

Form 40 (version 1)
UCPR 35.1

**AFFIDAVIT OF SAMANTHA MAREE LISTON (NEE RENWICK)
9 MARCH 2011**

COURT DETAILS

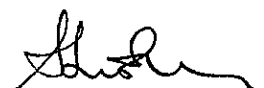
Court Supreme Court of New South Wales
Division Equity Division
List
Registry Sydney
Case number

TITLE OF PROCEEDINGS

First Plaintiff **SEVEN NETWORK (OPERATIONS) LIMITED
ACN 052 845 262**
Second Plaintiff **SEVEN MEDIA GROUP PTY LTD
ACN 116 850 607**
First Defendant **JAMES WARBURTON**
Second Defendant **TEN NETWORK HOLDINGS LIMITED
ACN 081 327 068**

FILING DETAILS

Filed for **Plaintiffs**
Legal representative Mark O'Brien, Johnson Winter & Slattery
Legal representative reference A5760
Contact name and telephone Ruveni Kelleher, +61 2 8274 9555

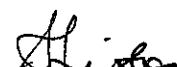


AFFIDAVIT

Name **SAMANTHA MAREE LISTON (NEE RENWICK)**
Address Wharf 17 Pirrama Road, Pyrmont NSW 2009
Occupation Group General Manager Human Resources
Date 9 March 2011

I affirm:

- 1 I am the Group General Manager Human Resources at Seven Network (Operations) Limited ("**Seven**"). Seven is a subsidiary of Seven Media Group Pty Limited ("**SMG**"). Seven Group Holdings Limited and KKR, a leading private equity investment fund each have a 45% economic interest in SMG. The remaining 10% economic interest is held by mezzanine investors and participants (all executives) in SMG's management equity plan. .
- 2 At about 10.30am on Wednesday, 2 March 2011, I was informed that James Warburton had resigned to become Chief Executive of Ten Network Holdings Limited ("**Ten**").
- 3 Mr Warburton is the Chief Sales and Digital Officer – Seven Media Group. In this position he reports directly to Mr David Leckie, the Chief Executive Officer of Seven. This role required him to be responsible for all sales across television, and as part of our SMG Red initiative, magazines and online, expanding on Seven's cross-platform selling and marketing and leveraging the scale and reach of our market-leading media brands. Mr Warburton is one of the three of the most senior executives within Seven, the other in addition to David Leckie, being Tim Worner, Director of Programming and Production. Ten is one of Seven's main competitors. Therefore, I was aware that this was an extremely significant issue for Seven.
- 4 At around 11.30am, Mr Bruce McWilliam the Commercial Director of Seven, came to my office to discuss Mr Warburton's contractual commitments including under the Management Participation Deed and supporting documentation. Confidential Exhibit **SR1** is a copy of Mr Warburton's most recent contract of employment dated 14 July 2008. Confidential Exhibit **SR2** is a copy of the Management Participation Deed dated 10 December 2007 ("**Deed**"). Confidential Exhibit **SR3** is a copy of a letter from Seven to Mr Warburton dated 20 December 2007 offering him options on the terms set out in the Deed and his acceptance of that offer.
- 5 Following my meeting with Mr McWilliam, I met with Mr Leckie to update him on the situation. We had a discussion to the following effect:



Me: *"Have you spoken to Kurt? You should talk to the sales team because Kurt is in hospital and it is not appropriate for James to talk to them about what is happening."*

David: *"I have spoken to Kurt in hospital."*

Me: *"Many of their employment contracts are coming up for renewal. Don't let them go home tonight without them having been reassured by the CEO about their future with Seven."*

Mr Leckie agreed to talk to the senior sales staff. Kurt Burnette is the Network Sales Director for Seven. He reports directly to James Warburton. Mr Burnette was in hospital having reconstructive surgery.

6 I was extremely concerned that James might recruit Seven employees for Ten. In particular, I was concerned about Mr Burnette, because James knew Mr Burnette's fixed term contract was due to expire this year.

