(tho95015)

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No. 41 of 1989
(8901769) and
No. 227 of 1992
(9217109)

BETWEEN:

COLIN WAYNE HINDS and
SUSAN JOAN (JEAN) HINDS
Plaintiffs

AND:

HORST UELLENDAHL and
FROUKJE UELLENDAHL
First Defendants

AND:

AMPHORA PTY LTD (formerly
ALLORA PTY LTD ACN 009645596)
Second Defendant

AND:

ANDREAS SYRIMI and
MARIANNA SYRIMI
Third Defendants

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 22 September 1995)

This is a claim by the plaintiff against the third defendants for monies for breach of a constructive trust relating to the sale and purchase of a block of land known as 35 Lagoon Road, Berrimah.

The hearing of this matter commenced on 13 June 1995 and concluded on 26 June 1995.

These reasons for judgment deal solely with the claim between the plaintiffs and the third defendants. The first defendants did not appear at the hearing. The plaintiffs have previously made application for summary judgment against the first defendants.

The application for summary judgment against the first defendants will be dealt with in a separate reasons for judgment. In respect of the second defendant an order was made with the consent of the plaintiffs and the third defendants. The third defendants were previously directors of the second defendant's company. The order by consent was made on 16 June 1995 (transcript pp 212-214):

> "I confirm I am informed that the second defendant, Amphora Pty Ltd (formerly Allora Pty Ltd) was a company de-registered on 4 March 1994. On the application of counsel for the defendant, and by consent, I make an order that the second defendant be removed as a party to these proceedings."

In the consolidated statement of claim dated 22 July 1994, the plaintiffs claim as against the third defendants as follows:

1. Equitable damages for breach of trust;

2. All necessary and consequential accounts, directions and inquiries.

3. Further and in the alternative, damages for interference with contractual relations;

4. Interest; and

5. Costs.

The background to the proceedings is as follows:

The dispute relates to a block of land currently described as:

> All that piece of land comprising an area of approximately 5.375 hectares being the whole of the land comprised in Certificate of Title Volume 287 Folio 152 being Portion 1110 Hundred of Bagot delineated in Plan S82/282 known as 35 Lagoon Road Berrimah. The subject property is situated on the corner of the Stuart Highway Lagoon Road and Agostini Road in the rural area of Berrimah. It is located opposite the industrial

area of Berrimah and has Ironstone Lagoon to the rear of the property (Exhibit P11).

On 17 May 1984, the property was owned by the Australian National Railways Commission who leased the land to Horst Uellendahl for a period of ten years (Exhibit P1-3.1).

On 20 July 1988, the Australian National Railways Commission entered into an agreement for sale of the land in fee simple to the first defendants, Horst Uellendahl and Froukje Uellendahl for the sum of $100,000. The date for completion of sale being 1 September 1988 (Exhibit P1-3.2).

Mr Martin Stanley Gore, licensed valuer of Darwin, states the fair market value of the subject property as at 9 August 1988 was $100,000 (Exhibit P11). I accept in July/August 1988, the fair market value of the property was the amount specified in the agreement of sale between the Australian National Railway Company and Horst Uellendahl and Froukje Uellendahl, i.e. an amount of $100,000.

On or about 20 July 1988, the plaintiffs and the first defendants entered into an oral contract. This and the written contract for sale dated 8 August 1988 are referred to hereafter as the "Hinds contract".

The first defendants agreed to sell to the plaintiffs an estate in fee simple in the subject land in consideration of the payment by the plaintiffs to the first defendants of the sum of $100,000.

The plaintiffs agreed to pay the purchase price to the first defendants by paying to the solicitors acting for the Australian National Railways Commission as follows:

a) The sum of $5,000 being the deposit due by the first defendants to the Australian National Railways Commission pursuant to the Australian National Railways Commission contract.

b) The balance of the purchase price due to the Australian National Railways Commission by the first defendants pursuant to the Australian National Railways Commission contract, namely $95,000 upon completion of the Australian National Railways Commission contract with the first defendants.

It was further agreed that upon completion of the Australian National Railways Commission contract with the first defendants, the first defendants would transfer an estate in fee simple in the subject land to the plaintiffs and pending such transfer the first defendants' interest in the subject land would be held by the first defendants on trust for the plaintiffs.

On 20 July 1988, in part performance of the contract, the plaintiffs paid to the first defendants and the first defendants then paid to the solicitors acting for the Australian National Railways Commission the sum of $5,000 being the deposit due by the first defendants to the Australian National Railways Commission pursuant to the Australian National Railways Commission contract. The plaintiffs then arranged to mortgage their own property to obtain the balance of $95,000 to pay to the first defendants. Mr Hinds was successful in obtaining approval for a loan of $95,000 from Citibank (Exhibit P7). He also organised insurance on this property for the loan (Exhibit P8). Mr Hinds gave evidence he had been unable to locate the first policy of insurance. Exhibit P8 is the renewal invitation of the original policy from 8 August 1989 to 8 August 1990. I accept Mr Hinds' evidence he first took out this policy on 8 August 1988. The plaintiffs arranged for their solicitors to draw up an agreement between themselves and the first defendants together with an acknowledgment that the first defendants held the property in trust for the plaintiffs until such time as the first defendants transferred the property to the plaintiffs. On the night of Sunday 7 August 1988, Mr Hinds in company with his wife and a Mr John Coyle went to the home of Mr and Mrs Uellendahl, the first defendants, and all parties signed the contract for sale and purchase of the subject land (Exhibit P1 - 3.3) and the acknowledgment (Exhibit P1 - 3.4). The completion date in the contract for sale (Exhibit P1 - 3.3) was 8 September 1988. These documents were dated the following day being Monday

8 August 1988 because Mrs Hinds, who completed the dates, believed such documents could not be dated on a Sunday. The final paragraph in the acknowledgment (Exhibit P1 - 3.4) reads as follows:

> "It is further acknowledged that until we transfer the property being Portion 1110 Hundred of Bagot to Mr. and Mrs. Hinds pursuant to the agreement for sale and purchase dated the 8th day of August, 1988 we shall hold the said Grant in Fee Simple entered in the Register Book Volume 185 Folio 125 in trust for and on behalf of Mr. and Mrs. Hinds as purchaser."

