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**LAW2485 FINAL ASSIGNMENT -
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INTRODUCTION

In addressing the legal matters raised by MapleLeaf Investments & Advisory Services Pty Ltd (MapleLeaf) and its financial adviser James Peterson, this paper adopts the IRAC (Issue, Rule, Application and Conclusion) method. The analysis will focus on eight distinct legal issues, looking at relevant provisions of Australian law, corporate finance principles, and consumer protection under the Australian Securities and Investments Commission Act 2001 (Cth). Furthermore, there are potential breaches of fiduciary duty, misleading conduct, inadequate due diligence and also conflicts of interest.

Issue 1: Conflicts of Interest and Undisclosed Commissions

Whether MapleLeaf and James Peterson did not fulfill their obligations by not informing about the conflicts of interest, especially the commissions James received from a few start-ups to which he directed investments in the GreenFuture Fund. Financial advisers and Australian Financial Services License (AFSL) holders are required by sections 912A and 961J of the Corporations Act 2001 (Cth) to act according to clients' best interests, including disclosing any conflicts of interests such as commissions or incentives specific to investment products.

Consequently, James Peterson collected undisclosed commissions from some solar startups included in the GreenFuture Fund. Consequently, there was an obvious conflict of interest since James was personally benefiting by directing Sophie Turner and other investors into the startups whether those investments suited them or not. This way, both James and MapleLeaf flouted their legal obligations because they failed to disclose this conflict. The situation is comparable to that of *Wingecarribee Shire Council v Lehman Brothers Australia Ltd (in liq) (No 5) (2012) 301 ALR 1* which was a landmark case. In it, Lehman Brothers suggested to local councils about complex financial products that were inappropriate owing to the councils' risk profile without revealing any conflicts in the process. Thus, on such grounds the court found that Lehman had neglected its duty towards these councils' best interests as far as failing to mention its motivation behind promoting some financial products was concerned. Besides, the ambiguous advice given as a result of not declaring the undisclosed incentives was among major reasons behind the financial losses incurred by those councils by then. Furthermore, when such conflicts remain undisclosed there is undermining of trust in finance options hence violating fiduciary duty. Equally, James Peterson has not made known to anybody that he received any commissions from the solar startups operating under the GreenFuture Fund. Most likely, this omission served as a bias in his counsel hence he encouraged investment in the fund considering its safety and stability yet the companies involved were speculative and volatile. Just like in *Wingecarribee* here, Turner's trust on James' advice was shaken due to undisclosed conflict of interest while it is evident that he breached his obligation to act in her best interests. For Sophie Turner, the absence of these crucial details (the commissions) implied that she saw James' counsel as unbiased and favorable for herself. This was made worse by the fact that she was a patient who depended on the adviser as a professional she

could trust. Therefore, because James did not disclose his commissions, Sophie was misled into making financial commitments that were poorly informed.

By not disclosing the commissions that James received for marketing particular start-ups in the GreenFuture Fund, both Maple Leaf and James Peterson likely transgressed their responsibilities under the Corporations Act. It is probable that the company contravened Sections 912A and 961J of the Corporations Act by not bringing to public notice the payments made to James; possible results include not serving in the best interests of Sophie Turner, their customer. In addition, as an AFSL holder, Maple Leaf failed to have proper systems to handle these conflicts thereby worsening the breach. James's advice cannot be trustworthy because there were conflicting interests involved; consequently, this leaves both Maple Leaf and James liable for Sophie's economic losses.

Issue 2: Failure to Conduct Proper Due Diligence

The issue is about the failure of Maple Leaf in performing its role as the Responsible Entity (Corporate Governance and Compliance) of the GreenFuture Fund by not doing appropriate due diligence on the start-ups where investments were made. Responsible Entities have a duty of care and diligence imposed on them by section 601FC and section 912A of the Corporations Act, which require proper management and oversight of managed investment schemes, including adequate due diligence performed on investment opportunities.

According to the facts in ASIC v Healey (2011) 196 FCR 291, MapleLeaf's failure to conduct proper due diligence closely resembles those. In Healey that involved Centro Group, its directors were found to breach their duty when they approved financial statements for that company which omitted material liabilities. The court held that directors have an obligation to take care and exercise due diligence while making financial decisions especially when it comes to managing investor's assets. It is similar to MapleLeaf where it did no meaningful due diligence on the solar startups it funded. These companies were marketed as leading firms with secured patents and contracts whereas in reality they were not running any genuine business models nor did they possess any sound finances. Further like in Mr. Peter Healey case, lack of committed governance, oversight and risk management by MapleLeaf resulted in big loss of investors.