7 In Seven, all senior business executive employees in, programming, sales, news and other key business areas are employed under contracts which are either:

- a. fixed term contracts; or
- b. contracts which were fixed term contracts and have been renewed for a maximum term, which can be terminated by either party providing a specified period of notice of termination during the renewed maximum term.

8 Mr Warburton was also employed under a contract for a fixed term until 14 July 2011 which, unless the parties agreed otherwise, automatically renewed on 14 July 2011 on the same terms, unless terminated earlier by either party providing notice of termination in writing during the further term. Therefore, the earliest date on which Mr Warburton's employment could cease was 14 October 2011, unless otherwise agreed.

9 The Human Resources division has a system in place which alerts us when a contract is coming up for renewal so we can negotiate a further fixed term contract if we want to do so in advance. If we do not want to do so, the contract will usually be renewed for a maximum term which can be terminated by notice.

10 I was aware that negotiations had commenced between Seven and Mr Warburton for renewal of his employment contract.

11 We have recently completed the budgeting process for the 2011 to 2012 financial year. As part of that process I was aware that Mr Warburton would have been provided with detailed information, including reports about when employees who

Ann L...

Shirley

reported to him are due to have their contracts renewed and the level of remuneration and other benefits provided to them by Seven. This information is kept strictly confidential by Seven and is not publicly available. I am aware that this information is extremely valuable to Seven's competitors as they can use the information to recruit Seven's employees by offering them more generous remuneration and benefits.

12 As Chief Sales and Digital Officer of Seven, Mr Warburton had four senior executives who reported directly to him;

- (a) Kurt Burnette;
- (b) Dion Workman, Focus Services Sales Director;
- (c) Jenny Hosie, Integrated Sales Director, SMG; and
- (d) Robert Minicola, Chief Executive Officer (Hybrid TV).

There are over two hundred employees across these divisions.

13 Mr Warburton was also involved in or aware of confidential negotiations with other senior Seven employees and contractors, regarding their contracts with Seven including:

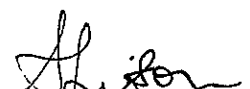
- (a) Tim Worner, Director of Programming and Production, who is one of the other of the three most senior executives of Seven;
- (b) Sally Williams, the presenter of the Focus Series, which is Seven's multi-platform advertising campaign business, SMG Red. Mr Warburton was instrumental in the formation of SMG Red which is regarded as a big success as it enables coordinated selling across television, magazines and online. Seven is considered to do this better than its competitors; and
- (c) some of Seven's most high profile television personalities.

14 After the meeting with Mr Leckie, I returned to my office and had a discussion with my assistant, Samantha Barker, to the following effect:

Ms Baker: *"Have you seen James Warburton?"*

Me: *"No. Why?"*

Ms Barker: *"I have sent you an email – James wants you to see him. He is in his office waiting for you."*

A copy of Ms Barker's email to me, received at 2:11pm, is annexed hereto and marked "A".

At 2.45pm, I emailed Ms Barker asking her to call Mr Warburton to say I would be there (for his requested meeting) as soon as I could. Annexed hereto and marked "B" is a copy of this email.

15 I went to see Mr Warburton in his office. When I entered and sat across from him at his desk he immediately passed over to me his BlackBerry, security pass, secure ID token, company credit card and a key. We had a conversation during which words were said to the following effect:

Me: *"What is this?"*

Mr Warburton: *"Well - I have been asked to leave immediately."*

Me: *"How long has this been going on?"*

[By this question, I was referring to how long Mr Warburton had been in discussions with Ten]

Mr Warburton: *"Since yesterday."*

Me: *"Come on James."*

Mr Warburton: *"Don't give me that."* [Mr Warburton appeared angry]

Me: *"Look James I only said that because I know from my experience with these matters that it takes longer than a day for these type of decisions to be made. Let's move on."*

We are preparing a letter setting out your ongoing legal obligations. Do you want to wait for it?"

