

IN THE SUPREME COURT)
OF NEW SOUTH WALES)
COURT OF APPEAL)

Term No. 22 of 1969

BETWEEN: ALEXANDER EWAN ARMSTRONG; GEORGE ARMSTRONG & SON
PTY. LIMITED; FINLAYSIDE PTY. LIMITED; SOUTHERN
TABLELANDS FINANCE CO. PTY. LIMITED; GOULBURN
ACCEPTANCE PTY. LIMITED; A.E. ARMSTRONG PTY.
LIMITED

Appellants (1st to 6th Defendants)

AND: JOHN OSBORNE BOVILL; CLARE BARTON; TERRENCE
BARTON; AGOSTON GONCZE; HOME HOLDINGS PTY.
LIMITED; ALLEBART PTY. LIMITED; and ALLEBART
INVESTMENTS PTY. LIMITED

Respondents (15th to 21st Defendants)

Term No. 25 of 1969

BETWEEN: ALEXANDER BARTON

Appellant (Plaintiff)

AND: ALEXANDER EWAN ARMSTRONG; GEORGE ARMSTRONG & SON
PTY. LIMITED; FINLAYSIDE PTY. LIMITED; SOUTHERN
TABLELANDS FINANCE CO. PTY. LIMITED; GOULBURN
ACCEPTANCE PTY. LIMITED; A.E. ARMSTRONG PTY.
LIMITED; LANDMARK (QUEENSLAND) PTY. LIMITED (IN
LIQUIDATION); PARADISE WATERS (SALES) PTY.
LIMITED; PARADISE WATERS LIMITED; GOONDOO PTY.
LIMITED; LANDMARK HOME UNITS PTY. LIMITED;
LANDMARK FINANCE PTY. LIMITED; LANDMARK HOUSING
& DEVELOPMENT PTY. LIMITED; LANDMARK CORPORATION
LIMITED; CLARE BARTON; TERRENCE BARTON; AGOSTON
GONCZE; JOHN OSBORNE BOVILL; HOME HOLDINGS PTY.
LIMITED; ALLEBART PTY. LIMITED; ALLEBART
INVESTMENTS PTY. LIMITED

Respondents (1st to 21st Defendants)

APPEAL BOOK

VOLUME 9

SOLICITORS FOR THE APPELLANTS
(1st to 6th Defendants)

Dare, Reed, Martin & Grant,
187 Macquarie Street,
SYDNEY.

SOLICITORS FOR THE APPELLANT
(Plaintiff)

McCaw, Johnson & Co.,
60 Pitt Street,
SYDNEY.

SOLICITORS FOR THE RESPONDENTS
(15th to 21st Defendants)

McCaw, Johnson & Co.,
60 Pitt Street,
SYDNEY.

SOLICITORS FOR THE RESPONDENTS
(1st to 6th Defendants)

Dare, Reed, Martin & Grant,
187 Macquarie Street,
SYDNEY.

SOLICITORS FOR THE RESPONDENTS
(7th, 9th, 10th & 13th Defendants)

Francis White, Barnes & McGuire,
149 Castlereagh Street,
SYDNEY.

INSTITUTE OF ADVANCED
LEGAL STUDIES.
25, RUSSELL SQUARE,
LONDON,
W.C.1.

SOLICITORS FOR THE RESPONDENT
(14th Defendant)

Dawson, Waldron,
44 Martin Place,
SYDNEY.

IN THE SUPREME COURT)
OF NEW SOUTH WALES)
COURT OF APPEAL)

Term No. 22 of 1969

BETWEEN: ALEXANDER EWAN ARMSTRONG; GEORGE ARMSTRONG & SON
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LIQUIDATION); PARADISE WATERS (SALES) PTY.
LIMITED; PARADISE WATERS LIMITED; GOONDOO PTY.
LIMITED; LANDMARK HOME UNITS PTY. LIMITED;
LANDMARK FINANCE PTY. LIMITED; LANDMARK HOUSING
& DEVELOPMENT PTY. LIMITED; LANDMARK CORPORATION
LIMITED; CLARE BARTON; TERENCE BARTON; AGOSTON
GONCZE; JOHN OSBORNE BOVILL; HOME HOLDINGS PTY.
LIMITED; ALLEBART PTY. LIMITED; ALLEBART
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44 Martin Place,
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IN THE SUPREME COURT }
OF NEW SOUTH WALES }
COURT OF APPEAL }

Term No. 25 of 1969

<u>BETWEEN:</u>	<u>ALEXANDER BARTON</u>	Appellant
<u>AND:</u>	<u>ALEXANDER EWAN ARMSTRONG</u>	First Respondent
<u>AND:</u>	<u>GEORGE ARMSTRONG & SON PTY. LIMITED</u>	Second Respondent
<u>AND:</u>	<u>FINLAYSIDE PTY. LIMITED</u>	Third Respondent
<u>AND:</u>	<u>SOUTHERN TABLELANDS FINANCE CO. PTY. LIMITED</u>	Fourth Respondent
<u>AND:</u>	<u>GOULBURN ACCEPTANCE PTY. LIMITED</u>	Fifth Respondent
<u>AND:</u>	<u>A.E. ARMSTRONG PTY. LIMITED</u>	Sixth Respondent
<u>AND:</u>	<u>LANDMARK (QUEENSLAND) PTY. LIMITED</u>	Seventh Respondent
<u>AND:</u>	<u>PARADISE WATERS (SALES) PTY. LIMITED</u>	Eighth Respondent
<u>AND:</u>	<u>PARADISE WATERS LIMITED</u>	Ninth Respondent
<u>AND:</u>	<u>GOONDOO PTY. LIMITED</u>	Tenth Respondent
<u>AND:</u>	<u>LANDMARK HOME HOLDINGS PTY. LIMITED</u>	Eleventh Respondent
<u>AND:</u>	<u>LANDMARK FINANCE PTY. LIMITED</u>	Twelfth Respondent
<u>AND:</u>	<u>LANDMARK HOUSING & DEVELOPMENT PTY. LIMITED (In Liquidation)</u>	Thirteenth Respondent
<u>AND:</u>	<u>LANDMARK CORPORATION LIMITED</u>	Fourteenth Respondent
<u>AND:</u>	<u>CLARE BARTON</u>	Fifteenth Respondent
<u>AND:</u>	<u>TERRENCE BARTON</u>	Sixteenth Respondent
<u>AND:</u>	<u>AGOSTON GONCZE</u>	Seventeenth Respondent
<u>AND:</u>	<u>JOHN OSBORNE BOVILL</u>	Eighteenth Respondent
<u>AND:</u>	<u>HOME HOLDINGS PTY. LIMITED</u>	Nineteenth Respondent
<u>AND:</u>	<u>ALLEBART PTY. LIMITED</u>	Twentieth Respondent
<u>AND:</u>	<u>ALLEBART INVESTMENTS PTY. LIMITED</u>	Twenty First Respondent

