
From: Alan Coyle
Sent: 17 August 2010 08:43
To: Donald McGougan
Subject: FW: Email to RJ

fyi

Regards

Alan Coyle | Financial Services | Corporate Finance Team (Edinburgh Trams) | Level 2/6 Waverley Court | 4 East Market St EH8 8BG | alan.coyle@edinburgh.gov.uk |
Phone 0131 [REDACTED] Mobile [REDACTED]

From: Nick Smith
Sent: 13 August 2010 14:20
To: Alan Coyle
Subject: FW: Email to RJ

Kind regards

Nick

Nick Smith
Principal Solicitor
Legal Services Division
City of Edinburgh Council
Level 3, Waverley Court
East Market Street
Edinburgh EH8 8BG

(t) 0131 [REDACTED]

Please note that I am not in the office on a Monday

From: Marshall Poulton
Sent: 13 August 2010 13:22
To: Nick Smith
Subject: RE: Email to RJ

Thanks for this Nick.

Marshall

From: Nick Smith
Sent: 13 August 2010 13:18
To: Marshall Poulton
Cc: Alastair Maclean
Subject: FW: Email to RJ

Marshall

Purely for info. You will recall that it was agreed that I would advise you on what we thought CEC would need re legal sign-off so that you could formally inform tie. It appears that at exactly the same time Alastair was giving Tom et al the exact same advice and undertook to go back to the directors and tie on what we require. Below is my first cut of a draft email. Just to keep you in the loop.

Kind regards

Nick

Nick Smith
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From: Nick Smith
Sent: 12 August 2010 17:30
To: Alastair Maclean
Cc: Carol Campbell
Subject: Email to RJ

Draft email

Further to our meeting today and having been briefed by Nick on the Pitchfork meeting I agree that should termination be the preferred route the Council will require some form of independent analysis of the strength of tie's case to terminate. Clearly it is tie's contract and it is up to tie to decide how to proceed. However, the Council will need comfort that tie's recommendation is a sensible and robust interpretation of the legal position in the light of the facts tie can evidence.

As mentioned by Nick today, CEC is not looking to "pre-approve" the serving of the notices as we understand that DLA and tie have done their analysis and consider these to be appropriate and of sufficient materiality to constitute Infraco Breach. However, before tie proceed to terminate, CEC will obviously wish to be comfortable that on the advice received tie have a reasonable prospect of successfully establishing Infraco breach. This will be critical given the potential consequences if this cannot be shown and tie are regarded as having effectively repudiated the contract.

With this in mind we are considering options, including the possibility of having Richard Keen QC give an opinion to both tie and CEC of his view of the prospects of success. Again, as Nick touched on today, we are considering the timing of this on the basis that it may be advantageous to see Infraco's initial response to any remediable breach notice.

Kind regards

Nick

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