Mr Warburton: *"Yes. What is in the letter?"*

Me: *"The usual legal matters around your contract - confirmation that your employment with Seven will continue during this period and that you will not be performing your usual duties. It will set out your obligations to Seven during this time, including the post employment restraint under the MEP."*

Mr Warburton: *"What post employment restraint? I don't have one."*

Me: *"Yes - there is one under the MEP."*

Mr Warburton: *"I'm not under the MEP."*

Me: "Yes - you signed the 2007 Management Participation Deed which has a post employment restraint."

Mr Warburton: "It doesn't apply to me."

Me: "I believe it does but the letter will set all of that out."

Mr Warburton: "I didn't sign up to that."

Me: "That was the 2010 MEP you didn't sign. This relates to the 2007 MEP. Look I am sure it's something you will get advice on."

Mr Warburton: "If that's the way you are going to play this I will just leave now, you can send the letter to my lawyer."

Me: "Is your lawyer still Joydeep Hor?"

Mr Warburton: "Yes"

Me: Can you give me Joydeep's email address?

[Mr Warburton gave me Mr Hor's email address.]

Me: What do you mean by "if that is the way you're going to play it"?

Mr Warburton: "If Seven is going to get nasty like this then I will just go now."

Me: "Seven is not getting nasty. We are simply setting out your legal obligations to Seven and what we expect from you regarding these obligations. This is no more than we would do for any employee going to work for a competitor - let alone someone in your position."

Mr Warburton: "I think its best I leave."

Me: "James you don't have to rush out. No one is asking you to rush out of here like this. Wait for the letter."

[Mr Warburton had become clearly agitated. His demeanour changed after I mentioned the restraint period.]

Mr Warburton: "They want me to leave immediately?"

Me: "Who?"


Mr Warburton: "Stokes and Leckie."

Me: "I don't think they are expecting you to leave immediately."

Mr Warburton: "Leckie told me to leave."

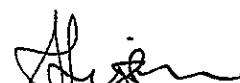


- Me: *"Look - it isn't that simple. There are things that have to be worked out and we are still working through that. Wait for the letter and it will set out what is expected."*
- Mr Warburton: *"It's best that I leave. You can send the letter to my lawyer."*
- Me: *"Well that is your choice to leave. Do you have a personal email address you also want the letter sent to?"*
- Mr Warburton: *"No. I don't want a copy. Send it to my lawyer."*
- Me: *"What is the best way for us to be in contact with you because we are going to need to contact you to discuss how we work through this period while you are still employed by Seven."*
- Mr Warburton: *"You can contact me through my lawyer."*
- Me: *"We will need to be able to call you. Do you have a mobile?"*
- Mr Warburton: *"No. I am getting one this afternoon."*
- Me: *"Did Kerry Stokes meet with you on Saturday and make you an offer to be CEO of SMG?"*
- Mr Warburton: *"Yes. He did."*
- Me: *"Well why did you meet with Mr Stokes on Saturday and then accept an offer with Ten on Tuesday?"*
- Mr Warburton: *"I told Kerry that I needed to look David in the eye regarding the offer to make sure he backed it up. I met with David on Monday and Tuesday regarding the offer from Kerry."*
- Me: *"Did you then go back to Kerry after your discussion with David to tell him what David had said?"*
- Mr Warburton: *"No. I didn't."*
- Me: *"Why not? [Mr Warburton shrugged.]
James why would you do that?"*
- Mr Warburton: *"Look - you know as well as I do that they haven't been able to deliver anything concrete, there are too many road blocks."*
- Me: *"But you were offered the CEO role by Kerry on Saturday."*
- Mr Warburton shrugged and did not respond to me. He then stood up to leave.
- Me: *"I would prefer you wait for the letter."*