In the defence filed by the first defendants dated 22 March 1989, to the original statement of claim dated 25 January 1989, the first defendants stated this agreement and acknowledgment were not binding because the first defendants were forced to sign them under duress. The first defendants did not file a defence to the plaintiffs consolidated Statement of Claim filed 22 July 1994. The first defendants did not attend the hearing and there is no evidence from them as to what occurred, when the contract for sale and the acknowledgment were signed by both parties on the night of 7 August 1988. Mr Hinds, Mrs Hinds and Mr Coyle have all given evidence that there was no threatening or intimidating behaviour on the part of the plaintiffs on the night of 7 August 1988 toward the first defendants.

The evidence of all three persons who gave evidence in the plaintiffs' case is that the relationship between the parties was quite amicable on the night of 7 August 1988, and the first defendants were not placed under any duress or threatened. I accept the evidence of Mr Hinds, Mrs Hinds and Mr Coyle on this aspect. I find the parties entered into a binding and valid contract which was dated 8 August 1988 and that such contract was not obtained by duress, threats or intimidating behaviour on the part of the plaintiffs.

The following day in the evening of 8 August 1988, Mrs Uellendahl telephoned Mrs Hinds and stated that her husband had received his money and they would not be needing the plaintiffs' money to purchase the property. Mrs Hinds replied that her husband would not be pleased.

Apart from a brief conversation with Mr Uellendahl the following day, i.e. 9 August 1988, in which Mr Uellendahl confirmed he would not need the plaintiffs' money, Mrs Hinds had not seen or communicated with the first defendants. The following Friday 12 August 1988, Mr Hinds had a conversation with Mr and Mrs Uellendahl on the side of the road near their property. Mr Hinds said words to the effect "that was a nice trick you pulled on me". The conversation became very heated. Mr Hinds gave evidence that Mrs Uellendahl abused him and the conversation ended when Mr Hinds said "I'll see you in Court".

A letter from the solicitor for the first defendants to solicitors for the plaintiffs dated 19 August 1988 indicated that any attempt to enforce the contract of sale would be vigorously opposed (Exhibit P1 - 4.3).

The plaintiffs did not pay the $95,000 balance of purchase money to any person and did not take up the loan obtained from Citibank for purchase of the subject property.

I find however, that the plaintiffs were at all relevant times willing and able to complete the "Hinds contract".

By letter dated 7 November 1988 (Exhibit P1 - 4.12) solicitors for the first defendants advised solicitors for the plaintiffs they were "still holding in our trust account the $5,000 lent to our clients by Mr and Mrs Hinds and are instructed to repay this money to your client".

By letter dated 14 December 1988, solicitors for the plaintiffs requested a cheque for $5,000 be forwarded to them without prejudice to any claims by the plaintiffs for breach of the contract entered into between the parties on 8 August 1988 and without prejudice to the interest the plaintiffs claimed in the subject land (Exhibit P1 - 4.13). The $5,000 was subsequently refunded to the plaintiffs.

At 9.39.09 am on 9 September 1988 the first defendants became the registered proprietors of an estate in fee simple in the subject

land upon completion of the Australian National Railways Commission contract (Exhibit P1 - 1.5).

At 9.39.51 am on 9 September 1988, the first defendants transferred their legal estate in the subject land to the second defendant and the second defendant became the registered proprietor of an estate in fee simple in the subject land (Exhibit P1 - 1.6).

On 25 January 1989 the plaintiffs issued a writ and statement of claim seeking specific performance of the "Hinds contract" and in the alternative, damages for fraud, breach of contract and breach of trust against the first defendants, and seeking certain declarations as against the second defendant. This was suit No. 41 of 1989.

On 13 February 1989, the plaintiffs lodged a caveat over the land.

On 7 December 1992, there was a hearing before Kearney J of an application on summons made by the second defendant seeking an order for removal of the caveat.

On 15 December 1992, Kearney J delivered reasons for decision in matter No. 41 of 1989 *Colin Wayne Hinds and Susan Joan Hinds v Horst Uellendahl and Froukje Uellendahl & Amphora Pty Limited* in granting an application by the second defendant for relief being:

1. An order for the removal of caveat number 213892 entered in Register Book Vol 185 Folio 125.

2. Costs.

The effect of the order made by Kearney J in *Colin Wayne Hinds and Susan Joan Hinds v Horst Uellendahl and Froukje Uellendahl & Amphora Pty Limited* matter No. 41 of 1989, was that the plaintiffs were required to remove the caveat over the subject land as the plaintiffs had no caveatable interest. In his reasons for decision at pp21-22 Kearney J commented that the plaintiffs should have lodged a caveat as soon as possible after 8 August 1988 forbidding

the registration by the Commission of any dealing with the land. I adopt with respect the observations of Kearney J in his reasons for decision at pp21-22:

> ".... The catastrophic consequence of not caveating was spelled out by Mason CJ, Dawson and McHugh JJ in *Leros Pty Ltd* at p404, as follows:-
>
> > 'Although the failure to lodge a caveat may not result in a loss of priority in a competition between conflicting equitable interests, such a failure will, as previously explained, result in the destruction of the equitable interest as soon as registration of an inconsistent dealing constitutes the registration of a subsequent proprietor who takes free from the prior unregistered equitable interest. In this respect there is a distinction between a competition between unregistered equitable interests and a competition between a prior unregistered equitable interest and a subsequently registered estate or interest in the land. In the second case, the prior unregistered interest is defeated so that the contractual right on which that interest depends, though enforceable against the party who created it, is not enforceable as against the third party who becomes registered as the proprietor of the inconsistent estate or interest.' (emphasis mine)
>
> And so it was here."

I find the first defendants clearly informed the plaintiffs on 8 August 1988, 9 August 1988 and 12 August 1988 that they were not proceeding with the "Hinds contract". I am satisfied that the statements made by the first defendants constituted a repudiation of the contract with the plaintiffs (*Holland v Wiltshire* (1954) 90 CLR 409 at 413, 420 and 423). This repudiation was confirmed in a letter from the first defendants' solicitors dated 19 August 1988 to the plaintiffs' solicitor (Exhibit P1 - 4.3).

The submission by counsel for the third defendants is that Mr Hinds expressly elected to terminate the "Hinds contract" during the roadside heated argument on 12 August 1988 when he concluded the argument by saying "I'll see you in Court". Alternatively, counsel for the third defendants argued the Hinds implicitly elected to terminate the "Hinds contract" prior to 9 September 1988 by their conduct in failing to assert or protect their rights under the "Hinds contract" or to comply with the provisions of the "Hinds contract" as if it was still on foot.

I agree with the submission by counsel for the plaintiffs that the statement "I'll see you in Court" at the conclusion of a heated argument is equivocal. I do not consider this statement supports a finding that Mr Hinds terminated the contract. In fact, it is consistent with an intention to take court action to enforce the contract.