TRANSCRIPT RECORD OF PROCEEDINGS

INDEX OF REFERENCE:

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54	- Statement by Det. Follington		2906
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71	Nineteen (19) photographs on sheets numbered by witness		3052
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74	Two (2) signatures of F. Hume and address in Guest Register Commodore Hotel-Motel, Jindabyne		3062

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75	- Copy article in "The Australian" 12th November, 1966		3064
76	- Relevant parts of Mr. Hume's Cashbook and		
	(1) cheque butt pinned to 33rd week page;		3066
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77	- Four (4) colour slides (m.f.i. 60) not reproduced		
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79	- Vouchers in envelope, 5th week 1966/67	25th July, 1966 to 31st July, 1966	3075
80	- Address of M.J. Gibbons (not reproduced)		
81	- Cheque for \$500 Pacific Panorama (m.f.i. 3)		3079
82	- Draft Deed (part Exhibit 50) See page 2810		
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22.	Notice of Appeal by Mr. Barton	15th January,	1969 3252

8/1/67. 10/15 am.

Mr. Alex Mint - 491431.

Miller re J. threats
- odd circumstances.

Wild + Follington.

8/1/67 - "Boon".

Mr. Miller

Allan Allan &
Hemley.

Mr. Alexander Barton

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1 on ~ 2 o B x

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Landmark Corporation

Wtd - 1 - 1 - 6 - 1

- 1 - formerly.

Palmer Corp Ltd

9 - 10 1961
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diverse range of
interests - ...
merging Landmark
Corporation Ltd. with
Palopane Corp Ltd.

Mr. Barton Sen 1
...
...
Landmark which
was still named
Palopane Corp Ltd.
Became ...
Director ...
... as Chairman.

...
Austin Factors Ltd.

1.1 0 0 0 0

Mr Lammerton

Trust Factors

o (Land & Miller)
a Director.

Landmark is
real estate

7 - C P 7 -
b 6 (2 2 2 2

Barton Sen. Shareholders

of Mr Barton for
Control - for left.

L x

for 1. C C

a Mr Boyle another
Director of Landmark

is C 7 5 - C 1
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o P 5 Boyle
that Barton had
better look out.

Miller } L

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12-1-20-
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Company, 2-6-0
1-1-0

a compromise x
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4/1/67 No. 20
+ B. A. Smith (2)
a Barton personally

2-1-1
2-1-1
2-1-1
2-1-1
2-1-1

4/3 on 7/1/67
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was 'Alec'. agreed to
see - 6/457 p 6
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8/407
 Barton: (2 weeks)
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 John
 John
 Alex - John left.
 John

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Whisky + Soda moved to
Corridor.

my group & → y. or
Job - → £5000 - 5.
Book at. to me

A. Armstrong.
9 Coolong Rd Vandulise.
Black Mercedes
or Mercedes Sports.

Barton has met Fred Hume.
Can identify Alec, ←
Jugoslav

Mt. J.W. Miller 76.9062.
55 Hunter Street.
20315.

Barton: 1807 Edinburgh Rd..
Burchard Castleway.
956294. (home)
280951. 18th Floor 109 Pitt St
Sydney.
(x) 285490.

J. O. Bovill.
Well known Commercially.

3/57. Follington says me.
I then says Supt Blissett.

Sp.1 Board Mr. Barton
 Mr. Armstrong
 Mr. Bovill
 Mr. Cotter A.J.S.

\$1,753.000 Paid up Capital
Mr. Barton has 200,000 Shares
Mr. Armstrong has 300,000 Shares
" Bovill 50,000
" Cotter 10,000

10

Approx. 2,000 Shareholders
 109 Pitt St. Sydney.
 Howard Marks Secty
 of the Company.

Alan, Alan & Hemsley Sictrs.

CREST

CRIMINAL INVESTIGATION
BRANCH

SYDNEY, 12th February, 1968.
Telephone: 2 0966 EXT.

TRANSCRIPT OF NOTES OF A TELEPHONE CONVERSATION
BETWEEN DETECTIVE INSPECTOR LENDRUM AND MR. MUIR

8.1.67 10.15 a.m.

Mr. Alec MUIR. 491431

Miller receiving death threats in odd circumstances. 10
Wild and Follington.

CREST
CRIMINAL INVESTIGATION
BRANCH

SYDNEY, 12th February, 1968.
Telephone: 2 0966 EXT.

TRANSCRIPT OF NOTES MADE BY DETECTIVE INSPECTOR
LENDRUM.

10

8.1.67 - 11.30 a.m.

Mr. Miller,
Allen Allen & Hemsley.

Mr. Alexander Barton has received threats on his
life.

2 men have approached Barton, Senior, for a large
sum of money. They claim they have been engaged
to take his life. Would make disclosures if money
paid.

Landmark Corporation Ltd, a public company, listed
on the Sydney Stock Exchange, formerly Palgrave
Corporation Limited, has been in operation for some
years and about 1961 came under the control of one
Alec Armstrong, M.L.C. as Chairman. The company had
a diverse range of interests and Armstrong gained
control by merging Landmark Corporation Limited
with Palgrave Corporation Limited.

20

Mr. Barton, Senior, was Managing Director of an-
other company and came under Armstrong's notice.
Barton gave up his principle existing employment
and joined Landmark which was still named Palgrave
Corporation Limited. Became general manager and
director. Mr. Armstrong remained as Chairman.

30

Mr. Armstrong was Chairman of Australian Factors
Limited which had as one of its Director's, Mr.
Lammerton.

Australian Factors is under investigation. Miller
was a Director.

Landmark commenced to concentrate on Real Estate
activities and over the last year or so grave con-
ditions have arisen between Armstrong and Barton,
Senior. Shareholders strongly supported Barton
for control and Armstrong left the Company.

