

*Anictomatis v NTA* [2008] NTSC 28

PARTIES: ANICTOMATIS, John

v

NORTHERN TERRITORY OF  
AUSTRALIA

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE  
NORTHERN TERRITORY  
EXERCISING TERRITORY  
JURISDICTION

FILE NO: 148 of 2005 (20529906)

DELIVERED: 17 July 2008

HEARING DATES: 3 October 2007

JUDGMENT OF: SOUTHWOOD J

**CATCHWORDS:**

LAW OF CONTRACT - offer and acceptance – specific performance – formation of binding contract – intention to enter contractual relations – contract arising from Government administration of a regulatory regime – application to Registrar of Motor Vehicle Registry (NT) for transfer of “right to display” particular number plates – form of application document – whether accepted application remained subject to Registrar approval – claim is dismissed

Motor Vehicle Act 1949 (NT) s 138(2)

*The Administration of the Territory of Papua New Guinea v Leahy* (1961)  
105 CLR 6

*Australian Woollen Mills Pty Ltd v Commonwealth* (1954) 92 CLR 424

*Ansett Transport Industries (Operations) Pty Ltd v The Commonwealth of Australia* (1977) 139 CLR 54  
*Airways Corporation of New Zealand Ltd v Geyserland Airways Ltd* [1996] 1 NZLR 116  
*Ballas v Theophilos (No 2)* (1957) 98 CLR 193  
*BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977) 180 CLR 266  
*Coogee Esplanade Surf Motel Pty Ltd v Commonwealth* (1976) 50 ALR 363  
*Director of Posts and Telegraphs v Abbott* (1974) 2 ALR 625  
*Ermogenous v Greek Orthodox Community of SA Inc* (2002) 209 CLR 95  
*John Cooke & Co Pty Ltd v Commonwealth* (1922) 31 CLR 394  
*Lismore City Council v Stewart* (1989) 18 NSWLR 718  
*Logan Downs Pty Ltd v The Commissioner for Railways* [1960] Qd R 191  
*Munday and Shreeve v Western Australia & Western Australia Transport Board* [1962] WAR 65  
*Placer Development Ltd v Commonwealth* (1969) 121 CLR 353  
*Rothmans of Pall Mall (NZ) Ltd v Attorney-General* [1991] 2 NZLR 323  
*Seven Cable Television Pty Ltd v Telstra Corp Ltd* (2000) 171 ALR 89  
*Spencer's Pictures Ltd v Cosens* (1918) 18 SR (NSW) 102  
*Suatu Holdings Pty Ltd v Australian Postal Corporation* (1989) 86 ALR 532  
referred to

## **REPRESENTATION:**

### *Counsel:*

Plaintiff:	I Morris
Defendant:	N Christrup

### *Solicitors:*

Plaintiff:	Hunt & Hunt
Defendant:	Solicitor for the Northern Territory

Judgment category classification:	B
Judgment ID Number:	Sou0808
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IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

*Anictomatis v NTA* [2008] NTSC 28  
No 148 of 2005 (20529906)

BETWEEN:

**JOHN ANICTOMATIS**  
Plaintiff

AND:

**NORTHERN TERRITORY OF  
AUSTRALIA**  
Defendant

CORAM: SOUTHWOOD J

REASONS FOR JUDGMENT

(Delivered 17 July 2008)

**Introduction**

- [1] This is a claim for the specific performance of an alleged contract between the plaintiff and the defendant which, it is said, was made on 16 July 2004. It is alleged that under the terms of the contract the defendant gave the plaintiff the right to display two number plates each depicting the number “13” (the number plates) on his motor vehicle and that in return the plaintiff paid the Registrar of Motor Vehicles (the Registrar) a transfer fee of \$18 and agreed to certain conditions of use of the number plates. The plaintiff says that, contrary to the terms of the contract, the defendant has refused to

deliver the number plates to him so that he could display them on his motor vehicle.

### **The issues**

[2] The principal issue in the case is was a contract formed between the plaintiff and the defendant? The determination of this issue involves the consideration of two subsidiary issues. First, was the plaintiff's offer to obtain the right to display the number plates on his motor vehicle accepted by the defendant? Secondly, did the parties intend to enter into contractual relations?

[3] In my opinion, for the reasons given below, no contract was formed between the plaintiff and the defendant and the plaintiff's claim should be dismissed. The defendant did not accept the plaintiff's application for the transfer of the number plates and there was no intention to enter into contractual relations.

### **The facts**

[4] The hearing proceeded on the basis of certain admitted facts and on the basis of various documents that were tendered in evidence by consent of the parties.

[5] The facts are as follows. On 25 May 2001 the Registrar approved the transfer of the number plates from a Ford Laser to a Porsche Carrera. Both motor vehicles were registered to Paul Reid's World of Wheels.

[6] On 8 August 2001 the Registrar approved a document entitled ‘Administrative Instruction 8 of 2001 Particular Plate Orders – (Numerical) Numbers 1 to 200’. The Administrative Instruction was not made available to the public or to the plaintiff. Of relevance, the Administrative Instruction stated as follows:

All particular plate orders for the numbers in the series 1 to 200 for cars, motorcycles and trailers can only be approved by the Manager Customer Services or his/her delegate.

MOVERS will prevent any plate orders for these numbers and will display the warning message:

“Plate not available without approval – refer AI8 of 2001”

Payment must be accepted from the customer with the order, however, the money is to be held in trust against the customer’s name. The customer is to be advised that the status of the plate will be investigated and there is a possibility that the plate order may be rejected.

The application is to be referred immediately to the Manager Customer Services.

The Manager Customer Services (or delegate) will investigate the status of the plate by:

- (a) searching MOVERS to obtain the plate history, if the plate has never been issued, approval will be given for the customer’s order to proceed; or
- (b) if the plate has been previously issued and the hold period has expired, the last known holder of the plate will be contacted to release the plate for ordering; and

if the last known holder of the plate wishes to retain the plate, the customer will be advised to pay the “hold” fee within 14 days, in order to update the hold period on the MOVERS’ plate surrender screen.

The new customer currently applying for the plate will then be advised that the plate is not available.

If the plate number is available the Manager Customer Services (or delegate) will approve the application and arrange for the plate order to be added to MOVERS as a reserved plate in the customer's name.

The Manager Customer Services is to advise the Customer Services Supervisor (who referred the order), that the application has been approved.

The Customer Services Supervisor is to advise the customer, in writing, of the outcome and arrange for the processing of the plate order on MOVERS as per the normal procedures for processing reserved plates.