Due to the Corporations Act, under sections 601FC and 912A, it is reasonable to suspect that MapleLeaf has committed its obligations by not conducting thorough due diligence on those start-ups that received the GreenFuture Fund's investments.

Issue 3: Misleading and Deceptive Conduct

Whether misleading or deceptive conduct was engaged by MapleLeaf and James Peterson thereby breaching section 12DA ASIC Act. This prohibits anyone from engaging in misleading or deceptive conduct for the purposes of any trade or commerce. Misleading conduct involves an act or omission that creates a false impression about the nature of a financial product, irrespective of its intention. For instance, misleading or deceptive conduct occurs when the seller's representation regarding possible returns on investment seems to be too good to be true given that other similar investments are offering lower profits. It also includes offering poor quality merchandise under the name brand at a cheaper price in order to discourage customers from buying them from other stores where they would pay more money.

This case is characterized by manifold forms of misleading or deceptive behavior on the part of both MapleLeaf and James Peterson. During the seminar which Sophie Turner attended, MapleLeaf presented its promotional materials for the GreenFuture Fund that contained exaggerated growth charts and claimed "guaranteed returns" of 15% annually. These projections were not just baseless but also misleading since they failed to show that early stage solar companies are speculative and highly risky investments. Moreover, fake testimonials from satisfied investors further reinforced the misleading impression about safety and performance of the fund. The meeting between James Peterson and Sophie only worsened these misleading acts that he had already perpetuated in his communication with other people as regards the investment opportunities provided by that firm. He reiterated how much return could be obtained with no risk whatsoever, going ahead to proclaim that the fund was "practically risk-free" despite the fact that such investments involved speculative start-ups, many of which did not have stable business models and hardly ever delivered any kind of success. In this moment, James misled Sophie greatly regarding what really constituted GreenFuture Fund's investments due to his failure to illuminate underlying risks associated with them.

These actions closely resemble the conduct found in Australian Competition and Consumer Commission (ACCC) v TPG Internet Pty Ltd (2013) 250 CLR 640. In TPG Internet, the company's advertisements prominently displayed a low price for internet services while downplaying the significant additional costs through small print. The High Court held that the overall impression created by the advertisements was misleading, even if the actual terms were technically available to those who sought them out. Similarly, while MapleLeaf may have included fine-print disclaimers regarding investment risks, the overwhelming impression given to Sophie and other potential investors was one of guaranteed returns and minimal risks. Further, in ASIC v National Exchange Pty Ltd (2005) 148 FCR 132, the Full Federal Court confirmed that conduct is misleading if it gives an overall false impression, even if technically accurate information is provided elsewhere. In that case, misleading letters were sent to shareholders offering to purchase shares at below market value. The overall impression left by the communication was deemed misleading, despite the inclusion of some accurate information. Although MapleLeaf may have included some factual data in its promotional materials to Sophie, the dominant message conveyed was false and misleading in relation to the fund's risks and potential returns.

So, James Peterson is likely violating the ASAIC Act's Section 12DA due to their misleading and deceptive actions in representing GreenFuture Fund as an investment with low risk.

Issue 4: Breach of Fiduciary Duty by Financial Adviser

The other concern is if James Peterson provided inappropriate financial advice which constitutes an action that breached his duty of trust towards Sophie Turner due to her fragile state and disease. According to Section 961B of the Corporations Act, financial advisers have a legal requirement to act in the best interests of their clients. More importantly, this responsibility becomes more pronounced when supporting weak citizens like pensioners or people who are not able to independently make decisions anymore.

James Peterson's deeds are similar to those that directors did in ASIC versus Cassimatis (No 8) (2016) 336 ALR 209. In Cassimatis case, the directors provided risky financial advice to elderly clients without considering their individual circumstances or financial needs. The court discovered that the directors had violated their duty by neglecting to take into account the clients' vulnerability and risk tolerance. This is evidenced by James Peterson's failure to properly evaluate Sophie's

financial situation and her needs despite knowing she had early-stage Alzheimer's. The consultation was rushed as he failed to mention its speculative nature even after rushing through it. James failed like the directors in Cassimatis case, since he did not tailor his advice to Sophie's specific situation thus breaching his fiduciary responsibility which required him to act strictly in her best interest.