40

Armstrong had a conversation with a Mr. Bovill,
another Director of Landmark, saying that people
could be hired in Sydney to "bump off" other
people. Armstrong is said to have told Bovil that
Barton had better look out.

Miller arrived back from overseas on 23.12.66 by
plane and a meeting of Directors held 12 noon that
day - of Directors - and it appeared that Landmark
would fall but since then Mr. Barton has managed

50

A.E.L.

to save the Company and there have been some conferences with representatives for Armstrong, with Barton, in connection with a compromise.

On Wednesday last 4.1.67 representatives of Armstrong (B.A. Smith, Chartered Accountant) and Mr. Barton personally reached what appeared to be an agreement subject to documentation to be prepared by Armstrong's Lawyers and submitted to Miller's firm and they were in fact submitted to the firm 5.0 p.m. Friday. 10

About 3.0 p.m. on 7.1.67 Mr. Barton received a telephone call from a gentleman at his home who wanted to meet Barton to discuss with him a message. Barton refused to see him.

"I told him, I did not see anybody unless he tells me his name and address and what he wants to talk about". 20

This man said he had a message from people he did not like for him and wanted to see him about it.

-4-

About 4.0.p.m. the man rang again and said - now he asked did he know a man named Frederick Hume and Barton said - yes.

Barton believes Hume is under a retainer from Armstrong since July to keep a tag on him.

Barton said he would be prepared to see the man at his home. The man wanted to see him elsewhere. His name was Alec. Agreed to see man 6.45. p.m. outside Post Office, Edinburgh Road, Castlecrag, and Eastern Valley Way. 30

Mr. Fleming of the Australian Watching Company was watching Barton for about 2 weeks.

Waited three quarters of an hour and nobody turned up. Went back home 8.40.p.m. The man rang and said Barton was not playing the game and said "I told you I wanted to see you on your own". Mentioned wife's car being across road with people in it. Agreed to meet the man 9.45.p.m. at Rex Hotel, Kings Cross. Rang Agency protecting him and they said they would send man named Robertson, who knew him, to the front of the Rex Hotel. 40

Drove car slowly and saw man. Stopped in bus stop and man asked was he looking for Alec. Said "Yes" and man said his name was "John". Taken to big bar of Rex and later to smaller bar. Started to take him upstairs. Introduced him to small man well dressed, who appeared Yugoslav, who called himself "Alec", and "John" left. 50

Had a Whiskey and soda and moved into corridor.

My group has been commissioned to do a certain job
- man paying £5,000 to kill you and rob wife of
diamond ring.

A. Armstrong,
9 Coolong Road, Vaucluse.
Black Mercedes or Mercedes sports.

10

Barton has met Fred Hume. Can identify Alec, be-
lieved Yugoslav.

Mr. F.W. Millar, 76.9062, 55 Hunter Street, 20315.

Barton - 187 Edinburgh Road, Castlecrag, 956294 (home).
280951 or 285490. 1st Floor, 109 Pitt Street,
Sydney. (Buchalter).

J.O. Bovill, well known commercially.

3.5.p.m. Follington rang me - I then rang
Superintendent Blissett.

8.0.p.m. Board. Mr. Barton
Mr. Armstrong
Mr. Bovill
Mr. Cotter, A.J.S.

20

\$1,753,000 paid up capital. Mr. Barton has 200,000
shares. Mr. Armstrong has 300,000 shares. Mr.
Bovill 50,000. Mr. Cotter 10,000. Approximately
2,000 shareholders. 109 Pitt St., Sydney. Howard
Marks, Secretary of the Company. Allen Allen &
Hemsley, Solicitors.

END OF NOTES.

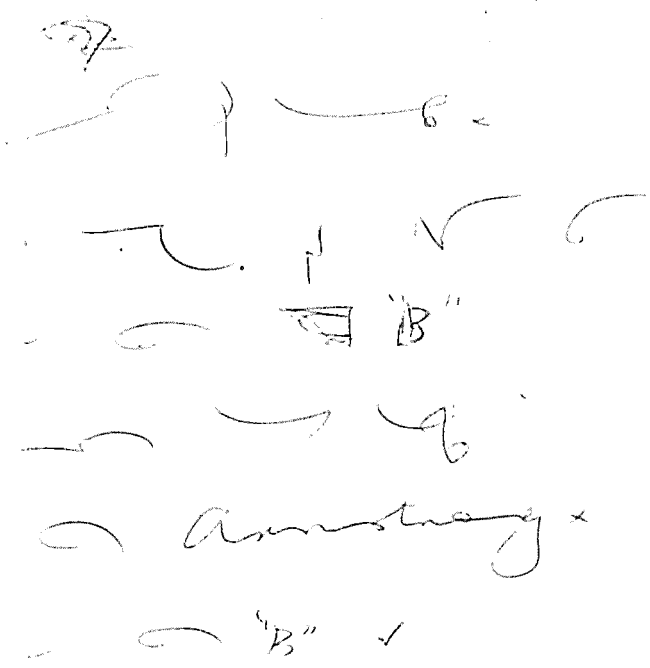
30

Alexander
 BARTON SEN + JUN
 17 in N. W. A. Box 769062
 55 HUNTER ST 20315.
 A. D. LUK 80x
 L 4411431

187 Edensburgh Rd
 Castle Craig
 956294x

b 280951. 4285490x
 1st Floor
 109 Pitt St.

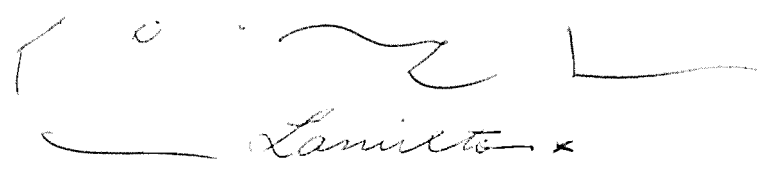
Landmark Corp. Ltd ²
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 Palgrave & Co
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Landmark of 6
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 Excavation details
 "A" 2 0 72



Arch Factor Ltd



Landmark 2
 2 1 21

Footway 1 11/166
 "A" - "B" -
 Landmark

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watch "B"

462218 (David Fleming)
Superior 602-8008

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1945

3/15
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2000x
[Faint handwritten notes]

San Antonio
[Faint handwritten notes]

1. MR. ALEXANDER BARTON Sen & Jrn.
MR. FREDK. W. MILLAR, Sol. Home 769062.
55 Hunter St. 20315.
A. MUIR Q.C.
Home 491431,
187 Edinburgh Rd,
Castle Crag.
956294.
Business 280951 Private 285490.
1st Floor. 10
109 Pitt St.