If not approved, the Manager Customer Services (or delegate) is to advise the customer in writing that the plate is not available and, they have the choice of an alternative plate or a refund of the fee paid.

This administrative instruction does not apply where a customer is transferring the right to display a plate.

- [7] On 7 May 2002 Paul Reid returned the number plates to the Motor Vehicle Registry and the return of the number plates was recorded in the records of the Motor Vehicle Registry. At the same time, Paul Reid also returned two number plates that each depicted the number 36. Under policy arrangements that were then in place at the Motor Vehicle Registry, the right to display the returned number plates continued to be held by Paul Reid for a period of 12 months from 7 May 2002 (the hold period), unless otherwise extended. During a hold period the number plates on hold are kept at the Motor Vehicle Registry and may not be transferred or issued to any other customer unless they provide a letter from the current holder of the right to display

the number plates giving the current holder's authority to transfer the number plates to the new holder. Six weeks prior to the expiry of the hold period, customers were to be notified in writing that the number plates on hold were about to expire. Prior to the initial hold period expiring, customers could apply to extend the hold period by a further 12 months upon the payment of an administration transaction fee.

- [8] On 31 July 2002 the Registrar approved the policy document entitled '3.14 Number plates'. The policy described the rules governing each respective number plate format and the purchase and transfer of number plates. The policy was to be used when staff at the Motor Vehicle Registry had an enquiry about various matters to do with number plates including transferring the right to display particular number plates. The document was not made available to the public or to the plaintiff. Of relevance, the document states as follows:

Particular plates

Particular number plates can be ordered with the customer's choice of numeric characters only. Customers may choose from a number that has been previously issued:

- the vehicle has been unregistered for twelve months;
- the hold period has expired; and
- the number must be below the current number range used for the general issue plates.

Refunds of orders for the personalised, particular or special plates

If a customer orders plates and then decides they no longer require the plate, they are not entitled to a refund except in exceptional

circumstances. In this instance, the customer should be referred to the Manager Customer Services, Darwin.

Where a plate order is accepted and refused for offensiveness later then the customer has the option of either obtaining a refund or submitting an alternate choice.

Under no circumstances is a refund to be granted for the plates themselves when a customer surrenders personalised plates or sells a registered vehicle with personalised plates attached to it.

#### Transferring the right to display number plates

The right to display a personalised and particular number plate may be transferred between owners in the following instances:

- where the number plates are attached to a vehicle that is being transferred;
- where the current owner having the right to display the plates gives written authorisation to the Registrar advising that they no longer require the plates and wish to dispose of them to a new customer.

The condition of transfer for the second instance above is that the plates must be on hold for the current owner. The new owner of the plates should then apply to have the number plates transferred to their name and pay the relevant plate transfer fee.

If the plate's hold period has expired and the plate is not currently owned then the owner has forfeited their right to display the plates and the person wishing to purchase them must lodge an application to order the plates at a Registry Office.

If a customer purchases a vehicle with personalised, particular or special number plates and the previous owner wishes to keep the plates, the original owner must perform a plate change and place the plates on hold before the vehicle is transferred.

Customers may be granted an exemption from the plate transfer fee only in the situations listed below:

- the plates are transferred from the name of the deceased person to the estate of that person;

- where the recipient of the plates is the executor and sole beneficiary of a deceased estate;
- the plates are included in the division of assets ordered by a decision of the Family Law Court;
- they change their name by Deed Poll, or a company changes its name, but there is no change of “company” as defined by the Australian Securities and Investment Commission, (ASIC);
- if they are an organisation transferring the plates from one registered address to another.

Although a customer is able to transfer the right to display a number plate from one owner to another with the approval of the Registrar, they are not permitted to advertise the rights to display a number plate for sale. Such advertising will constitute a breach of the Trade Practices Act because it cannot be done without the Registrar’s approval and this approval will not be forthcoming.

- [9] On 7 May 2003 the Paul Reid’s World of Wheels’ hold period for the number plates expired as no one had made a written application to extend the hold period before the hold period expired. The expiry of the hold period also meant that Paul Reid’s right to transfer the right to display the plates was forfeited unless he successfully applied to the Registrar to regain the right to display the number plates.
- [10] On 19 June 2003 the Registrar approved a document entitled ‘Administrative Instruction 6 of 2003 Freeze on Particular Plate Re-Orders – Numbers 1 to 200’. The Administrative Instruction came into effect on 23 June 2003. The Administrative Instruction was issued to all Motor Vehicle Registry staff and to Police Outstations. The Administrative Instruction was applicable throughout 2004. The approval of the Administrative Instruction meant that the number plates depicting the number 13 were no longer available for re-

order by the general public. The document was not made available to the public or to the plaintiff. The Administrative Instruction states as follows:

FREEZE ON PARTICULAR PLATE RE-ORDERS – NUMBERS 1 TO 200

From 23 June 2003 all expired particular plates for numbers in the series 1 to 200 for cars, motorcycles and trailers will no longer be available for re-order by the general public.

MOVERS has been updated to prevent new plate orders for this range of numbers and will display the warning message:

“PLATE NOT AVAILABLE FOR RE-ORDER – REFER AI6 of 2003”

If a new customer inquires after a low number plate known to be expired or no longer required by the previous owner, the customer is to be advised the plate is not available for re-order and has been retained by the Motor Vehicle Registry.

AVAILABLE PLATE NUMBERS REPORT – MRM9016

The “Available Plate Numbers” (MRM 9016) report will now only display available plate numbers over 200. To avoid any conflict with customers, this list should be the only source available for customers to choose a particular number plate.

APPLICATIONS TO BE MADE IN PERSON

All customers must complete an official application (Form R1 - Application for Personalised/Particular Plates) at an MVR Office and pay the prescribed fee. Written, email or telephone applications and expressions of interest are not to be accepted.

TRANSFERRING THE RIGHT TO DISPLAY

If the plates are still on hold to the current owner, they can transfer the right to display to another person. To do this they must provide written authorisation to the Registrar advising they no longer require the plates and wish to dispose of them to a new owner. The new

owner should then apply to have the number plates transferred to their name and pay the relevant plate transfer fee.

NOTE: if the hold period has expired the owner has forfeited the right to transfer the plates to another person.

#### REGAINING AN EXPIRED 'RIGHT TO DISPLAY'

Occasionally the holder of a plate, that has allowed their plate to expire (that is the plate is no longer on hold but is now held by MVR) and now wishes to regain the right to display the plate. In such cases the holder must apply in writing to the Registrar of Motor Vehicles advising of their circumstances. The Registrar will determine each such request on its merits.