I turn then to examine the evidence as to what occurred after the first defendants had repudiated the contract. There is evidence from Mr Hinds, which I accept, that on 29 August 1988 Mr Hinds signed a caveat (Exhibit P9). Mr Hinds gave the following evidence in respect of his attitude to the enforcement of the contract (transcript p83):

> "You were asked a lot of questions about the reason for you not enforcing your rights in respect of the contract with the Uellendahls until late in January 1989, do you remember those questions?---Yeah.
>
> It was suggested to you that you had decided that you weren't going to do anything about it and that you'd changed your mind later in the piece?
>
> Well, it was certainly suggested to you that you hadn't made a decision, that you weren't going to do anything about it?---Whether there was anything I could do or not, yeah.
>
> Can you tell us this, did you give any instructions to Mr Winter when you found out that the Uellendahls were going to attempt to renege on the contract?---I must have asked him what we could do about it, I presume.
>
> And did you leave it in his hands or what did you do?---Yeah I think so yeah. Yes."

And further on transcript p87:

> "Mr Hinds, does your signature appear anywhere on that document?---Yeah. Yes.
>
> Do you know when about you signed that document?---Well, it says 29 August, so it must have been.
>
> At whose request did you sign that document?---Mari's.
>
> Did you understand what that document was intended to do?---I knew the principle of a caveat sort of.
>
> If you'd perhaps just explain to the court - - -?---Just a bit, yeah.

> What did you understand was the purpose of that document? ---To take a caveat out so they couldn't sell the property, or something to that effect."

I accept Mr Hinds was at that time keen for the contract to be enforced.

Mr David Winter, solicitor for the plaintiffs, gave evidence relevant to the issue of what steps the plaintiffs took to enforce their rights under the "Hinds contract". I have summarised his evidence as follows:

Mr Winter stated as a result of receiving instructions from Mr Hinds he drew up a caveat dated 29 August 1988 (Exhibit P9). Mr Winter stated the caveat was never lodged for registration because on advice he had received Mr and Mrs Hinds did not have an interest that permitted them to register a caveat against the title because at that time Mr and Mrs Uellendahl were not the registered proprietors.

Mr David Winter gave evidence he first became aware on approximately 29 September 1988 that the first defendants had transferred the subject property to the third defendants on 9 September 1988. Until 29 September 1988, Mr Winter was not aware that the first defendants intended to sell the property to any person other than his client the plaintiffs. Mr Winter arranged for a caveat to be lodged on the subject land. Mr Winters' evidence does not address the issue of the third defendants involvement prior to the transfer to them of the subject property. Under cross examination Mr Winter agreed that he received a letter from Waters James & O'Neil dated 19 August 1988, solicitors for the first defendants, referring to "the contract of sale allegedly entered into by Mr and Mrs Uellendahl and Mr and Mrs Hinds" and further advising "any attempt to enforce this document would be vigorously opposed" (Exhibit P3 - 4.3). Mr Winter agreed this letter indicated the first defendants did not consider the "Hinds contract" to be valid and binding and would vigorously oppose its enforcement. Mr Winter stated he did not consider the possibility at that time that the first defendants would sell the property to another party.

It was his intention to monitor the title and when the first defendants became registered owners of the subject property lodge a caveat on the title to protect his clients' interest. Mr Winter agreed he was aware the date for completion of the "Hinds contract" was 8 September 1988. Prior to the completion date, Mr Winter did not receive instructions from the plaintiffs to give a notice to complete the agreement nor did he advise the plaintiffs to tender the $95,000 balance of purchase price or to take proceedings to prevent the first defendants dealing with the property in any way other than that covered by the contract with his clients. I accept the evidence given by Mr Winter.

Memorandum of a telephone conversation that took place between a member of Mr Winter's staff and Mr Hinds on 15 August 1988 was tendered Exhibit P13. This memorandum states Mr Hinds was told nothing could be done until the settlement between Mr and Mrs Uellendahl and the Railways Commission following which a caveat would be lodged on behalf of the plaintiffs as purchasers under a contract. The final two paragraphs of this memorandum dated 15 August 1988 read:

> "At this stage I prepared the caveat to be signed by Mr. and Mrs. Hinds and would disregard the caveat I prepared earlier to be executed by DW on the Hinds' behalf.
>
> Mr. Hinds left all documents with me on the basis that once he had paid the $95,000.00 to Poveys we would act on his behalf to settle and he assumed that this would be during the first week in September."

Mr Hinds' actions were not "clearly inconsistent" with an intention to keep the contract on foot (*Immer (No. 145) Pty Ltd v Uniting Church in Australia Property Trust (NSW)* (1993) 67 ALJR 537 at 545). Neither Mr Hinds or his solicitor Mr Winter ever conceded or inferred the contract was not valid and binding. I find on the evidence of Mr Hinds and Mr Winter that the intention of the plaintiffs was to enforce the contract. As Kearney J has already observed in *Colin Wayne Hinds and Susan Joan Hinds v Horst Uellendahl and Froukje Uellendahl & Amphora Pty Limited* at p21, the prudent course of conduct would have been to lodge the caveat as soon as possible after 8 August 1988.

I agree with the submission made by counsel for the plaintiffs that as Mr and Mrs Uellendahl had plainly stated their intention not to proceed with the contract (Exhibit P1 - 4.3), and the conversation between the plaintiffs and the first defendants on 8 and 12 August 1988, the Hinds were relieved of the obligation to formally tender performance of their obligations (*Foran v Wight* (1989) 168 CLR 385 per Brennan J at 422 seq. and Dawson J at 442).

> "Whilst the contract remains on foot for both parties, if the repudiation by one party makes it futile or pointless for the other party to attempt to perform an obligation, the law does not require him to do so."

I agree with the submissions by the counsel for the plaintiffs that the plaintiffs did not terminate the contract. I find that at the relevant time the intention and actions of the plaintiffs were to enforce the contract not to terminate it. I find the "Hinds contract" was "specifically enforceable" and a constructive trust in the Hinds favour did arise (*Jessica Holdings Pty Ltd v Anglican Property Trust Diocese of Sydney* (1992) 27 NSWLR 140).