2. Landmark Corp Ltd
Public company listed on the stock exchange
formerly
Palgrave Corporation Ltd.
It has been in operation many years.
1961 it came under the control of one
Alec Armstrong
as Chairman, a M.L.A. in N.S.W. has a very
diverse range of interests. 20

3. real estate interests.
The company did not do particularly well and
Mr. "B" came in the interests of Mr.
Armstrong and Mr. "B" joined Landmark (then
Palgrave in July 63).
Executive Director.
Mr. "A" remaining as chairman.

Page 2.

Page 2.

4. Mr. "A" was also chairman of another company
Aust. Factors Ltd. but has a managing direc- 30
tor named Lamilton. Landmark begins to carry
on real estate.

Proxy vote 2/12/66 between "A" and "B" to
gain control of Landmark.

5. Shareholders in favour of Mr. "B".

Before that "A" had conversations with an-
other director of Landmark named J.O. Bovil
that people could be hired in Sydney £2000 to
bump off other people. Not taken seriously.
(Bovil and accountant in Sydney) 40

6. Millar arrived 23.12.66 and a meeting of the
directors held at 12 mn and a breach occurred
and it appeared that Landmark would fail.
"B" soon prevented this and there has been
some discussion between representatives "B"
and "A" regarding a compromise,
which resulted in a discussion last Wednesday
in which an agreement was purported to be a
compromise

Page 3.

Page 3.

50

7. Last Wednesday 4.1.67 that B.H. Smith repre-
sentative of "A" and Mr. Barton reached an
agreement subject to being legally documented.
Documents were prepared and submitted to

Mr. Mullen on Friday last. Yesterday afternoon about 3 p.m. Mr. "B" received a telephone call from a gentleman who said he wanted to meet him at

8. Kings Cross to discuss with him a message. Mr. "B" refused to see him, saying I do not see anyone unless he knew the name. He said I have a message from people he did not like. About 4 p.m. he rang again and said do you know a man named Frederick Hume. "B" said yes. 10
9. (reason for this was Mr. "B" believes Hume has been retained by "A" at least since July 66).

Man who rang "B" said his name is Alex.

"B" said he would see him at 6.45 p.m. on Eastern Valley Way. 20

Page 4.

Page 4.

10. Kept the appointment 6.45 p.m. in white Mercedes and waited 45 minutes then went home. 8.40 p.m. rang and said you are not playing the game I told you I want you on your own. "B" said I was waiting at the P.O. in my white Mercedes. He said I saw your wife's car at the service Station and another
11. car with other people in it. "B" said you are mistaken. He said I think you should come to see me in Rex because it is very important. You might run out of time. 30
- Then agreed to meet at 9.45 at Rex.
- Then rang agency 6028048
12. Australian Watching Co. employed to watch "B" 462218 (David Fleming) Supervisor 602-8048. since end of November 66. Finishing 7 a.m. 3.12.66.

Page 5.

Page 5.

13. and he said he would send a man named Robinson to the Rex. 40
- My friends decided to come to the Rex with me.

- I was instructed to drive very slowly in my white Mercedes in front of the Rex at 9.45 p.m. This I did and I saw a man and I parked near the bus stop.
14. The man asked me if I was looking for Alex I said yes. He said my name is John.

He took me into the big bar and then to a smaller one. Then into another bar and he introduced me to a small fellow. And the man John left.

15. Alex and I then had a drink and we moved outside the bar into the corridor. He said I am now going round to business. We know different business. My group has been commissioned to do a certain job because a man paying £5000 to kill you and we have to rob it your wife to get a ring from her. It is worth £2500.

10

16. We are prepared to do a deal for £2000. Alex discusses the matter of the Police and asks that they not be notified of the money £2000.

Jossph Martin & his wife Anne 11 Euyralys
St Mosman XM 2674 went to Rex with Mr.
Barton.

20

Sunday
8.1.67

On duty 6 am. Criminal Investigation Branch - perused wireless messages and other police publications, noted descriptions of persons wanted and suspects, also other matters of interest. Brought diary up to date.

Assisted Detective-Sergeant Workman with summary of wireless logs until 8.30 a.m.

10

Inside duties re John Alan Roberto and George William Stone.

At 11.30 a.m. with Detective Sergeant Wild and Detective Inspector Lendrum - saw Mr. Barton & son - Mr. Millar - Solicitor and Mr. Muir Barrister - complaint re the actions of a man named Alec and allegations that Mr. Alexander Armstrong M.L.C. and a Mr. Frederick Hume were conspiring together to murder Mr. Barton Senior.

20

Tea
\$1.20

Then to 187 Edinburgh treet, Castle-cr agh and awaited telephone call from suspect. Suspect rang at 3 p.m. and again at 6.15 p.m. when an appointment was made to meet Mr. Barton outside the St. Vincents Hospital at 7.30 p.m. Meal 6.30 p.m. till 7 p.m. City \$1.20.

At 7.30 p.m. spoke to Alexander Vojinovic of 42 Bayswater Rd., Kings Cross, when he approached Mr. Barton.

30

Vojinovic was then conveyed to the Criminal Investigation Branch where he was questioned at length by Detective Sergeant Wild - record of interview taken.

Off duty 11 p.m.

Tuesday
10.1.67

On duty 8 a.m. Criminal Investigation Branch perused wireless messages and other police publications, noted descriptions of persons wanted and suspects, also other matters of interest. Brought diary up to date.

Inside duties re Barton inquiry until 11.30 a.m. - then conveyed Professor Shatwell to Law-School-Office and saw Det. Sgt. Chalmers - Queensland Police - re Jack Anthony Vermoulen - suspect for safe robbery in Brisbane. Fingerprints re same.

10

1 p.m. Meal till 2 p.m.

Then with Detective Sergeant Butler to Americanno Hotel, Kings Cross Rd., saw Mrs. Morris re Jack Carter - associate of Vermoulen suspect.

Then patrol to Haberfield re suspects - Office 5.30 p.m. & off duty.