- [11] On 15 July 2004 the plaintiff gave the defendant a handwritten authority from Paul Reid's World of Wheels. The authority was signed by Paul Reid. It states as follows:

I, Paul Reid, of World of Wheels authorise John Anictomatis or Elias Investments Pty Ltd to transfer NT plate 13 as required.

- [12] On 15 July 2004 the plaintiff also paid the defendant \$16.80. The sum was paid in order to obtain an extension of Paul Reid's World of Wheels' hold period for the number plates for a period of 24 months. A 12 month extension of the hold period incurred a fee of \$8.40. The fee is specified by Item 31 of the Motor Vehicles (Fees and Charges) Regulations (the Regulations). The fee is described in the Regulations as an "Administration fee for each transaction in or in relation to the registration or renewal of registration of motor vehicles."

- [13] The member of staff at the Motor Vehicle Registry to whom the plaintiff paid the fees of \$16.80 and asked for an extension of Paul Reid's hold

period for the number plates did not realise that the extension of the hold period was contrary to the policy and to Administrative Instruction 6 of 2003. As a result, an entry recording that the hold period for the number plates had been extended for 24 months from 15 July 2004 was made in error in the records of the Motor Vehicle Registry. Contrary to the policy and the Administrative Instruction that were then in place in the Motor Vehicle Registry, the request for an extension of Paul Reid's hold period for the number plates was not made in writing and no approval for the extension of Paul Reid's hold period for the number plates was obtained from nor given by the Registrar. The Registrar had no knowledge of this transaction until some time in 2005.

[14] On 16 July 2004 the plaintiff lodged an incomplete Form R31 - Application for Remake or Transfer of Right to Display Number Plates (the Application) with the defendant and paid a fee of \$18.00 to the defendant. The fee was imposed by Item 25 of the Regulations. The fee is described in the Regulations as a fee or charge for the "transfer of number plates from one vehicle to another." The Application was incomplete as the plaintiff did not state the name of the current holder of the number plates in the Application. The plaintiff signed the Application on behalf of the current owner of the right to display the number plates namely, Paul Reid. He did not sign the Application as the new owner of the right to display the number plates. The application contained the following conditions of use and the following declaration clause:

### Conditions of Use

1. All number plates remain the property of the Registrar of Motor Vehicles. You are paying a fee for the “Right To Display” particular number plates only, and not for the purchase of the number plates.
2. All plates ordered must be placed on a registered vehicle within twelve (12) months of the notification that the plates are available for collection.
3. If the registration of the vehicle is allowed to lapse, you will retain the right to display the plate for twelve months. Before the expiry of this period you can apply for a twelve month extension.
4. All plate applications are accepted subject to approval of the Registrar of Motor Vehicles. Obscene, blasphemous, racially offensive, sexually explicit, violent or discriminatory plate combinations will not be approved.
5. If complaints are received regarding a personalised number plate then the Registrar may choose to withdraw the plate from circulation and offer the owner an alternative number or a refund of their personalised plate fee.

### Declaration

I declare that I have read and agree to abide by the above conditions and I acknowledge this order has been accepted subject to final approval by the Registrar of Motor Vehicles.

[15] The member of staff at the Motor Vehicle Registry to whom the plaintiff gave the Application and paid the sum of \$18.00 did not realise that the Application was contrary to the policy and Administrative Instruction 6 of 2003 and an entry was made in the records of the Motor Vehicle Registry that the number plates had been transferred to the plaintiff. The entry in the records of the Motor Vehicle Registry that the number plates had been transferred to the plaintiff was made in error. The records kept at the Motor

Vehicle Registry are not accessible by the public. The recording system is an internal recording system. The Application was not approved by the Registrar. The Application was not brought to the notice of the Registrar until June 2005.

[16] On or shortly after 16 July 2004 a member of staff at the Motor Vehicle Registry informed the plaintiff that the number plates would be on hold for him until 21 August 2005.

[17] On 19 January 2005 the Registrar approved amendments to the policy document entitled 'Registration – Policy 3.14 Number Plates'. Of relevance, the amendments to the policy state as follows:

Ownership and right to display – all number plates

All number plates issued, including Commemorative, Particular/Personalised and Special Series number plates, remain the property of the Registrar of Motor Vehicles. The use and “right to display” are subject to the Registrar’s approval in all situations. All number plates sold as souvenirs become the property of the purchaser. No “right to display” is sold with these plates.

The “right to display” is not sold or auctioned by the Registrar of Motor Vehicles.

Applications for Particular, Personalised, Special Series, or Commemorative Number Plates

All customers must complete an official application (Form R1- Application for Particular/Personalised and Special Series Number Plates) at an MVR Office and pay the prescribed fee.

Written, e-mail or telephone applications can be accepted as long as the prescribed fee is paid when the order is placed, and the Form R1 is signed (for the customer to agree to the use and conditions of the plates) at the time of collection.

The customer must agree to all conditions without amendment. No signed agreement – no number plates.

### Particular Plates

See Information Bulletin (Registration) Index – R1 Particular, Personalised and Special Number Plates

See Schedule A – Reserved and Restricted Number Plates

Particular number plates are available in the various colour and size options and consist of the customer's choice of numbers only (Fee applies). Customers may choose from a number that has been previously issued providing that:

- the number is not reserved;
- the vehicle to which the plates are attached has been unregistered for twelve months;
- the hold period has expired; and
- the number must be below the current number range used for general issue plates.

### Number Plates from 1 to 200

All particular plate orders for numbers in the series of 1 to 200 for cars, motorcycles and trailers can only be approved by the Registrar of Motor Vehicles. MOVERS will prevent any plate orders for these numbers.

The Registrar has retained the “right to display” these number plates and the Registrar may issue or re-issue these plates at his/her discretion.

From 23 June 2003 all expired particular plates for numbers in the series 1 to 200 for cars, motorcycles and trailers will no longer be available for re-order by the general public. MOVERS has been updated to prevent new plate orders for this range of numbers and will display a warning message.

If a new customer inquires after a low number plate known to be expired or no longer required by the previous owner, the customer is

to be advised the plate is not available for order or re-order, and has been retained by Motor Vehicle Registry.

#### Refunds for Personalised, Particular or Special Series/Commemorative Number Plates

If a customer orders plates and then decides they no longer require the plates, they are not entitled to a refund.

Where a plate order is accepted then refused by the Registrar, or the Registrar has withdrawn a plate from circulation, the customer may be offered an alternative number or given a refund of the personalised plate fee.