In providing unsatisfactory financial guidance to Sophie Turner, a defenseless retiree, James Peterson has probably violated his legal responsibility under Section 961B of the Corporations Act.

Issue 5: Breach of AFSL Obligations

Inquired into whether or not MapleLeaf's AFSL holder was in breach of its obligations by not overseeing James Peterson sufficiently and making sure that his actions conformed to the financial advice regulations. Pursuant to the stipulations of Section 912A of the Corporations Act, AFSL holders are required to maintain suitable compliance practices and guarantee that financial advisers behave both ethically and lawfully. This also entails putting in place appropriate oversight systems capable of supervising adviser behavior.

MapleLeaf's failing to supervise James Peterson is similar to ASIC v Financial Circle Pty Ltd [2018] FCA 1794. Thus, in that case, it was determined that Financial Circle had not met its AFSL obligations because it did not monitor its representatives who gave unsuitable advice to customers. For this reason, AFSL holders must develop mechanisms which prevent non-compliance by their advisors. At present, MapleLeaf did not provide James Peterson with sufficient training or supervision thus enabling him to engage in deceptive practices and advise Sophie without taking into account her interests. Moreover, another indication of lack of supervision is his failure to reveal any financial incentives he had for providing those services. The misconduct was directly attributable to MapleLeaf's deficiencies in supervision.

It looks like MapleLeaf might have messed up its AFSL obligations in accordance with Section 912A of the Corporations Act due to insufficient monitoring of James Peterson and lack of enforcement on the financial advice standards.

Remedies and Investor Protections

Mapleleaf has caused a lot of problems, and with that, Sophie is left with some options on how to protect herself as an investor while suing them for the losses they have suffered financially due to their actions. The Australian law provides her with various remedies. In particular, under both common law and statute law, Sophie may look for remedies based on her situation. Specifically, if there are misrepresentations made by any other party, an individual can take proceedings against him or her as per s 12GF of the ASIC Act and recover what he/she lost. Moreover, *Grimaldi v Stockland Chameleon Mining Netherlands Antilles (No 2) (2012) 200 FCR 296* states that Sophie can claim either equitable damages or have Peterson pay back all profits resulting from undisclosed commission payments which are breach of fiduciary duty. Besides that a court could also order that she be compensated for losses caused by statutory mandates such as those specified in section 1325 of the Corporations Act. Additionally section 961M Corporation Act stipulates clients are entitled to receive compensation for any loss incurred as a result of non – compliance with their duty regarding best interest..

Sophie can make a claim for misleading conduct as outlined in Section 1041H. She could seek compensation for loss arising from such misrepresentation because falsehoods on the security and performance of GreenFuture Fund had been claimed. Additionally, she may sue for damages resulting from breach of financial adviser’s statutory obligations under section 961B, including loss resulting from Peterson’s unsatisfactory counseling advice or its failure to reveal conflicts of interest. In addition to such statutory claims, Sophie may pursue common law actions based on the lack of reasonable care and skill by Peterson where you can also sue him as an advisor due to inadequate and misleading advice that made her lose money. If there are any violations of certain provisions of the Corporations Act , then ASIC has the authority to conduct regulatory actions against MapleLeaf as well as Peterson. This could include civil penalties, disqualifications orders or compensation recoveries – all intended at helping injured investors.

There are diverse means for Sophie to restore her financial detriments inclusive of legal claims as provided under ASIC Act and equitable measures for violating a position of trust. These provisions aim at aiding Sophie in seeking damages due to misconduct done by MapleLeaf and James Peterson.

CONCLUSION

The GreenFuture Fund promoted by MapleLeaf and James Peterson has a lot of offenses like deceptive manipulation, hiding conflicting interests and breaking fiduciary obligations. Consequently, Sophie Turner has incurred serious financial losses that could lead to possible legal redress under the ASIC Act and Corporations Act. It is evident from the application of IRAC that Sophie has sound reasons for pursuing damages against them for the financial loss she suffered since Maple Leaf and Peterson are liable under both ASIC Act and Corporations Act as well as common law fiduciary principles. This case highlights how vital it is for businesses to adhere to regulations, disclose matters openly, and ensure that financial advisors act in their customers' best interest.

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