20

Wednesday
11.1.67

on duty 8 a.m. - Criminal Investigation Branch perused wireless messages and other police publications, noted descriptions of persons wanted and suspects, also other matters of interest - Brought diary up to date.

Inside duties re Vermoulen and Barton Then to the Central Police Station re Hazel Dulcie Bodsworth charged with "Arson" - remanded 22nd March, 1967. Office 12.30 a.m. inside duties 1 p.m. Meal till 2 p.m.

30

Inside duties re Barton and Vermoulen inquiry. At 4 p.m. to 151 Forbes Street, East Sydney re Jacques Vermoulen - not located.

Office 5.15 p.m. & off duty 5.30 p.m.

Exhibit 53 - Copy
Diary of Det. Follington dated 10/1/1967
and 11/1/1967

Wednesday
18.1.67

On duty 8 a.m. Criminal Investigation Branch - perused wireless messages and other police publications, noted descriptions of persons wanted and suspects, also other matter of interest. Brought diary up to date.

Inside re Anlezark and Lovell - then to Central Court re same - Lovell failed to appear - Anlezark remanded until 22/2/67 and detained him until the arrival of Det. Rope from Bondi. 10

Office 12.30 p.m. then with Emergency Squad to 121 Union Street, Erskinville re Perry - Office 2 p.m. then to 109 Pitt Street, City re Barton - then to 361 Kent Street, City re Ribb - to Cleveland Street Police Station.

Office 5 p.m. inside & off duty 5.30 p.m. 20

Friday
3.11.67

On duty 6.30 a.m. Criminal Investigation Branch - with Detective Sergeant Bayter - perused wireless messages and other police publications, noted descriptions of persons wanted and suspects, also other matters of interest. Brought diary up to date.

Out to 82 Cooper Street, Maroubra, and saw Mrs. Byrne and John Raymond Pratech re enquiries re Lawrence John Byrne charged. 30

Office 9.30 a.m. and interviewed Pratech re his association with Byrne - no evidence to warrant any further police action - returned him to Maroubra. Office 1 p.m. Meal till 2 p.m.

Inside re Jack Lander and return of property, to Edinburgh Street, Castlecreagh, and saw Mr. Barton re Armstrong enquiry. 40

Office 4.15 p.m. inside re Safe Squad records and off duty 5.30 p.m.

Shortly after 10a.m., on the 9th. February, 1968, I arrived at the Supreme Court in Equity, Mena House, Macquarie Street, City, with Sergeants Johnson and Anderson, as the result of a direction received from the Commissioner of Police.

On leaving the lift on the 12th. floor of those premises, I was approached by Mr. Barton, Senior, who shook my hand and asked me how I was.

We were joined by his son and Mr. Barton said to me, "Sergeant Wild is in Tasmania, you will be giving the evidence." I said, "A subpoena has only been received for documents, but if I am required no doubt I will give evidence." 10

Barton Said, "In February you rang me and said I should go into hiding again as my life was in danger."

I said, "Your'e mistaken."

Barton Said, "I'm sorry about the letters I sent about the jewellery, but I've got a lot of money at stake." 20

I said, "They're a complete lie, the Commissioner questioned me about them this morning and the papers you have."

Barton Said, "I'm sorry, but I have been told to say that you gave me the papers and that you gave all the papers to Armstrong's solicitor, and that you are refusing to bring the others to Court. Sergeant Wild is away and you will be giving the evidence."

I said, "This is a complete fabrication and I want you to tell this to Sergeants Johnson and Anderson, who are here representing the Commissioner of Police." 30

Barton Said, "I can't do that, I was told not to be seen talking to you."

Mr. Barton and his son then walked away from me and I immediately informed Sergeant Anderson and Johnson of the conversation and requested that it be conveyed to the Commissioner of Police.

On returning to the Criminal Investigation Branch I informed Detective Superintendent Ferguson of the happenings. 40

MR. A. MRS. MR. MRS. A. MR. B. MISS MR.
GIULICON DOGLAS DIANNE MORTON
BRYANT KIERY CANSDELL



MINUTES OF MEETING OF DIRECTORS OF LANDMARK CORPORATION LIMITED HELD AT 109 PITT STREET, SYDNEY ON 6TH JUNE 1966 AT 2.30 P.M.

PRESENT: Messrs. A.E. Armstrong (Chair), J.O. Bovill, A.J.S. Cotter and J. Stewart (Asst. General Manager and Secretary) as alternate for Mr. A. Barton.

FINANCE: The Asst. General Manager reported negotiations with Mr. A.E. Armstrong acting on behalf of Southern Tablelands Finance Co. Pty. Limited whereby that Company had agreed to advance the sum of \$86,000.00 subject to a contemporaneous repayment to Southern Tablelands Finance Co. Pty. Limited of \$70,000.00 in respect of securities already held by Southern Tablelands Finance Co. Pty. Limited. Mr. A. E. Armstrong having a pecuniary interest in the transaction as a Director and Shareholder of Southern Tablelands Finance Co. Pty. Limited disclosed his interest in terms of the Companies Act and the Company's Articles of Association and temporarily retired from the Meeting. RESOLVED THAT the Asst. General Manager be and is hereby authorised to complete the transaction and THAT any documents necessary in relation thereto be executed under the Common Seal of the Company or under the Common Seal of such of the Company's subsidiaries as may be required. RESOLVED THAT the Asst. General Manager be and is hereby instructed to convey to Mr. A.E. Armstrong the Board's appreciation of his assistance to the Group

in making the additional funds available.

Mr. A. E. Armstrong returned to the Meeting and IT IS RECORDED that he did not vote.

MANAGING
DIRECTOR:

The Asst. General Manager reported concerning a telephone conversation with the Managing Director who was in Acapulco, Mexico, on Sunday 5th June, 1966 Australian time.

10

Signed as a correct record 8th July 1966.

A.E. Armstrong

MINUTES OF MEETING OF DIRECTORS OF LANDMARK CORPORATION LIMITED HELD AT 109 PITT STREET, SYDNEY ON 16TH JUNE 1966 AT 10.30 P.M.

PRESENT: Messrs. A.E. Armstrong (Chair), J.O. Bovill, A.J.S. Cotter and J. Stewart (Asst. General Manager and Secretary) as alternate for Mr. A. Barton.

MANAGING DIRECTOR: The Asst. General Manager reported concerning the current financial position of the Group, in particular in relation to amounts outstanding with suppliers, financiers (including current interest) and other creditors.