Mr Warburton: *"It is best that I go."*

- 16 I left Mr Warburton's office and he walked out behind me and stopped to say goodbye to his staff.
- 17 At no stage did I get the impression from anything Mr Warburton said or his conduct that he considered that his employment with Seven had ceased on that day. When I told Mr Warburton that his employment was continuing during the discussion referred to above, he did not dispute it.
- 18 Mr Warburton was aware that Seven's common practice is that senior employees and most sales employees who resign to accept employment with a competitor are required to work out their notice period or they are put on gardening leave. Mr Warburton was both a senior employee and in sales.
- 19 In fact, Mr Warburton also usually insisted on employees who reported to him being placed on gardening leave and working out their full notice period if they had accepted employment with a competitor and resigned. For example, Mr Warburton did so when Michael Stevenson resigned from his employment with Seven to join the Nine MSN and more recently when David Bellamy who was in sales resigned to accept a job with Ten. A copy of this letter is annexed hereto and marked "C". A similar letter was sent to Michelle Izzard who was also in sales and was believed to be going to work for Ten. These employees were far less senior than Mr Warburton. A copy of this letter is annexed hereto and marked "D".
- 20 In addition, when Karelle Healy, the former Revenue Strategy Director of Seven recently commenced working for Ten, Mr Warburton was extremely concerned about Karelle's ability to use confidential information and intellectual property of Seven at Ten and insisted on a letter being sent to her in strong terms reminding her of her legal obligations to Seven although four months had lapsed after she had left Seven. A copy of this letter is annexed hereto and marked "E".
- 21 I did not then (and do not now) consider that there was or is any possibility that Mr Warburton's employment ceased on 2 March 2011. As I was aware that Mr Warburton was employed under a fixed term employment until 14 July 2011 which was only able to be terminated after that date by Mr Warburton providing three months notice in writing, I knew that there would be no benefit in Seven releasing Mr Warburton from his contractual obligations earlier than 14 October 2011 because:
- a. it would mean his restraint of trade obligations would commence earlier than required; and




- b. as a result, he could commence employment with Ten earlier than he was legally allowed to do so and use his knowledge and contacts to Seven's detriment

Therefore, when I spoke to Mr Warburton I understood that no one at Seven would agree to allow Mr Warburton to terminate his employment earlier than he was able to so under his employment contract with Seven.

AFFIRMED at

Sydney

Signature of deponent



Signature of witness



Name of witness


Anurupa Lahiri

Address of witness

Level 30, 264 George Street
Sydney NSW 2000

Capacity of witness

Solicitor

This and the following pages is the Annexure
Marked " A " to the Affidavit of S M Liston
Sworn at Sydney on the 9th day of May
2011
Before me: 

From: Barker, Samantha [SBarker@seven.com.au]
Sent: Wednesday, 2 March 2011 2:11 PM
To: Renwick, Samantha
Subject: Can you please see James W when you are done with David?
Sarah just called to request.

Thanks,

Sam

Samantha Barker

Human Resources Assistant | Human Resources



Seven Network (Operations) Limited
38-42 Pirrama Road | Pyrmont NSW 2009 Australia
Postal Address: PO Box 777 | Pyrmont NSW 2009 Australia
Telephone +61 02 8777 7461 | Email: sbarker@seven.com.au

This and the following pages is the Annexure
Marked " B " to the Affidavit of S M Liston
Sworn at Sydney on the 9th day of March
2011
Before me: *[Signature]*

From: Renwick, Samantha [SRenwick@seven.com.au]
Sent: Wednesday, 2 March 2011 2:45 PM
To: Barker, Samantha
Subject: Re: Can you please see James W when you are done with David?
Can you call and say I will be there soon

From: Barker, Samantha
Sent: Wednesday, March 02, 2011 02:10 PM
To: Renwick, Samantha
Subject: Can you please see James W when you are done with David?

Sarah just called to request.