SUMMARY OF PLAINTIFFS' CLAIM AGAINST THE THIRD DEFENDANT

With regards to the third defendants the plaintiffs' claim the third defendants knew of the Hinds interest in the property or alternatively ought to have known of the "Hinds contract" and the plaintiffs interest in the subject land or alternatively abstained from making inquiries which would have revealed the plaintiffs interest in the subject land in circumstances in which a reasonable person would have made such inquiries. Alternatively, the third defendants had an understanding or agreement with the first defendants to enable the first defendants to purchase the subject property otherwise than with funds from the plaintiffs in accordance with the "Hinds contract". The arrangements between the first defendants and the second and third defendants were structured in such a way as to minimise the prospects of the plaintiffs obtaining a remedy for breach of contract and breach of trust by the first defendants. The second and third defendants induced the first defendants to sell the subject land to the second defendant rather than to the plaintiffs.

Accordingly, the second and third defendants were a party to a breach of trust by the first defendants and unlawfully interfered with the plaintiffs contractual relations with the first defendants.

The third defendants dispute these claims.

FACTS FOUND IN RESPECT OF THE ACTIONS OF THE THIRD DEFENDANTS

At the hearing of this matter, evidence was called for the plaintiffs from Mr and Mrs Hinds, Mr Winter and Mr Strange, Mr Gore and Mr Coyle. No evidence was called on behalf of the third defendants.

The evidence of Mr and Mrs Hinds does not address the issue of the involvement of the third defendants. Mr Gore gave evidence as an expert valuer giving evidence as to the value of the subject property. His evidence does not address the involvement of the third defendants. Mr Coyle gave evidence as to the meeting between the plaintiffs and the first defendants on the night of 7 August 1989, and the signing of the Hinds agreement and the acknowledgment. His evidence is not relevant to the actions of the third defendants.

Mr Kelvin Strange gave evidence that he was the solicitor with Waters James & O'Neil handling matters for the first defendants. Mr Strange stated that his file note indicates on 17 August he attended on Mr and Mrs Hinds and Mr Andreas Syrimi. Mrs Uellendahl complained that Mr Hinds had been very abusive and Mr and Mrs Hinds had signed the contract "under physical threats" (transcript p141). I note that the file note of 17 August 1988 is the first reference to the presence of Mr Syrimi. On 22 August 1988, Mr Strange had a meeting with Mr and Mrs Uellendahl, Mr Peter James, a solicitor from Ward Keller acting for Mr Syrimi, Mr Tom Jelly, Mr Syrimi's accountant, and Mr Syrimi himself. The discussions were as to how the $100,000 to be advanced by Mr Syrimi was to be secured. There was tentative agreement that a unit trust be set up with Mr Syrimi holding two thirds of the units and Mr and Mrs Uellendahl holding one third of the units. The property was to be transferred to Mr and Mrs Uellendahl who would execute a declaration of trust to hold

on behalf of the trust. A caveat would be lodged against the property. There were further discussions on 1 and 2 September 1988 relating to the arrangements between the first and third defendants to secure the $100,000 purchase price being provided by the third defendant. Mr Strange declined to answer certain questions on the grounds that they were privileged communications between himself and his ex-clients the first defendants. The first defendants did not attend the hearing and Mr Strange had not received instructions to waive such privilege. I declined to make an order sought by the plaintiffs counsel to direct Mr Strange to answer such questions. Ultimately, counsel for the plaintiffs did not pursue their application for such a direction. On Mr Strange's evidence there were obviously some discussions involving the third defendants as to whether the third defendants would contribute to the cost of any subsequent action taken by the plaintiffs against the first defendants relating to enforcement of the contract between the plaintiffs and the first defendants (transcript pp152-3). The third defendants were not prepared to undertake to be responsible for the cost of such litigation. It is also clear that on the morning of 17 August 1988, Mr Syrimi was aware of the existence of a contract between the plaintiffs and the first defendants in respect of the subject property. On the same date Mrs Uellendahl had in the presence of Mr Andreas Syrimi complained about the behaviour of the plaintiffs and alleged the contract had been signed by the first defendants under threat of physical action by the plaintiffs.

The documentary evidence tendered in Exhibit P1 details the transactions and the correspondence that took place between the first and the second and third defendants at the relevant time.

I have also examined in detail the file of Waters James & O'Neil solicitors for Mr and Mrs Uellendahl (Exhibit P15).

The following is a summary of various memorandum in the file maintained by Waters James and O'Neil, solicitors for Mr and Mrs Uellendahl (after certain documents for which there was a claim of privilege had been removed the file was tendered and marked Exhibit P15):

a) There is a memorandum signed by Mr Strange dated 8 August 1988 noting Mrs Uellendahl had telephoned advising Mr Hinds was the person willing to provide purchase money, his solicitor being David Winter. There is no note of any complaint by Mrs Uellendahl of duress or threats by Mr Hinds in this memorandum (Exhibit P15).

b) Memorandum on the 10 August. Telephone attendance Jackie (David Winter's office). "Hinds purchasing from Uellendahls C/S been signed between them. Also acknowledgment deed signed saying Hinds already lent Uellendahls $100,000." This memorandum confirms Mr Strange was advised of contract of sale and acknowledgment deed between the plaintiffs and the first defendants (Exhibit P15).

c) On 11 August 1988, a memorandum, signed by Mr Strange, of a telephone conversation with Mrs Uellendahl. Mrs Uellendahl advised she was trying to obtain $100,000 elsewhere. Mr Strange advised her if Hinds did not enforce contract of sale then would have to refund $5,000 deposit (Exhibit P15).

There is no reference to any mention by Mrs Uellendahl of threats or duress by Mr Hinds. Mr Strange gave evidence if Mrs Uellendahl had mentioned this he would have noted it down.

Although failure by Mrs Uellendahl to mention the allegations of threats and duress is not in itself conclusive it is another piece of evidence which would tend to prove there was no such duress or physical threat.

d) There is a memo dated 15/8/88 signed by Mr Strange's secretary stating inter alia "found alternative finance" (Exhibit P15).

e) By memo dated 17 August 1988, Mr Strange noted conversation with Mr & Mrs Uellendahl and Mr Syrimi. Mr & Mrs Uellendahl stated they both signed the contract under physical threats. Andreas Syrimi heard of their problem and offered to help saying "don't worry re money I'll find it" (Exhibit P15).

I accept the inference from this memorandum is that Mr Syrimi knew something about the background to this matter, that he had offered to assist with the purchase of the property and must have become involved prior to 17 August 1988.