10

RESOLVED THAT the Managing Director be and is hereby instructed to return to Australia so as to be present at the Company's office no later than 27th June, 1966 and THAT the Asst. General Manager be and is hereby instructed to convey this information to the Managing Director by telephone and letter.

20

VISTA COURT: The Asst. General Manager tabled a mortgage and other documents relating to Vista Court providing for an advance to Mahonga Pty. Limited secured by mortgage over the property and reported a telephone conversation with the Managing Director who had requested that execution be deferred until his return from overseas. Mr. A.E. Armstrong having a pecuniary interest in the transaction as a Director and Shareholder of Mahonga Pty. Limited disclosed his interest in terms of the Companies Act and the Company's Articles of Association.

30

Exhibit 56 - Minutes
of Landmark Corporation
dated 16/6/1966

RESOLVED THAT consideration of this mat-
ter be deferred until 28th June, 1966.

Signed as a correct record
this 8th day of July 1966.

A. E. Armstrong

CHAIRMAN

MINUTES OF MEETING OF DIRECTORS OF LANDMARK CORPORATION LIMITED HELD AT 109 PITT STREET, SYDNEY ON FRIDAY 16th SEPTEMBER 1966 at 10 a.m.

Present: Messrs. A. Barton (Chair) A.J.S. Cotter,
R.I. Grant (alternate for A.E. Armstrong)
H.R. Marks (alternate for J.O. Bovill)

In Attendance: H.R. Marks, Secretary.

Minutes Previous Meeting: The Minutes of Meeting held on 30th August 1966 after being read and confirmed were signed by the Chairman as a true record. 10

Leave of Absence: RESOLVED THAT leave of absence from 10th September 1966 to 30th September 1966 be granted to Mr. J.O. Bovill.

Alternate Director: A Notice dated 10th September 1966 from Mr. J.O. Bovill appointing Mr. Howard Robertson Marks as his alternate was tabled.

RESOLVED THAT Mr. H.R. Marks be and he is hereby appointed Alternate Director of the Company pursuant to the aforementioned Notice. 20

1966 Accounts: The draft 1966 Accounts were discussed and it was -

RESOLVED THAT a Provision of \$100,000 for fluctuation in market values of assets and contingencies be made out of AEA the Profit and Loss Appropriation Account. HM

RESOLVED THAT authority be and is hereby given for a preliminary announcement as tabled and corrected in the form annexed hereto to be delivered to the Sydney Stock Exchange at 12.30 p.m. on Friday 16th September 1966. 30

Signed as a correct record this 18th day of October, 1966.

A.E. Armstrong
(CHAIRMAN)

LANDMARK GROUP OF COMPANIES

FROM THE OFFICES OF LANDMARK CORPORATION LIMITED

109 Pitt Street, Sydney . G.P.O. Box 4211 . Phone:
28.0951 . Telegrams: Landcorp, Sydney.

Our Reference:

Your Reference:

16th September, 1966.

PRELIMINARY RESULTS

The Directors report that subject to audit and after eliminating interests of outside shareholders in subsidiaries, consolidated profits for the year ended 30 June 1966 are as set out in the following table:- 10

	<u>1966</u>	<u>1965</u>	
	\$	\$	
<u>NET PROFIT</u> from trading before provisions	280,348	288,248	
Less provisions for Doubtful Debts and Contingencies	<u>18,000</u>	<u>46,000</u>	
<u>NET PROFIT</u> from trading after provisions	262,348	242,248	20
Less loss on sale of Fixed Assets and termination of Operations	<u>31,425</u>	<u>25,596</u>	
<u>NET PROFIT</u> for year before Taxation	230,923	216,652	
Provision for Taxation	<u>18,645</u>	_____	
<u>NET PROFIT FOR YEAR AFTER TAXATION</u>	212,278	216,652	
Income Tax underprovided in previous year	-	<u>8,510</u>	30
<u>NET PROFIT FOR YEAR</u>	\$212,278 =====	208,142 =====	

The results have been determined after charging:-

Interest on Fixed Term Loans	\$333,732	\$136,776
Interest Received	\$121,460	\$ 66,812
Depreciation & Amortisation of fixed Assets	\$ 4,366	\$ 14,214

The Directors consider the result most satisfactory, and that the future profitability of the Company is assured from projects already completed, and from projects now being developed or planned. 40

The Directors are therefore confident that dividend payments will continue on a rising scale and will recommend a dividend of 5% (5 cents per stock unit) at the Annual General Meeting to be held in November.

A. Barton

A. Barton

MANAGING DIRECTOR & DEPUTY CHAIRMAN

John Bovill

Exhibit 56 - Annexure
to Minutes of Landmark
Corporation dated
16/9/1966

MINUTES OF DIRECTORS MEETING OF LANDMARK CORPORATION LIMITED HELD AT 109 PITT STREET, SYDNEY AT 10.00 a.m. ON THE 28TH OCTOBER 1966.

Present: Messrs. A. Barton (Chair) A.J.S. Cotter,
J.O. Bovill

In Attendance: Mr. H.R. Marks (Secretary) Mr. E.D.
Cameron (Hungerford Spooner & Kirkhope)

Apology: Mr. Barton tendered an apology on behalf
of Mr.A.E. Armstrong for his absence.

Minutes: The Minutes of the Meeting held on the 24th October, 1966 after being read and confirmed were signed by the Chairman as a true record. 10

1966 Accounts: The Directors considered the written down value of the Bent Street land (a project to be known as Waratah Court) and considered that it was a conservative valuation.

The Directors considered that the book value of the Beachcomber Estate is not less than its estimated realizable value. However, it was not intended that it should be sold in the current Financial Year. 20

It was RESOLVED unanimously that the Balance Sheets and Profit & Loss Accounts for the year ended 30th June 1966 be approved and that they be recommended to the shareholders at the Annual General Meeting. It was further RESOLVED to recommend that a dividend of 5% be paid out of the profits of the year ended 30th June 1966 to all shareholders whose names appear on the register of members on 21st November 1966. 30

Annual General Meeting: RESOLVED THAT the Secretary be and is hereby instructed to convene in the form of notice annexed hereto the thirty-third Annual General Meeting of the Company to be held at the Meeting Room of the Royal Commonwealth Society "Grevel House" 30-32 Pitt Street, Sydney on 25th November 1966 at 11.00 a.m. 40

Preference Shares: RESOLVED THAT the unissued balance of the share capital of the company be converted to 8% Participating Redeemable Preference shares for the purpose of obtaining additional working capital.