Under no circumstances is a refund to be granted for the plates when a customer surrenders personalised plates, or sells a registered vehicle with personalised plates attached to it.

#### Transferring the “right to display” number plates

The “right to display” a personalised and particular number plates may be transferred from one person to another, whether on a vehicle or on hold, where:

- (a) the number plates are attached to a vehicle and the vehicle’s ownership is being transferred; or
- (b) the person who has the “right to display” gives written authorisation to the Registrar advising that they no longer require the plates, and wish to dispose of them to another person. The new plate holder is required to pay the prescribed plate transfer fee.

#### Retaining the “right to display”

If a customer purchases a vehicle with particular/personalised/special series or commemorative number plates, and the previous vehicle owner wishes to keep the number plates, then the original vehicle owner (the person holding the “right to display”) must perform a plate change, and place the number plates on hold before the vehicle is transferred.

If the hold period has expired, the person has forfeited the “right to display” the plates, and therefore cannot transfer the “right to display” the plates to another person.

#### Regaining an expired “right to display”

Occasionally the holder of a plate has allowed their plate to expire (ie, the plate is no longer on hold but is now held by MVR) and now wishes to regain the “right to display” the plate. In such cases, the holder must apply in writing to the Registrar of Motor Vehicles advising of their circumstances. The Registrar will determine each such request on its merits.

[18] On 4 May 2005 the plaintiff requested a member of staff at the Motor Vehicle Registry to provide him with the number plates. He was told that the number plates could not be located and it was necessary to manufacture a new set of the number plates. The Motor Vehicle Registry then took steps to re-order the number plates. It was necessary to make an entry in the computer records of the Motor Vehicle Registry that the number plates had been surrendered to the Motor Vehicle Registry as a pre-condition to the re-order. The plaintiff did not in fact surrender the plates.

[19] On 12 May 2005 the Registrar issued Information Bulletin R31 - Remaking and Transferring the Right to Display Number Plates. Of relevance, the Bulletin states as follows:

#### Transferring your number plates (“right to display”)

What is the “right to display” number plates?

The “right to display” is the permission granted to you by the Registrar of Motor Vehicles to display a particular number or letters (or a combination of both) on a number plate issued for the purpose of vehicle registration in the NT. This combination is exclusive to the person who has been granted the “right to display”. You can

transfer the “right to display” to another person. You need to provide written permission to the person who you are transferring the “right to display” to.

How do I transfer the “right to display” to another person?

Simply fill out the form attached to the rear of this bulletin and lodge it at your nearest Motor Vehicle Registry office with the fees.

If transferring the “right to display” to another person, your number plates must be handed into a Motor Vehicle Registry office, so that a new registration certificate can be issued to the new owner. Number plates can be held for collection by the new owner for up to twelve months.

The following conditions apply to all number plate remakes and transfers:

- (1) All number plates remain the property of the Registrar of Motor Vehicles. Payment of the fee gives you the “right to display” the approved number plate on your vehicle.
- (2) All plates ordered must be placed on a registered vehicle within twelve [12] months of becoming available.
- (3) If the registration of the vehicle is allowed to lapse you will retain the “right to display” the plate for twelve months. At any time within this period you can apply for an extension of time to retain the “right to display” for an additional fee.
- (4) Transferring the “right to display” incurs a fee, and a new registration certificate and label will be issued.

The format of the number plate cannot be changed. If you wish to change the plate size, colour, or series (e.g.: to record a region or explorer plate series), a new application is required.

[20] On 12 May 2005 the Registrar issued Information Bulletin R1 - Particular, Personalised & Special Series Number Plates for Private Vehicles. Of relevance, the Bulletin states as follows:

### How can I order Personalised, Particular or Special Series number plates?

To order particular, personalised or special series number plates, simply complete the application form attached to the rear of this bulletin and lodge it at your nearest MVR Office. Plates must be paid for when ordering. No refunds will be given unless the application is not approved, or there are extenuating circumstances. This includes changing an existing number plate to a new colour or format.

For further information please contact your local MVR office or phone 1300654628.

### What conditions apply?

The following conditions apply to all particular, personalised and special number plates:

- (1) All number plates remain the property of the Registrar of Motor Vehicles. Payment of the fee gives you the “right to display” the approved number plate on your vehicle.
- (2) All plates ordered must be placed on a registered vehicle within twelve [12] months of becoming available.
- (3) If the registration of the vehicle is allowed to lapse you will retain the “right to display” the plate for twelve months. At any time within this period you can apply for an extension of time to retain the “right to display” for an additional fee.
- (4) Where an application for a specific plate has been rejected, the applicant may either:
  - submit an alternative choice, or;
  - apply for a refund of fees.

[21] On either 1, 2 or 3 June 2005 the plaintiff attended the Motor Vehicle Registry and requested delivery of the number plates. He was informed by the Motor Vehicle Registry Manager, Mr Craig Bradley, that the transfer of number plates depicting the numbers 1- to 200 was subject to the final

approval of the Registrar; that it was Motor Vehicle Registry policy that the Registrar retained the right to display number plates depicting the numbers 1 to 200 once the hold period expired; there had been an error in extending Paul Reid's hold period for the number plates; the number plates would not be given to the plaintiff; and the number plates would be disposed of in some fair way as there had been interest expressed by other members of the community in the number plates. The plaintiff asked Mr Bradley to speak to the Registrar concerning the matter and on a later occasion, but before 1 July 2005, Mr Bradley told the plaintiff that the Registrar had decided the number plates would not be issued to the plaintiff.

[22] On 1 July 2005 the Registrar sent a letter to Paul Reid. The letter states as follows:

Dear Mr Reid,

I refer to your previous Right to Display number plate 13.

Our records indicate that you returned number plate 13 to Motor Vehicle Registry (MVR) on 7 May 2002. Consistent with policy, MVR held surrendered plate 13 for a period of twelve months. During the hold period I understand you received a letter from MVR, also consistent with policy, advising you were required to extend the hold period on plate 13 for a further one to two years by paying the prescribed annual fee (\$8.20 per year) or that your right to display the plate would be forfeited. MVR did not receive a request from you during this time to extend the hold period on plate 13. As a result your right to display plate 13 at this time was forfeited.

Some twelve months after the hold period had expired on plate 13 and your right to display plate 13 forfeited, you paid MVR \$16.40 to place this particular plate on hold for a period of two years.

During the twelve month period where the right to display this plate was retained by the Registrar (7 May 2003 to 14 August 2004) a number of customers expressed interest in plate 13. A former Registrar determined that all plates between the range of 1 to 200 would not be re-issued and would no longer be available for re-order by the general public. This is the case with number plate 13. This determination was effected in MVR policy.