Thanks,

Sam

Samantha Barker
Human Resources Assistant | Human Resources



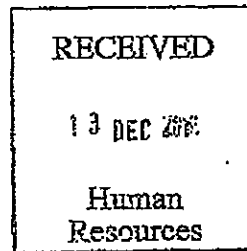
Seven Network (Operations) Limited
38-42 Pirrama Road | Pyrmont NSW 2009 Australia
Postal Address: PO Box 777 | Pyrmont NSW 2009 Australia
Telephone +61 02 8777 7461 | Email: sbarker@seven.com.au

This and the following 1 page is the Annexure
 Marked " C " to the Affidavit of S M Liston
 Sworn at Sydney on the 9th day of March
 2011
 Before me: 

MOG12
 SNM



13 December 2010



EIS Entered
 13 DEC 2010

David Bellamy
 BY HAND

Dear David,

This is to confirm the resignation of your employment with Seven Network (Operations) Limited ("Seven") effective 7 January 2011. As you will be going to a direct competitor, for the duration of your notice period, Seven requires you to not attend the office without the prior approval of your manager.

At this time we would like to draw your attention to your contractual obligation in regard to exclusivity and confidentiality whereby you have agreed you will not:

1. Be employed or provide services to any other media organisation (including free-to-air, commercial, government, broadcasting, narrowcasting, subscription or pay per view television or internet, multimedia, radio or print) in Australia or any business of a similar nature to or competitive with that carried on by Seven.
2. Either during or after your employment with Seven use, record or disclose to any person any confidential company information (written/verbal) including but not limited to the use of Seven's intellectual property (eg. Business development/promotional/trade strategies, financial and sales data, client lists, pricing and trading terms, corporate opportunities, employee benefits, salaries and conditions).
3. Make any adverse comment, publicly or otherwise about Seven or any of its related bodies corporate.

We consider your notice period to count as service and as such, the requirements in relation to exclusivity and confidentiality apply during this period. Should you commence employment or engage in the provision of services during your notice period, Seven reserves the right to seek damages in relation to breach of your employment contract.

Termination of Employment Checklist

Your manager has been provided with a checklist that must be completed, signed and returned for your final payment to be processed. Please liaise with your manager to ensure this form is completed, signed by your finance representative and returned to Human Resources (you are required to sign off on the checklist).

Final Pay

Any final pay will be banked electronically into the bank account held on file by Seven unless alternative arrangements are made, providing the Termination of Employment Checklist is completed and returned to Human Resources. Payment will be made on or around your last day of employment with Seven.

Corporate Credit Card

Please note that your corporate credit card has been cancelled. Your corporate credit card must be reconciled in Spendvision before your final pay is processed.

Superannuation

Seven will notify your superannuation fund of your termination of employment and any outstanding contributions will be forwarded to the fund in the month following your termination of employment. The fund will contact you in writing to let you know what options are available for your superannuation and seek your instructions. It is important that you ensure your Super fund has your current postal address so that you receive your superannuation material promptly.

Upon ceasing employment, any disablement insurance cover provided within the fund generally ceases after 30 days. Your death insurance cover generally continues for a period of 60 days after ceasing employment. Please contact your superannuation fund directly to confirm the insurance cover which applies to you.

Personal Deductions

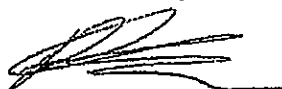
If you have personal deductions from your pay eg. health fund, you will need to make alternative arrangements.

Change of Address

~~Should you change your address before receiving your payment summary, please~~
advise payroll.

If you have any questions, please contact your manager or Human Resources on 02 8777 7474.

Yours sincerely,



Danny Klepac
Senior Human Resources Manager

This and the following 1 page is the Annexure
Marked " D " to the Affidavit of SMListon
Sworn at Sydney on the 9th day of March
2011
Before me: *[Signature]*

33658
SNM



1 March 2011

Michelle Izzard
BY HAND

Dear Michelle,

I refer to our earlier letter confirming receipt of your resignation of employment with Seven Network (Operations) Limited ("Seven") effective 18 March 2011. As you have advised that you are in discussions concerning potential employment with a direct competitor, Seven requires you to not attend the office for the remainder of your notice period without the prior approval of your manager.