Signed as a correct record this 17th day of November 1966 50

John Bovill
(CHAIRMAN)

MINUTES OF DIRECTORS MEETING OF LANDMARK
CORPORATION LIMITED HELD AT 109 PITT STREET, SYDNEY
AT 3.00 p.m. ON MONDAY 7th NOVEMBER 1966.

Present: Mr. A.E. Armstrong (Chair).

In
Attendance: Mr. H.R. Marks (Secretary).

Mr. A.E. Armstrong being the only
Director present the meeting lapsed for
want of a Quorum.

Signed as a correct record this 17th
day of November 1966.

10

John Bovill
(CHAIRMAN)

MINUTES OF MEETING OF DIRECTORS OF LANDMARK CORPORATION LIMITED HELD AT 109 PITT STREET, SYDNEY ON TUESDAY 8TH NOVEMBER 1966 at 3.45 p.m.

Present: Messrs. A.E. Armstrong (Chair) A. Barton, J.O. Bovill, A.J.S. Cotter.

In Attendance: Mr. H.R. Marks (Secretary) Messrs. E.D. Cameron, A.H. Kewin (Hungerford Spooner & Kirkhope) part time.

Retiring Allowance C. Thorpe: RESOLVED THAT a retiring allowance of \$1,000 (which amount includes Long Service Leave and Holiday Pay due) be paid to Mr. C. Thorpe on his retirement from the Company. 10

Repayment to Southern Tablelands Finance Pty.Ltd. It was noted that the amount of \$50,000 owing to Southern Tablelands Finance Pty. Limited would be repaid by the 25th November, 1966.

1966 Accounts: RESOLVED THAT the forfeited security deposit of \$30,000 be not brought to account in arriving at the profits of the year ended 30th June 1966, and it was further RESOLVED THAT the accounts as adjusted be adopted for presentation to the Annual General Meeting. 20

The resolution was passed with Mr. A.E. Armstrong dissenting.

RESOLVED THAT Mr. A. Barton and J.O. Bovill sign the Balance Sheets and Profit and Loss Accounts for the year ended 30th June 1966 and that Mr. A. Barton sign the Directors Report as Managing Director. 30

The Secretary was instructed to make the necessary alterations to the Balance Sheets, Profit and Loss Accounts and Directors Report and arrange for their printing. It was further RESOLVED THAT the Secretary be and is hereby instructed to convene in the form of notice annexed hereto the Thirty-third Annual General Meeting of the Company to be held at the meeting room of the Royal Commonwealth Society "Greval House", 30-32 Pitt Street, Sydney, on Friday 2nd December, 1966 at 11.00 a.m. instead of the date of the 25th November, 1966. 40

Signed as a correct record this 17th day of November 1966.

John Bovill (CHAIRMAN) 50

NOTES RE; ANNUAL ACCOUNTS PRESENTED BY
A.E. ARMSTRONG

1. BENT STREET

My view is that in the ordinary course of
realisation of this asset by the Company it would
realise \$50,000.00. It stands in the Company's 10
books at about \$100,000.00. A provision has been
made to meet the loss by the creation of a reserve
in this amount. To comply with Section 162 of the
Companies Act not only should some provisions be
made to meet the loss but the Directors should state
their view as to the amount which the asset should
realise in the ordinary course of the company's
business. If in the opinion of the Board it is
\$50,000.00 then my view is that it is the prudent
and conservative thing to write it off out of this 20
years profit. In no circumstances should the loss
be written off against previous years profits. I
understand that there would be almost a unanimous
view within the accounting profession as to this.
An analogy is drawn with bad debts. Assume that
since the end of the accounting period a debt be-
came doubtful; it can't be written off at this
stage but it would be prudent to make some provi-
sions for this debt in the accounts for the account-
ing period. The course adopted with Bent Street 30
should also be followed in the case of any of the
Company's Real Estate which in the opinion of the
Directors will not realise it's book value in the
ordinary course of the Company's business.

2. CAPITALISATION OF INTEREST CHANGE

There has been a change in method of accounting by the company in so far as holding charges are now capitalised. This appears as a note on the Balance Sheet in the Draft Accounts but should also appear in the Directors Report.

10

-2-

A change of the method of accounting at this stage of the Company's business could be open to criticism.

3. CONSERVATIVE APPROACH

The public company climate is one of conservatism. It would be prudent to clean up the profit situation of the Balance Sheet in the Current Accounts and start off with a good and sound commercial picture for 1967. In the long run this would appeal to shareholders and to any Company proposing to make a take over offer than painting the rosiest possible picture as far as is legally possible.

20

4. BOARD RESPONSIBILITY

There is no doubt that the accounts are legally the Board's accounts and not the auditors. The responsibility of preparing and signing of accounts is the Boards. Strictly speaking they should present the auditors with a set of accounts which they have prepared and signed. The auditors should then audit the accounts and accept them with qualifications or alternatively should qualify the accounts as he thinks fit. In practice the professional advice of the Company's auditor is sought in the preparation of the accounts so that when

30

Exhibit 56 - Annexure
to the Minutes of
Landmark Corporation
dated 8/11/1966

they are presented to him there are no points at
which the Board and the auditors seriously take
issue.

The issue to be determined by the Board is whether
the accounts should be presented in a conservative
way as I wish or alternatively in such a way as to
present the rosier possible picture as the Manag-
ing Director wants.

10

MINUTES OF DIRECTORS MEETING OF LANDMARK

CORPORATION LIMITED HELD AT 109 PITT STREET, SYDNEY

ON MONDAY 14TH NOVEMBER 1966 at 3.00 P.M.

Present: Messrs. A.E. Armstrong (Chair) A. Barton,
J.O. Bovill, A.J.S. Cotter.

In Attendance: Messrs. H.R. Marks (Secretary) E.D.
Cameron (Hungerford Spooner and Kirkhope)
Mr. E. Solomon (Allen Allen & Hemsley).