On 16 August 2004, a day following receipt of your \$16.40 at MVR to hold plate 13 for a further two year period, you provided permission for Mr Anictomatis to be given the right to display/hold this plate. It should be noted that all plates, including those that are handed back to MVR, are the property of the Registrar in accordance with the Motor Vehicles Act.

MVR accepted in error the \$16.40 to place plate 13 on hold, after the hold period had expired, and incorrectly transferred the right to display/hold on this plate to Mr Anictomatis.

As MVR has received numerous requests for number plate 13 and to ensure a fair and equitable process of allocating this particular plate, I have determined this plate to be offered by public competitive process. Details of this process are currently being investigated and confirmed.

I apologise for any inconvenience caused and advise that a cheque for \$16.40 as refund for monies incorrectly receipted by MVR will be forwarded to you. Mr Craig Bradley, Manager MVR can be contacted on telephone 8999 3156.

[23] On 1 July 2005 the Registrar sent a letter to the plaintiff. The letter states as follows:

Dear Mr Anictomatis

I refer to your application for the transfer of the right to display number plate 13 dated 16 July 2004 and your subsequent requests to obtain number plate 13. Your application to display number plate 13 has been declined and you will be reimbursed monies receipted in error by Motor Vehicle Registry (MVR). An opportunity does exist however, for you to make a new application for a different plate. Reasons for this decision are provided below.

I have been advised that number plate 13 was handed back to MVR on 7 May 2002 by Mr Paul Reid.

In accordance with policy, Mr Reid's claim on this plate expired on 7 May 2003. Current policy enables an extension on number plate hold periods for a further twelve to twenty-four months providing the person surrendering the plate has met the following:

- Applies to extend the hold period on the plate prior to the initial twelve month expiration period; and
- Pays the prescribed hold fee of \$8.20 per year.

Our records indicate that Mr Reid did not fulfil the requirements to extend the hold period on plate 13. The renewal letter for extending a plate clearly stipulates that any rights to display the plate are forfeited unless application has been received to extend the hold period.

A search of MVR records has indicated that Mr Reid paid to hold plate 13 on 15 August 2004 and the following day, 16 August 2004, incorrectly gave permission to transfer the right to display/hold this plate to you.

[indecipherable] ...to MVR, are the property of the Registrar in accordance with the Motor Vehicles Act.

During the twelve month period where the right to display this plate was retained by the Registrar (7 May 2003 to 14 August 2004) a number of customers expressed interest in plate 13. The former Registrar determined that all plates between the range of 1 to 200 would not be re-issued and would no longer be available for re-order by the general public. This is the case with number plate 13 and this determination was effected in policy.

I understand Mr Reid is related to you. However, number plates are not allocated based on family relationship or association.

I appreciate, and regret, that the acceptance and transfer of the right to display plate 13 and the subsequent payment to place this plate on hold, after the expiry period had lapsed, have been processed in error.

Your application for plate 13 has been one of many for this particular plate received by MVR since 7 May 2003. To ensure a fair and equitable process of allocating the right to display this plate to all parties involved, I have determined this plate to be offered by public competitive process. Details of this process are currently being investigated and confirmed.

Any monies received in relation to this application to extend the hold period on plate 13 will be refunded to Mr Reid and the transfer fee for the right to display which was also taken in error will be refunded to you.

I apologise for any inconvenience caused and I will contact you further when details of the public competitive process for this plate are confirmed.

[24] On 4 July 2005 the Registrar recorded that the \$18.00 was being held as trust monies for the plaintiff by way of an accounting reversal of the transfer fee paid by the plaintiff on 16 July 2005. On 7 July 2005 a cheque was sent to the plaintiff by way of refund of the \$18.00. On the same day a cheque was sent to Paul Reid's World of Wheels by way of refund of the \$16.80. The plaintiff did not accept the cheque and returned it to the Minister for Infrastructure and Transport on 8 August 2005.

[25] On 10 November 2005 the Registrar approved amendments to the policy document entitled 'Registration - Policy 3.14 Number Plates'. Of relevance, the amendment to the policy states as follows:

Number Plates from 1 to 200

From 23 June 2003 all expired particular plates for numbers in the series 1 to 200 for cars, motorcycles and trailers will no longer be available for order by the general public. MOVERS has been updated to prevent new plate orders for this range of numbers and will display a warning message.

The Registrar has retained the right to display these number plates and the Registrar may issue or re-issue these plates through the public tender process.

If a new customer enquires after a low number plate known to be expired or no longer required by the previous owner, the customer is to be advised the plate is not available for order or re-order, and has been retained by Motor Vehicle Registry.

#### Public Tender Process – Number Plates 1 to 200

Number plates 1 to 200 will be made available by public tender inclusive for car/truck, motorcycles and trailers.

Northern Territory residents are invited to tender bids on the approved form – Form R38 – Tender for Personalised/Particular Number Plates – for the particular number plate of their choice. Plates can be ordered in any of the approved number plate formats.

#### Hold Period for plates numbered 1 to 200

Under no circumstance is a hold period on this plate range to be extended on MOVERS for an expired plate, ie where a customer's right to display on an expired plate has ceased.

Any customer queries on this plate range must be referred to the Manager of MVR.

[26] On 11 November 2005 Information Bulletin R31 and Form R31 were amended by the Manager of Registration & Licensing Policy. Of relevance, the conditions of use contained in Form R31, which is the application form for personalised/particular number plates, still stated that all plate applications are accepted subject to approval of the Registrar.

[27] On 23 November 2005 the Registrar sent a letter to the plaintiff. The letter states as follows:

Dear Mr Anictomatis

Re: Public Tender for available Number Plates between 1 to 200

I understand that you received a letter dated 29 October 2005 from the Minister for Infrastructure and Transport, Chris Burns MLA in relation to number plate 13 and the intention to make this plate available by public tender. In his letter of 29 October 2005 the Minister also advised you that the Department would contact you to advise you of the timelines for the tender process.

I am pleased to inform you that the opening date for the tender is Thursday 24 November 2005, with tenders closing on 7 December 2005. Information relating to the tender process can be obtained from the Northern Territory News edition of Thursday 24 November 2005 or via the Internet at the website: [www.nt.gov.au/tenders](http://www.nt.gov.au/tenders).

The number plates that are available for public tender are car/truck type plates 13, 31, 77, 82, 120, 127, 158, and 197.