It is also the first time there is any allegation by Mr & Mrs Uellendahl of physical threats from Mr Hinds.

f) Memo dated 18 August 1988 signed by Mr Strange states as follows:

> "T/A Mrs Uellendahl
>
> Advised him of our proposed course of action.
> (1) To proceed with purchase for ANR asap. [Therefore} she'll have to discuss finance with Syrimi & they will make appt to see me early next week. Advised it would be prudent to settle with ANR asap.
>
> (2) We then to ignore Hinds & his contract. We will have to repay $5,000 asap. I then to write a letter to Winter denying recognise contract. It then up to Hinds to take action to enforce c/s.
>
> (3) Mrs Uellendahl to bring in $500 for S/D this afternoon or first thing tomorrow.
>
> (4) Mrs Uellendahl has a signed transfer at home. She to bring in to me tomorrow. If Hinds turns up she will tear it up.
>
> (5) If Hinds bothers them again, they to contact Police.
> (Signed and dated 18/8/88)"

g) Memo dated 22/8/88 Mrs Uellendahl rang, had $5,000 cheque got from Mr Syrimi. Cheque payable to D. Winter Trust Account. "She got $5,000 from Syrimi and going to discuss arrangement with Syrimi and his accountant and come to see me asap" (Exhibit P15).

I find this was the $5,000 sent to Mr Winter which was returned and forwarded to Mr Winter again in December 1988 when it was accepted on a without prejudice basis.

h) A memo of 25 August 1988 signed by Mr Strange records a meeting that went for 90 minutes at the office of Ward Keller

between Peter James, Kelvin Strange, Mr & Mrs Uellendahl, Andreas Syrimi and his accountant Tom Jelly (Exhibit P15). This memo states:

> "Meeting [at]Ward Keller
> Present:KFS, Mr & Mrs Uellendahl,
> Peter James, Andreas Syrimi
> Tom Jelly (Accountant)
>
> (90 mins)
>
> Lengthy discussion as to how the $100,000.00 to be advanced by Mr Syrimi would be secured.
>
> Was agreed tentatively that a Unit Trust be set up with A Syrimi holding 2/3's of units & Mr & Mrs U holding 1/3 of units.
>
> The property be transferred to Mr & Mrs U. They to execute declaration of trust to hold on behalf of Trust.
>
> Caveat will be lodged against the property.
>
> Andreas says money has been advanced but don't know if Bank want security on the property or on other properties owned by Andreas. He to confer with Peter James who will let me know.
> (signed) 25/8/88"

i) Letter from Ward Keller dated 2 September (Exhibit P15 and Exhibit P1 4.4.). On 2 September 1988, Ward Keller solicitors for the third defendants, wrote to Waters James & O'Neil solicitors for the first defendants, stating agreement with the proposal to sell the subject property to the third defendants immediately after the first defendants took a transfer of the subject land from the Australian National Railways Commission. The letter suggests the third defendants acquire the subject property through a shelf company to be used to act as a trustee for a unit trust and that 100,000 units be issued to the third defendants. The purchase price to be in the amount of $100,000 that the first defendants have an interest in the land but there be no documentation evidencing such agreement (Document 4.4).

j) Letter in reply from Waters James and O'Neil to Messrs Ward Keller dated 2 September 1988. Letter dated 2 September 1988 Waters James & O'Neil to Ward Keller (Exhibit P15 and Exhibit P1 - 4.5) omitting formal parts states:

"We cannot understand why, if Mr. Syrimi is genuine is his instructions to assist our clients in retaining an interest in the land, he will not commit himself to an agreement evidencing this. He must realise that the arrangement as depicted affords no benefits whatsoever to our clients. Under this agreement they have no legal right to occupancy and retain no legal interest in the land. It is entirely at the whim of your client as to whether they even remain on the property.

We suggest the following arrangement to be the most equitable to all parties concerned. A transfer to Allora Pty. Limited to hold as trustee for a newly created Unit Trust. The creation of a Unit Trust with say 100,000.00 units to be issued to Mr. & Mrs. Syrimi. A written agreement between the parties whereby our clients would at some definite date in the future receive one quarter of the units in the Unit Trust. Until such time, the Trustee would grant to our clients the right under Licence (or other suitable arrangement) to remain on the property.

Under this proposal our clients would have to take their chances with any possible litigation with Mr. Hinds. If judgment were obtained against them, they would have to face this with their own devices. The transference to the trustee however, would ensure no caveatable interests on the part of Hinds in the land.

As you are aware, we are under great pressure to advise A.N.R. of our interest in this matter. Accordingly we request your earliest response to our proposal."

I accept that from these two letters it is clear the first and third defendants were well aware legal action may be taken against the first defendants by the plaintiffs.

The inducement offered by Mr and Mrs Syrimi and referred to in this correspondence is the arrangement for Mr and Mrs Uellendahl to retain an interest in the land. I accept a reading of this correspondence gives rise to an inference Mr and Mrs Syrimi and Mr and Mrs Uellendahl have structured their affairs in such a way as to disguise this inducement. The inducement offered by the third defendants required the first defendants to breach their contract with the plaintiffs.

k) Letter dated 5 September 1988 from Ward Keller to Waters James & O'Neil (Exhibit P15 and Exhibit P1 4.6) refers to the "Hinds risk". Paragraphs 2 and 3 of this letter state as follows:

"Indeed, it was my understanding of the situation that your clients, through their fear of the threat of Mr. Hinds,

suggested that there should be nothing in writing which might create an asset upon which execution could be levied.

Indeed, our client is quite prepared to enter into an Option Agreement, provided your clients are prepared to take the "Hinds' risk"."

l) Statement of account from Waters James & O'Neil to Mr & Mrs Uellendahl dated 2 November 1988 (Exhibit P15) states inter alia: "Personal attendance upon you and Mr Syrimi discussing at great length the history of your involvement with Mr Hinds (2 and three quarter hours 30/8/88)."

m) In memo dated 2/9/88 signed by Mr Strange (Exhibit P15) the following words are included: "Unit Trust 300,000 units. To transfer to you at your cost 100,000 units once the litigation regarding Hinds has either been finalised or settled."

n) On 27 September 1988, an agreement was signed by the first defendants and Marianne Syrimi concerning grant of option over units in Ironstone Unit Trust (Ex PI - 3.8).

There is no evidence from Mr Syrimi as to whether he believed Mrs Uellendahl when she alleged the physical threat had been made by Mr Hinds.

