 contract by Mr Schoch and then Mr Palmer was the natural culmination of the transfer from Mineralogy to Queensland Nickel at an increased salary which Mr Palmer had told Mr Schoch was going to happen. Mr Schoch, who had a law degree and was an experienced chartered accountant read the document. If he had wanted to, he could have taken the document away and obtained independent advice as to its terms. The contract was, as one would ordinarily expect of a formal document signed by two experienced business people, intended by them to have effect according to its terms. There is no reason to think otherwise.

[96] The proper conclusion which should be drawn from the conduct of the parties in February and March 2012 is that Mr Schoch’s employment agreement with Mineralogy was terminated and replaced by the new contract with Queensland Nickel. That new contract

provided for the manner of Mr Schoch's remuneration and was inconsistent with his case. There is no room for any view that any part of whatever terms had existed as between Mineralogy and Mr Schoch continued in existence to bind any of the parties.

- [97] I find that Mr Schoch was not misled into signing the March 2012 contract. His suggestion that he had been was only faintly advanced by him in his evidence. There was no misrepresentation made to him. Indeed the conduct was obvious, unambiguous and consistent. He was told he was to be transferred from one company to another. He was so transferred. And he signed a contract documenting that fact. It is unnecessary to conduct any more sophisticated explanation of my reasons for rejecting his argument.

Conclusion

- [98] For the reasons I have articulated, Mr Schoch has failed to persuade me that there was any enforceable agreement that he be paid in the manner on which his claim depends.
- [99] I order that the plaintiff's claim is dismissed. I will hear the parties as to costs. My preliminary view is that there no reason why costs should not follow the event.