Should you have any questions about this matter, please contact me on telephone 8924 7598 or by email [leah.croke@nt.gov.au](mailto:leah.croke@nt.gov.au).

LEAH CROKE

Registrar of Motor Vehicles

[28] On 24 November 2005 the Registrar put the number plates out to public tender. The tender period closed at 2.00pm on 7 December 2005. The Registrar has not delivered the number plates to the plaintiff.

[29] The material facts may be summarised as follows. On 7 May 2003 Paul Reid's hold period for the number plates expired which meant that according to the policy of the Motor Vehicle Registry he no longer retained the right to display the number plates and he forfeited the right to transfer the right to display the number plates. On 19 June 2003 the Registrar issued an Administrative Instruction which stated that all expired particular number

plates for numbers in the series 1 to 200 would no longer be available for re-order by the general public. Unexpired number plates in the series 1 to 200 could still be transferred to another person with the approval of the Registrar. Paul Reid could also apply to have his hold period extended out of time but such an application had to be in writing and any extension of the hold period out of time was subject to the approval of the Registrar. On 14 July 2004, which was more than 12 months after Paul Reid's hold period for the number plates had expired, Paul Reid authorised the plaintiff in writing to transfer the number plates as required. On 15 July 2004 the plaintiff attended at the Motor Vehicle Registry in Darwin, he filed the written authority that had been signed by Paul Reid, he asked a member of staff to extend Paul Reid's hold period for 24 months and he paid the administration fees for doing so being \$16.80. The member of staff accepted the fees and extended Paul Reid's hold period for the number plates to 15 July 2006. The staff member did so in error and contrary to the written instructions of the Registrar. The Registrar did not approve the extension of Paul Reid's hold period for the number plates. On 16 July 2004 the plaintiff again attended at the Motor Vehicle Registry in Darwin and he applied to have the number plates transferred to him. He signed the Application for transfer and he paid the transfer fee of \$18.00. The Application contained the Conditions of Use referred to in par [14] above. Acceptance of the Application was expressed to be "subject to" the approval of the Registrar. On 16 July 2004 a member of staff employed at the Motor

Vehicle Registry accepted the \$18.00 fee paid by the plaintiff and made an entry in the records of the Motor Vehicle Registry that the number plates had been transferred to the plaintiff. The member of staff did so in error and contrary to the written instructions of the Registrar. The Registrar did not approve the transfer of the number plates to the plaintiff and was not aware of what had occurred until sometime in 2005. On either 1, 2 or 3 June 2005 the plaintiff attended the Motor Vehicle Registry and requested delivery of the number plates. He was informed by the Motor Vehicle Registry Manager, Mr Craig Bradley, that the transfer of number plates depicting the numbers 1 to 200 was subject to the final approval of the Registrar and that the Registrar had decided not to approve the transfer of the number plates to the plaintiff. On 1 July 2005 the Registrar caused a letter to be sent to the plaintiff confirming that the plaintiff's application for transfer of the number plates had been declined and stating that the right to display the number plates would be offered by public competitive process.

**Was the plaintiff's offer accepted by the defendant?**

[30] The plaintiff argued that in the above circumstances a contract between the plaintiff and the defendant was formed when the member of staff employed at the Motor Vehicle Registry accepted the Application, which was signed by the plaintiff, and the transfer fee of \$18.00 and recorded the transfer of the number plates to the plaintiff on the computer system at the Motor Vehicle Registry. It was said that in the circumstances there was nothing more for the parties to do. The plaintiff had performed his side of the

bargain and the number plates were on hold for the plaintiff from the time that the relevant entry was made in the computer records at the Motor Vehicle Registry. The approval of the Registrar was a forgone conclusion because the issue of the number plates had previously been approved. The number plates were not obscene, blasphemous, racially offensive, sexually explicit, violent or discriminatory.

[31] In my opinion the plaintiff's argument cannot be sustained and I find that no contract was formed between the parties. Putting aside, for the moment, the question of whether the parties intended to enter contractual relations, the argument cannot be sustained for the following reasons. This was not a case in which the plaintiff accepted a unilateral offer that was made by the defendant. The plaintiff made a specific Application to the defendant. He applied for the right to display the number plates, which the Registrar controlled, to be transferred to him. In support of his application the plaintiff declared that he agreed to comply with the Conditions of Use and he paid the sum of \$18.00. While staff employed by the defendant at the Motor Vehicle Registry physically accepted the signed Application for transfer of the number plates and the sum of \$18.00 and erroneously made the various entries in the computer system, the defendant did not thereby agree to the plaintiff's request. That is, the defendant did not thereby accept what may be described as the plaintiff's offer. Clause 4 of the Conditions of Use and the Declaration in the Application, which are set out in par [14] above, expressly state that the acceptance of the Application (or order) was

“subject to” final approval by the Registrar and the Registrar declined to give his approval to transfer the number plates to the plaintiff. There cannot be a conditional acceptance of an offer: *Spencer’s Pictures Ltd v Cosens* (1918) 18 SR (NSW) 102; *Ballas v Theophilos (No 2)* (1957) 98 CLR 193. For an acceptance to be binding on a party it must be unequivocal. In this case acceptance by the defendant of the plaintiff’s Application was made expressly contingent upon the final approval of the Registrar and the Registrar declined to approve the transfer of the number plates to the plaintiff. In the circumstances there was no binding contract formed between the parties.

[32] If I am wrong in the above analysis, then, at the very least, the inclusion of the express statement in the Application that “applications are accepted subject to the approval of the Registrar of Motor Vehicles” meant that the defendant’s acceptance of the plaintiff’s request was suspended pending approval by the Registrar and as approval by the Registrar was ultimately declined the defendant was not bound to perform its obligations under the alleged contract.