The consolidated statement of claim filed 22 July 1994 claims as follows:

"17. Further, on and prior to 9.39.51am on 9 September 1988, the Second Defendant and the Third Defendants:

17.1 knew that the Plaintiffs had paid the deposit owing by the First defendants in respect of the ANRC Contract;

17.2 knew that in consideration inter alia of this payment the First Defendants had agreed to transfer the Subject Land to the Plaintiffs upon the transfer of the Subject Land to the First Defendants;" (emphasis mine)

The third defendants have admitted in defence filed 14 October 1992 that they had knowledge of the facts contained in sub-paragraphs 17.1 and 17.2. The third defendants denied that

they had actual knowledge of the Hinds contract or of any interest which the plaintiffs claimed to have in the subject land as described in paragraph 17.3.

I find that Mr and Mrs Uellendahl entered into a Unit Trust to disguise their interest in the subject property and to thwart attempts by Mr and Mrs Hinds to register a caveatable interest or enforce the contract.

I consider it reasonable to infer Mr Syrimi saw the contract between Mr and Mrs Hinds and Mr and Mrs Uellendahl. This contract was collected by Mr Strange on 17 August 1988 and subsequently there were a number of meetings to discuss the whole situation at which Mr Syrimi was present.

I am satisfied on the balance of probabilities that the third defendants played a part in inducing Mr and Mrs Uellendahl to breach the "Hinds contract".

I have already made a finding that there is no evidence to support a finding that Mr and Mrs Uellendahl signed the "Hinds contract" and the acknowledgment under duress or physical threat from Mr Hinds.

There is, in my opinion, no evidence as to whether or not Mr Syrimi knew the allegations of physical threat to be false or as to whether he assisted Mr and Mrs Uellendahl to contrive such a statement.

Clearly Mr Syrimi knew the plaintiffs could have an action for breach of contract. Mr Syrimi assisted Mr and Mrs Uellendahl to structure their affairs in such a way as to disguise Mr and Mrs Uellendahl's interest in the land.

It would appear on the evidence that Mr and Mrs Uellendahl were not honest in that they were not prepared to state to the plaintiffs the real reason why they did not intend to proceed with the contract for sale at the time they repudiated the contract or subsequently. It would appear they just hoped the whole "Hinds

problem" would either go away or didn't exist and in this they were assisted by the third defendants. To that extent the third defendants turned a literal blind eye to the issue of the validity of the "Hinds contract". There was a calculated abstention from inquiring on the part of the third defendants (*Consul Development Pty Ltd v D.P.C. Estates Pty Ltd* (1974-75) 132 CLR 373).

> "Thus a calculated omission to inquire, for fear of unearthing fraud or breach of duty, or the unreasonable failure to recognize fraud or breach of duty, may well be equivalent to actual knowledge. Such an omission or failure may make good the third of the elements previously mentioned, that is, the recognition that the facts known constitute the impropriety in question." (*United States Surgical Corporation v Hospital Products International Pty Ltd* [1983] 2 NSWLR 137 at 254).

The memoranda of telephone conversations and meetings between Mr and Mrs Uellendahl and their solicitors in August and September 1988 (Exhibit P15) makes it quite clear the first defendants were well aware that there could be a problem if Mr and Mrs Hinds sought to enforce the contract. This information was imparted to the third defendants.

On 7 September 1988, contract for sale of the subject property was exchanged between Mr and Mrs Uellendahl and Allora Pty Ltd. The purchase price was $100,000 (Exhibit P1 3.7). A deed of trust dated 7 September 1988, establishing "The Ironstone Unit Trust" is Exhibit P1 3.6. Option agreement dated 27 September 1988 is Exhibit P1 3.8.

By letter dated 2 November 1988, from Waters James and O'Neil to Mr and Mrs F. Uellendahl (Exhibit P15) the second paragraph states:

> "You will remember from our numerous discussions on this matter that Lot 1110 Lagoon Road is now owned by the Trustee company Allora Pty. Ltd. which holds it on trust for "the Ironstone Unit Trust". At present all one hundred thousand (100,000) units in this Trust Deed are registered in the names of Andreas and Marianna Syrimi. However, pursuant to the Option Agreements you have a right to purchase from Mr. and Mrs. Syrimi twenty five thousand (25,000) units at a purchase price of two dollars ($2.00) on or before the 30th of September, 1990. You will further remember that ownership of the land was structured in this fashion to ensure that Mr. Hinds would have

no assets to seize should he successfully enforce his contract of sale."

I find Mr and Mrs Syrimi and Mr and Mrs Uellendahl structured their affairs in such a way as to ensure the plaintiffs could not register an interest or execute in respect of the subject property.

Neither Mr or Mrs Syrimi gave evidence and there was no explanation forthcoming as to why they did not give evidence.

I apply the principle established in *Jones v Dunkel* (1959-60) 101 CLR 298 Kitto J at 308:

> "..... any inference favourable to the plaintiff for which there was ground in the evidence might be more confidently drawn when a person presumably able to put the true complexion on the facts relied on as the ground for the inference has not been called as a witness by the defendant and the evidence provides no sufficient explanation of his absence. ....."

On 7 September 1988, the first defendants entered into a contract for sale of the subject land with the second defendant, previously known as Allora Pty Ltd (Document 3.7).

On 7 September 1988, a deed of trust to establish the Ironstone Unit Trust between Peter Donald James, the founder of the Ironstone Unit Trust, and Allora Pty Limited, the second defendant, was executed (Document 3.6).

On 27 September 1988, Marianna Syrimi entered into an agreement with the first defendants for the purpose of recording the terms of the grant of option contained therein (Document 3.8).

It is clear from the correspondence between solicitors for the first and third defendants as outlined that the third defendants were aware prior to 8 September 1988, of the "Hinds contract" and the possible risk of litigation over the "Hinds contract" between the plaintiffs and the first defendants. I consider it is a reasonable inference to draw from the correspondence between solicitors for the first and third defendants and the documentation prepared for and signed by these parties that the first and third

defendants were structuring the transaction between themselves so as to ensure as far as possible, the interests of the first defendants and the third defendants were protected if the Hinds did attempt to enforce their contract. The third defendants did receive a benefit, they received the whole of the land. They did know about the "Hinds contract".