At this time we would like to draw your attention to your contractual obligation in regard to exclusivity and confidentiality whereby you have agreed you will not:

1. Be employed or provide services to any other media organisation (including free-to-air, commercial, government, broadcasting, narrowcasting, subscription or pay per view television or internet, multimedia, radio or print) in Australia or any business of a similar nature to or competitive with that carried on by Seven.
2. Either during or after your employment with Seven use, record or disclose to any person any confidential company information (written/verbal) including but not limited to the use of Seven's intellectual property (eg. Business development/promotional/trade strategies, financial and sales data, client lists, pricing and trading terms, corporate opportunities, employee benefits, salaries and conditions).
3. Make any adverse comment, publicly or otherwise about Seven or any of its related bodies corporate.

We consider your notice period to count as service and as such, the requirements in relation to exclusivity and confidentiality apply during this period. Should you commence employment or engage in the provision of services during your notice period, Seven reserves the right to seek damages in relation to breach of your employment contract.

Termination of Employment Checklist

Your manager has been provided with a checklist that must be completed, signed and returned for your final payment to be processed. Please liaise with your manager to ensure this form is completed, signed by your finance representative and returned to Human Resources (you are required to sign off on the checklist).

Final Pay

Any final pay will be banked electronically into the bank account held on file by Seven unless alternative arrangements are made, providing the Termination of Employment Checklist is completed and returned to Human Resources. Payment will be made on or around your last day of employment with Seven.

Corporate Credit Card

Please note that your corporate credit card has been cancelled. Your corporate credit card must be reconciled in Spendvision before your final pay is processed.

Superannuation

Seven will notify your superannuation fund of your termination of employment and any outstanding contributions will be forwarded to the fund in the month following your termination of employment. The fund will contact you in writing to let you know what options are available for your superannuation and seek your instructions. It is important that you ensure your Super fund has your current postal address so that you receive your superannuation material promptly.

Upon ceasing employment, any disablement insurance cover provided within the fund generally ceases after 30 days. Your death insurance cover generally continues for a period of 60 days after ceasing employment. Please contact your superannuation fund directly to confirm the insurance cover which applies to you.

Personal Deductions

If you have personal deductions from your pay eg. health fund, you will need to make alternative arrangements.

Change of Address

Should you change your address before receiving your payment summary, please advise payroll.


If you have any questions, please contact your manager or Human Resources on 02 8777 7474.

Yours sincerely,



Danny Klepac
Senior Human Resources Manager

28 February 2011

This and the following pages is the Annexure
Marked " E " to the Affidavit of S.M. Liston
Sworn at Sydney on the 9th day of March
2011
Before me: 



Karelle Healey
[REDACTED]
[REDACTED]

Dear Karelle,

We refer to your Consultancy Agreement with Seven Network (Operations) Limited which expired on 31 October 2009.

We understand you have recently gained employment with Network Ten.

We would like to remind you of your legal obligations with respect to confidentiality and intellectual property rights.

Without limiting your obligations (which are clearly set out in the consultancy agreement), during the course of your engagement with Ten you may not disclose to Ten any trade secrets, business secrets nor confidential information relating to the affairs or business of Seven, including but not limited to information relating to Seven's personnel, pricing, discount levels, policies, business strategies and client lists.

In addition, all intellectual property rights in the works created and developed by you during the course of your consultancy with Seven are owned by Seven and you have no right to use such rights for the benefit of Ten nor in any capacity whatsoever.

Seven takes the protection of its confidential information and intellectual property rights very seriously, and will monitor Ten's actions closely in coming months to ensure our rights have not been infringed. Should we become aware of any disclosures or infringements on your part, Seven will pursue all legal remedies available to it under contract and at law.

Seven reserves all rights.

Yours sincerely



Samantha Renwick
Group General Manager
Human Resources