[33] I do not accept the argument of the plaintiff that the proper interpretation of the terms of clause 4 of the Conditions of Use and the terms of the Declaration, which are set out in par [14] above, is that the discretion of the Registrar to decline approval of the transfer of number plates was confined to obscene, blasphemous, racially offensive, sexually explicit, violent or discriminatory number plate combinations. The Application applied to both

the remake and the transfer of number plates including particular numeric number plates. If the intention of the clause was to only preclude the re-ordering or transfer of obscene, blasphemous, racially offensive, sexually explicit, violent or discriminatory number plate combinations then clause 4 simply needed to state that obscene, blasphemous, racially offensive, sexually explicit, violent or discriminatory number plate combinations shall not be remade and the right to display such number plates shall not be transferred. The purpose of the statement that, “obscene, blasphemous, racially offensive, sexually explicit, violent or discriminatory plate combinations will not be approved” was to put all applicants on notice of that particular policy of the Registrar. It was not to confine the discretion of the Registrar. There are a number of reasons why the Registrar may decline to approve the transfer of the right to display a set of numeric number plates including the expiry of the hold period of the current holder of the right to display the number plates, the failure of an applicant for transfer to obtain the authority of the current holder of the right to display the number plates, information received that the applicant does not intend to fix the number plates to the appropriately registered motor vehicle and the fact that the current holder of the right to display the number plates may have advertised them for transfer contrary to the policy of the Registrar. This interpretation of clause 4 of the Conditions of Use is also supported by the fact that the Declaration in the Application makes no reference to obscene, blasphemous, racially offensive, sexually explicit, violent or discriminatory plate

combinations. It simply states that, “this order has been accepted subject to final approval by the Registrar of Motor Vehicles.”

[34] Further, the actions taken by the members of the defendant’s staff at the Motor Vehicle Registry in recording that the plaintiff had become the holder of the right to display the number plates did not amount to acceptance of the plaintiff’s request for the following reasons. A principal will only be bound to a third party by acts that are within the agent’s authority. The members of staff at the Motor Vehicle Registry were not the delegates of the Registrar nor were they authorised to approve or record a transfer of the number plates to the plaintiff or anyone else. On the contrary, they were instructed not to do so. No member of staff other than the Registrar had authority to extend Paul Reid’s hold period after it had expired. The members of staff who were employed at the Motor Vehicle Registry had been instructed that they could not extend hold periods of number plates depicting numbers in the series 1 to 200 after the hold period had expired. The members of staff had also been instructed that any orders for number plates in the series 1 to 200 were to be rejected if the hold period for the number plates had expired. The defendant did not ratify the acts of the members of staff who were employed at the Motor Vehicle Registry. The plaintiff did not rely on the fact that he was erroneously told by members of staff at the Motor Vehicle Registry that the number plates were on hold for him to his detriment; and, he was advised of the Registrar’s decision to decline approval of the transfer of the number plates to him before the number plates were delivered to him.

[35] No question of ostensible authority arises because the Application expressly states that the acceptance of the application was subject to the approval of the Registrar. The defendant took the necessary steps to make the public aware that the members of staff employed at the Registry did not have the authority to approve an application for the transfer of the right to display a number plate.

[36] In my opinion, the Registrar did not unreasonably withhold his approval. The Registrar's decision to decline approval of the transfer of the number plates to the plaintiff was consistent with the formally established policy about number plates in the series 1 to 200. The aim of the policy was to establish a commercially fair way of dealing with the competing demands of the members of the public who had expressed an interest in obtaining the right to display number plates in the series 1 to 200.

**Did the parties intend to create contractual relations?**

[37] The defendant argued that the plaintiff's claim for specific performance should be rejected because there was no intention to create legal relations and therefore no contract capable of being enforced. It was submitted on behalf of the defendant that, taking into account all of the circumstances, it could not be concluded that the parties were dealing with one another on a contractual basis. The transaction was not contractual in nature but was part and parcel of the Registrar's governmental functions which were carried out under the Motor Vehicle Act: *The Administration of the Territory of Papua*

*New Guinea v Leahy* (1961) 105 CLR 6 at 10 and 19. The arrangements were not entered into on a commercial basis. The arrangements were entered into as part of the administration of a regulatory regime. The arrangements that were in place for the transfer of the right to display number plates were part of the arrangements that the Registrar had established to retain control over the issue and circulation of number plates which was necessary to ensure that number plates were attached to a particular registered car so that registered and unregistered motor vehicles could be easily identified. The fee paid was akin to an administration fee that was paid to a consent authority and was not a negotiated or set price. The Registrar was in an equivalent position to the Council in *Lismore City Council v Stewart* (1989) 18 NSWLR 718.

[38] The plaintiff's argument in response may be summarised as follows. The parties did intend to create contractual relations. The parties voluntarily assumed legally enforceable duties. The search for the intention to create contractual relations requires an objective assessment of the state of affairs between the parties: *Ermogenous v Greek Orthodox Community of SA Inc* (2002) 209 CLR 95. The law is concerned not with the real intentions of the parties but with the outward manifestations of those intentions. The decisive issue is the intention of the parties objectively ascertained from the terms of the relevant document read in the light of the surrounding circumstances: *Seven Cable Television Pty Ltd v Telstra Corp Ltd* (2000) 171 ALR 89 per Tamberlin J at par 100. The relevant document in this case

is the Application that was signed by the plaintiff on 16 July 2004. The Application was in the form of a contractual document. The Application was in similar form to documents that were used in a commercial context such as applications to obtain finance from a bank. The consideration provided by the defendant was expressed to be the “Right to Display” particular number plates. The fee of \$18.00 was described in the Application as a fee for the “Right To Display” particular number plates. Neither in the Regulations nor in the Application was the fee of \$18.00 described as an administration fee whereas other fees were described as administration fees in the Regulations. The Application contained “CONDITIONS OF USE”, the “DECLARATION” beneath which the plaintiff signed was expressed in such a manner so as to record that the plaintiff agrees to abide by the Conditions of Use and the Application described the transaction to be effected by it as an “order”. The surrounding circumstances of the transaction included a whole raft of arrangements whereby members of the public could order personalised and particular plates for which different fees applied under the regulations and, as in this case, fees were to be refunded in certain circumstances to “Customers” if “orders” for particular or personalised number plates were unsuccessful. It was said that in the circumstances the Application had all of the hallmarks of a contract.

[39] In view of my findings at par [31] above it is strictly not necessary for me to determine this issue. However, as some time was devoted to it I have

considered the issue. In my opinion, having objectively considered the Application, the nature of the transaction and the surrounding circumstances there was not a voluntary assumption of a legally enforceable duty by the defendant. A person in the position of the plaintiff could not have reasonably understood that it was the defendant's intention to be legally bound to grant the plaintiff the right to display the number plates upon the Application being lodged with a member of staff at the Motor Vehicle Registry and the transfer fee being paid. It would be inappropriate to regard the relationship between the plaintiff and the defendant as a contractual relationship.