I apply the principles expressed by Lord Selbourne LC in *Barnes v Addy* (1874) 9 Ch App 244 at pp251-252:

> " It is equally important to maintain the doctrine of trusts which is established in this Court, and not to strain it by unreasonable construction beyond its due and proper limits. There would be no better mode of undermining the sound doctrines of equity than to make unreasonable and inequitable applications of them.
>
> Now in this case we have to deal with certain persons who are trustees, and with certain other persons who are not trustees. That is a distinction to be borne in mind throughout the case. Those who create a trust clothe the trustee with a legal power and control over the trust property, imposing on him a corresponding responsibility. That responsibility may no doubt be extended in equity to others who are not properly trustees, if they are found either making themselves trustees *de son tort*, or actually participating in any fraudulent conduct of the trustee to the injury of the *cestui que trust*. But, on the other hand, strangers are not to be made constructive trustees merely because they act as the agents of trustees in transactions within their legal powers, transactions, perhaps of which a Court of Equity may disapprove, unless those agents receive and become chargeable with some part of the trust property, or unless they assist with knowledge in a dishonest and fraudulent design on the part of the trustees. ....."

The two limbs of this claim based upon constructive trusteeship involves as alternate claims each limb of Lord Selborne's proposition in *Barnes v Addy* (1874) 9 LR Ch App 244. In referring to this decision, I apply also the principle expressed by Smith J in *Ninety Five Pty Ltd (In Liquidation) v Banque Nationale De Paris* [1988] WAR 132 at 173 in discussing Lord Selbourne's test in *Barnes v Addy*:

> "... Under the first limb of that proposition a person who receives for his own benefit trust property with notice that it has been transferred to him in breach of trust will be liable as a constructive trustee. The second limb relates to agents

> participating with knowledge in a dishonest and fraudulent design on the part of the trustees. ..."

and at p176:

> " The *Belmont Finance, Rolled Steel Products* and *Consul Development* cases are authority for the proposition that it is not essential, as counsel for BNP contended at trial, to prove dishonesty or want of probity on the part of the third party who receives trust property for liability to arise under the first limb of Lord Selbourne's proposition. The position may well be otherwise in circumstances in which the trust property does not pass through the hands of the defendant in relation to the knowing participation category of liability in that for liability to arise under that limb of Lord Selbourne's proposition the knowledge, actual or constructive, may need to include actual or constructive awareness that the conduct is improper as well as actual or constructive knowledge of the facts relevant to the breach of duty: see *Carl Zeiss Stiftung v Herbert Smith (No 2)* [1969] 2 Ch 276 at 297, 298 per Lord Justice Sachs and *Consul Development* (at 398) per Gibbs J (as he then was). But that is not this case. Here there is no dispute that it was trust property which came into and remains in the hands of BNP and I find it unnecessary to express any concluded view on this question."

and at p178:

> "The *Belmont Finance* case is further authority for the proposition that if all the facts are known to the parties ignorance of the law will not excuse them even if their ignorance is due to the fact that they were erroneously advised as to the effect of the transaction: ..."

Counsel for the third defendants argued the plaintiffs have not proved their claim against the third defendants personally because:

(a) they personally did not receive the land.

(b) neither the second defendant nor they personally received any benefit in the land because the second defendant paid full market value for the land.

(c) their actions as directors of the second defendant cannot give rise to personal liability: see *O'Brien v Dawson* (1942) 66

CLR 18 at p32; *Said v Butt* [1920] KB 497 at p504 and *De Jetley Marks v Greenwood* [1936] 1 All ER 863 at p872.

I do not accept this submission by counsel for the third defendants. The third defendants have admitted that they held the whole of the beneficial interest in the assets and undertaking of the second defendant. I accept the submission of counsel for the plaintiffs and find that the second defendant (and AGN) was "the creature of the (third defendants), a device and a sham, which (they) hold before (their) face in an attempt to avoid recognition by the eye of equity" (*Jones v Lipman* (1962) 1 All ER 442 at p445; *Shaw v Harris* unreported decision of the Supreme Court of Tasmania, No. 13 of 1992 delivered 30 March 1992, per Wright J at pp37-38.)

The second defendant first came into existence on 1 September 1988. I agree with the submission made by counsel for the plaintiffs that on the facts I have found the third defendants were clearly acting for their own benefit and not for the benefit of the second defendant (and not therefore exclusively as directors of those companies). The second defendant was a vehicle for their scheme.

In this case it is admitted by the third defendants on the pleadings that Mr Syrimi knew of the contract, although in the pleadings it states he did not know of the precise terms, he did know about payment of the deposit. On my finding of fact, Mr Syrimi knew about the "Hinds contract" and was present during extensive discussions about the "Hinds contract" and how it could be avoided.

I apply the principle expressed by Young J in *Carlton and United Breweries Ltd v Tooth and Co Ltd*, Supreme Court of NSW Equity Division, No. Eq 41469 1985 at p60:

> "(at page 79)
> It seems to me that all the cases are consistent with the proposition that so long as the defendant has actual knowledge that there is a contract between the plaintiff and X, then if the defendant acts in such a way as to induce a breach of that contract, he is liable even though he does not know the actual terms of the contract did not contain the term which is relied on, and this is a fortiori the position where (a) the term is a very common one in contracts of that type; or (b) he deliberately closes his eyes and refrains from inquiring

whether the term existed or not. See also Stratford v Linley [1965] AC 269 esp 324; Greig v Insole [1978] 1 WLR 302, 336 and Clerk and Lindsell on Torts, 15th Ed p 702."

and at p64:

"(at page 85)
In my view the law here is the same as in England, and that is that if a third person "has dealings with the contract breaker which the third party knows to be inconsistent with the contract, he has committed an actionable interference", per Jenkins LJ in DC Thomson & Co Ltd v Deakin (supra) at p 694."

I am satisfied the third defendants induced the first defendants to breach the "Hinds contract". The requisite test for inducement is that set out in the decision *La Porte Group Australia Limited v Vatselias & Ors* CA 40341/92, Supreme Court of NSW at p18:

"..... As was pointed out in *British Motor Trade Association v Salvadori [1949] 1 Ch 556 at 565*, although the word *"inducement"* or *"procuring"* is often used in relation to this tort, the relevant concept is the wider one of interference, which was described in that case as referring to *"any active step taken by a defendant having knowledge of the covenant by which he facilitates a breach of that covenant"*.

The elements of the cause of action are set out by O'Keefe CJ in decision *Sea Containers Ltd v ICT Pty Ltd* (formerly International Catamarans (Tasmania) Pty Ltd & Ors No. 50210 of 1993 at p84):

"(at page 120)
Ms Needham, counsel for Buquebus, submits that in order to succeed against Buquebus SCL must establish the following elements;
(i) There is a valid and enforceable contract.
(ii) Buquebus had the requisite knowledge of that contract and of its terms.
(iii) Buquebus had the intent to prevent or hinder the performance of the relevant contract or to cause breach of it.
(iv) The action of Buquebus caused SCL to suffer damage.
(v) In the result SCL did suffer damage."