[40] It is now well established that Governments can sue and be sued in contract. The Crown does not attract any special rule relating to the intention to create legal relations if it is engaging in ordinary commercial dealings: *Munday and Shreeve v Western Australia & Western Australia Transport Board* [1962] WAR 65. However, when a Government enters into an arrangement with a citizen as part of the process of implementing governmental functions or administering regulatory regimes the treatment of the relationship between the Government and a member of the public as contractual may be inappropriate: *Australian Woollen Mills Pty Ltd v Commonwealth* (1954) 92 CLR 424. The authors of Cheshire and Fifoot's: Law of Contract (9<sup>th</sup> Aust ed) state at par 5.28:

There is a considerable body of case law that upholds the proposition that in certain types of activities governments cannot be tied down by contract. An example is a local council carrying out its

responsibilities in relation to planning control, even though a fee is paid for obtaining a certificate and so forth. The courts in such cases say that there is no intention to create contractual relations, despite the fact that in all other respects the arrangements have the hallmarks of contract.

[41] Because arrangements that are entered into with Governments often involve both commercial and peculiarly governmental activities it may be difficult to determine if the parties intended to create contractual relations.

Agreements which have an element of public purpose or non-commercial outcome may nevertheless be binding contracts. As the author of *Government Contracts – Federal, State and Local* (2<sup>nd</sup> ed) states:

It is not true to say that, just because the subject matter of the agreement is uniquely governmental in character, this necessarily means that it is not legally binding as a contract.

[42] I have reviewed the following authorities: *The Administration of the Territory of Papua New Guinea v Leahy* (supra); *Australian Woollen Mills Pty Ltd v Commonwealth* (supra); *John Cooke & Co Pty Ltd v Commonwealth* (1922) 31 CLR 394; *Logan Downs Pty Ltd v The Commissioner for Railways* [1960] Qd R 191; *Lismore City Council v Stewart* (supra); *Placer Development Ltd v Commonwealth* (1969) 121 CLR 353; *Ansett Transport Industries (Operations) Pty Ltd v The Commonwealth of Australia* (1977) 139 CLR 54; *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977) 180 CLR 266; *Suatu Holdings Pty Ltd v Australian Postal Corporation* (1989) 86 ALR 532 at 542; *Rothmans of Pall Mall (NZ) Ltd v Attorney-General* [1991] 2 NZLR 323; *Airways Corporation of New*

*Zealand Ltd v Geyserland Airways Ltd* [1996] 1 NZLR 116; *Director of Posts and Telegraphs v Abbott* (1974) 2 ALR 625 and *Coogee Esplanade Surf Motel Pty Ltd v Commonwealth* (1976) 50 ALR 363. The authorities reveal that the following factors may be of assistance in determining the issue of whether the Government and a member of the public have intended to create contractual relations. First, the form of the arrangement may be an important factor. In some cases the obligations of the parties are spelled out in the same way as in a commercial agreement. Secondly, the procedures that were followed by the parties in formulating their arrangement may be important. Thirdly, the fact that the relevant Government entity or servant is obliged by legislation to provide their goods and services to the public may be an important factor. Fourthly, the fact that the transaction is a transaction which ordinary commercial entities do not undertake may be an important factor. That is, the subject matter of the agreement may or may not indicate whether the parties intended to create legal relations. Fifthly, the lack of any element of negotiation in the transaction may be an important factor. Sixthly, the fact that the agreement was in the nature of a “one off” deal may be important. Seventhly, the fact that there has been a request by the alleged promisor that the promisee do the act on which the latter relies may be an important factor. Eighthly, the fact that the conduct of the parties constituted an administrative arrangement by which the Government implemented its governmental scheme or regime may be an important factor. That is, it is important to consider whether the transaction

is being undertaken pursuant to a specific governmental function. However, it should not be overlooked that on occasion contract may be chosen by Government as the mode of public administration.

[43] In my opinion the most important consideration in this case is the nature of the transaction itself. What occurred is that the plaintiff made a written application to obtain the Registrar's approval for the right to display the number plates to be transferred to him so that he could display the number plates on his motor vehicle. He did so after he had obtained Paul Reid's authority to do so. It was necessary for the plaintiff to obtain the Registrar's approval because the defendant owned the number plates and the Registrar controlled the issue and transfer of the number plates. The Registrar did so as part of the Registrar's functions under the Motor Vehicles Act 1949 (NT) of administering and regulating the registration of motor vehicles in the Northern Territory. If the transfer of number plates is approved the number plates may be held for a period of 12 months at the motor vehicle registry unless approval is given for the period to be extended. Otherwise, the number plates are to be placed on a registered motor vehicle within 12 months of the transfer being approved. A transfer of number plates incurs a fee and prior to the number plates being placed on the registered motor vehicle a new registration label and certificate for the motor vehicle are issued by the Motor Vehicle Registry. The defendant, no doubt, incurs the cost of producing the new registration label and certificate. While allowing members of the public a degree of choice in the number

plates that they are required to have attached to their motor vehicles, the purpose of the transfer procedures is to enable the Registrar to retain control over the issue and circulation of number plates which is necessary to ensure that number plates are attached to a particular registered motor vehicle so that registered and unregistered motor vehicles can be easily identified. The procedures are an integral part of the Registrar's function in administering and regulating the registration of motor vehicles in the Northern Territory which is a specific governmental function. The wording of the Application did not change the fundamental nature of the transaction and the inclusion of the Conditions of Use was consistent with the requirements of the Act and the system of motor vehicle registration that had been established. The transaction is not a transaction in the nature of a commercial transaction. What was being sought from the defendant was the approval of the Registrar which at all times remained a matter of discretion for the Registrar. In the circumstances it is my opinion that the parties did not intend to enter into contractual relations.

[44] The above finding is supported by the fact that neither the transfer fee nor the Conditions of Use were capable of being the subject of negotiation and the transaction is distinguishable from the kinds of transactions contemplated by s 138(2) of the Motor Vehicles Act, which states as follows:

Notwithstanding that the Regulations may prescribe a fee for the issue of number plates, the Registrar may offer number plates for sale by tender, auction, or other method approved by the Minister,

and the purchase price paid by a person for number plates so offered shall be deemed to be the fee prescribed for the issue of those number plates.

[45] Subsection 138(2) of the Motor Vehicles Act recognises that there is a distinction between a purchase price and a fee that is fixed by the Regulations. The subsection deems the purchase price to be the fee which would otherwise be payable in such circumstances. In effect, if a member of the public pays the purchase price they are excused from paying the fee which would otherwise be imposed under the Regulations.

### **Orders**

[46] I make the following orders:

1. The plaintiff's claim is dismissed.
2. The interlocutory injunction granted by Thomas J on 8 December 2005 restraining the defendant from selling the use of or the entitlement to use, or to display, number plate 13 until further order is set aside.
3. There shall be judgment for the defendant.

[47] I will hear the parties further as to costs.

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