For reasons already stated I find in this matter:

(1) The "Hinds contract" was a valid and enforceable contract.

(2) Mr and Mrs Syrimi had the requisite knowledge of that contract and its terms.

(3) Mr and Mrs Syrimi had the intent to prevent or hinder the performance of the relevant contract or to cause breach of it.

(4) The action of Mr and Mrs Syrimi caused the plaintiffs to suffer damage.

(5) In the result the plaintiffs suffered damage in that they suffered a lost chance of earning profits from the subject property.

"The chance of earning those profits is a clear detriment recognised by the law (*Howe v Teefy* (1927) 27 SR (NSW) 301; *Fink v Fink* (1946) 74 CLR 127 at 134-135." SEA Containers Ltd v ICT Pty Ltd (formerly International Catamarans (Tasmania) Pty Ltd & Ors (supra).

Mrs Syrimi was a director and shareholder of the second defendant and AGN and held half of the units in Ironstone Unit Trust. Mrs Syrimi signed the agreement concerning grant of option over the units in Ironstone Unit Trust in favour of the first defendants (Exhibit P1 - 3.8). Mrs Syrimi witnessed the affixation of the second defendant's seal to the transfer to AGN (Exhibit P1 - 1.13). As a recipient of trust property she is held to have the knowledge of the person who acted on her behalf as her agent to obtain the benefit (*Meagher, Gummow and Lehane*, 3rd ed, para 853). Mrs Syrimi was not called to give evidence to dispute the natural inference that she was involved with her husband in the scheme.

I find the third defendants did receive for their own benefit trust property with notice that it had been transferred to them in breach of the trust and are liable as constructive trustees. I am also satisfied they fall within the second limb of the test applied in *Barnes v Addy* (supra) in that they assisted with knowledge in a dishonest and fraudulent design on the part of the trustees.

The plaintiffs have, I consider, established a claim under both limbs of the test applied in *Barnes v Addy* (supra) for damages against the third defendants. I turn now to consider the question of damages.

DAMAGES

I consider the plaintiffs are entitled to a claim for damages against the third defendant for the benefit received by the third defendant by reason of their breach of trust.

I accept the submission made by counsel for the plaintiff that the relevant date when the third defendant converted the transaction into a profit occurred on 30 June 1994. On 30 June 1994 the third defendant concluded a sale of the property to Kooyong Pty Ltd for $380,000. I agree with the submissions made on behalf of the plaintiffs that the earlier transfer to Allora Garden Nursery Pty Ltd should be ignored. The third defendants were the shareholders and directors of Allora Garden Nursery Pty Ltd. The third defendants were effectively the company. From the $380,000 it is necessary to deduct the purchase price of $100,000 leaving a balance of $280,000. It is then necessary to deduct an amount to cover an allowance for the improvements made by the third defendant to the nursery. I accept the evidence given by the valuer Mr Gore that a reasonable assessment of the value of the improvements is $70,000.

A depreciation schedule was tendered and marked Ex P16. The total of the written down value of all the items excluding the land is $112,358. Mr Gore gave the following evidence in respect of these items (transcript pp108-109):

> "Okay. Now that you have this information about the improvements that form part of that sale and particularly the cost and the present written-down value of those improvements, what does that information say to you about the correctness or otherwise of that estimate that you made of $70,000?
>
> ...
>
> Mr Gore, do you remember the question, or will I put it to you again or - - -?---Yes, yes. There are certainly some additional improvements in there that we hadn't allowed for, but I think the total amount allowed of 70,000 was not an

unrealistic figure. Some of the improvements that are listed within this - I think the added value of them would be very minimal from an incoming purchaser because they were done for a specific improvement for the running of the nursery at that time. For an incoming purchaser wishing to do - having a different set-up or not utilise all of those assets, the amount that - they may not pay anything for that, things such as - the added value of the pergola may be questionable on something like that. And the other thing with those of course, they're at cost, well cost doesn't always equal added value, so some things may cost more to do than what they would resultantly improve the value of the property by overall."

In accepting the evidence given by Mr Gore , as I do, I accept that the most reasonable figure for the improvements is $70,000.

Accordingly, the sum of $70,000 is deducted from the $280,000 leaving a balance of $210,000. From this amount should also be deducted the amount the plaintiffs would have paid in interest had they proceeded with the purchase of the property. A calculation of the interest was prepared by Mr Winter, solicitor for the plaintiff, from the Citibank statements (Ex P5). The calculation of interest prepared by Mr Winter is annexed to these Reasons for Judgment. I accept these calculations. The total amount of interest is calculated as $52,978.95 to be deducted from $210,000, this leaves a balance of $157,021.05. I allow interest at the rate of 8% from 1 July 1994 on the award of $157, 021.05.

The order I make is to award judgment in favour of the plaintiffs against the third defendants in the sum of $157,021.05 plus interest at the rate of 8% calculated from 1 July 1994.

The parties are at liberty to apply on the question of costs.

No. 41 of 1989 (8901769) AND
No. 227 of 1992(9217109)

BETWEEN:

COLIN WAYNE HINDS and
SUSAN JOAN HINDS

AND

ANDREAS SYRIMI and
MARIANNA SYRIMI

Calculation of Interest on Loan of $95,000.00 repaid by Instalments of $30,000.00 per annum from 1/9/88 - 31/8/93

Principal as at 1/9/88		95,000.00
Average Interest over 12 month period 18.27%=	17,356.50	
to 31/08/89		112,356.50
Less Payment		30,000.00
Principal as at 1/9/89		82,356.50
Average Interest over 12 month period 18.65%=	15,359.49	
to 31/08/90		97,715.99
Less Payment		30,000.00
Principal as at 1/9/90		67,715.99
Average Interest over 12 month period 16.25%=	11,003.84	
to 31/08/91		78,719.83
Less Payment		30,000.00
Principal as at 1/9/91		48,719.83
Average Interest over 12 month period 13.23%=	6,445.63	
to 31/08/92		55,165.46
Less Payment		30,000.00
Principal as at 1/9/92		25,165.46
Average Interest over 12 month period 11.18%=	2,813.49	
to 31/08/93		27,978.95
Less Payment		27,978.95
		NIL

TOTAL INTEREST PAYMENTS

1988-89	17,356.50
1989-90	15,359.49
1990-91	11,003.84
1991-92	6,445.63
1992-93	2,813.49
	$52,978.95