Authorising to Managing Director: RESOLVED THAT Mr. A. Barton be and he is hereby authorised to carry out negotiations with United Dominions Corporation (Australia) Limited and Finlayside Pty. Limited Representative regarding Paradise Waters project. 10
JB AB

RESOLVED THAT Mr. A. Barton be and he is hereby authorised to instruct Messrs. Gaden Bowen and Stewart, Solicitors to act on behalf of this Company in matters relating to Paradise Waters (Sales) Pty. Limited, Paradise Waters Limited and Finlayside Pty., Limited. 20
JB AB

RESOLVED THAT Mr. A. Barton be and he is hereby authorised to instruct Messrs. Steindl Wardrobe & Company, Solicitors to take over from Dare Reed Martin & Grant, Solicitors all company matters in Queensland and also all matters Dare Reed Martin and Grant are conducting in N.S.W. be handed over to Messrs. Allen Allen & Hemsley. 30

This hand-over to be mutually discussed between the solicitors concerned.

Stock Exchange Announcement: RESOLVED THAT our announcement to the Sydney Stock Exchange be made in the form annexed hereto and the Secretary was instructed to have the letter delivered by hand to the Stock Exchange at 5 p.m. 14.11.66.

Report by Mr. Armstrong: The Chairman reported that Mr. Kratzmann had telephoned him that morning and made certain statements that he was having trouble paying his accounts, also that he had only received \$33,186 and that he owed approximately \$150,000 on Landmark House and approximately \$58,000 on Paradise Towers which he was not contesting. He (Mr. Kratzmann) asked the Chairman could he do anything about it he also said he might have to stop work and might have to consult Industrial Acceptance Corporation Limited. 40 50

Mr. Barton replied that he had spoken to Mr. Kratzmann after his call to Mr. Armstrong and that Mr. Kratzmann had

stated that he was happy with the position.

../2.

2.

Mr. A.E. Armstrong stated that he would write a letter to the Company which is to be appended to the minutes attaching a copy of a letter received from Hungerford Spooner & Kirkhope.

10

Mr. A.E. Armstrong handed a letter to Mr. Cameron which was in reply to their letter and was asked by Mr. Cameron if there were any other reasons why he dissented from the Board resolution adopting the accounts.

Mr. Armstrong said there were not.

Chairman
to give
details of
Meeting:

RESOLVED THAT the Chairman be required to give details of his meeting on 23rd October 1966 at Parliament House between himself, Mr. A. Hoggett, Mr. Davies (Solicitor) and Mr. Grant, (Solicitor) and any other meeting with any of those parties relating to the affairs of the Company or to the letter written by Mr. A.P. Hoggett to the Chairman or the action brought by Mr. A.P. Hoggett against the Company.

20

30

Deputy
Chairman:

RESOLVED THAT Mr. J.O. Bovill be and is hereby appointed Deputy Chairman of the Company.

Auditors
request
to Chair-
man:

Mr. Cameron asked Mr. Armstrong to again confirm that he would not supply further particulars of the matters mentioned in Mr. Armstrong's letter stating his reasons for dissenting from the Accounts and that there were no other reasons for his dissent. Mr. Armstrong replied that he would not make any further statement on the matter.

40

Signed as a correct record this 17th day of November 1966.

John Bovill
(CHAIRMAN)

LANDMARK GROUP OF COMPANIES

FROM THE OFFICES OF LANDMARK CORPORATION LIMITED.

109 Pitt Street, Sydney . G.P.O. Box 4211 . Phone:
28.0951 . Telegrams: Landcorp, Sydney.

Our Reference: A. Barton;sg.

Your Reference: 14th November, 1966.

The Secretary,
The Sydney Stock Exchange
20 O'Connell Street
SYDNEY. N.S.W.

10

Dear Sir,

At your request and on behalf of the Board of Directors of Landmark Corporation Limited, I wish to inform you as follows:-

1. No member of the Board or Companies in which they are interested, has sold any Landmark shares under sixty-six cents during the year 1966.
2. No member of the Board or Companies in which they are interested, has sold any shares during the past three months. 20
3. The consolidated nett profit for the year ended 30th June, 1966, as announced in the preliminary statement has been adjusted to a figure of \$158,481. In addition, further adjustments totalling \$167,000 have been made against unappropriated profits brought forward from previous years, and the 5% dividend will be recommended, as announced, at the annual meeting which will be held on December 2nd, 1966. 30
4. The Company's accounts for 1965/66 have been approved by the Board, and the Auditors' Report has been signed by Messrs. Hungerford, Spooner and Kirkhope.

.....page2.

Page 2.

5. The Board maintains its belief in the Company's prospect of continued success and growth. 40

For and on behalf of the Board of Directors,

A. Barton

A. BARTON
Managing Director.

Exhibit 56 - Annexure
to the Minutes of
Landmark Corporation
dated 14/11/1966
2922.

Exhibit 56 - Annexure
to the Minutes of
Landmark Corporation
dated 14/11/1966

9 Coolong Road,
Vaucluse.

14th November, 1966.

The Directors,
Landmark Corporation Limited,
109 Pitt Street,
SYDNEY.

10

Dear Sirs,

I received a letter from the Company's
auditors inviting me to notify them of any reason
why the accounts of the Company did not give a true
and fair view of the state of the Company's affairs
and I enclose herewith for your information a copy
of my reply. I would like the receipt of this
letter recorded in the Minutes.

Yours faithfully,

20

A.E. Armstrong.

Exhibit 56 - Annexure
to the Minutes of
Landmark Corporation
dated 14/11/1966

1st Floor
Commercial Union House
109 Pitt Street
Sydney

Phone 28 0951

G.P.O. Box 1512

14th November 1966

10

Messrs. Hungerford Spooner & Kirkhope,
Chartered Accountants,
P. & O. Building,
2, Castlereagh Street,
SYDNEY

Dear Sirs,

I acknowledge receipt of your letter of the
11th instant and it is true that I dissented from
the Board Resolutions passing the Annual Accounts.

I have sought legal advice and have been ad-
vised that the treatment in the accounts of the
several matters raised by me when considered
separately has been in accordance with accepted
method of accounting but in each case the treatment
has been such as to present the rosiest picture
possible. This treatment does not represent the
conservative approach which I regard as prudent and
proper and ultimately in the best interest of share-
holders.

20

I do not think that a dividend should be re-
commended by the Board, particularly in the light
of the Company's present unliquid position and the
uncertainty of the source from which payment is in-
tended to be made.

30

Yours faithfully,

A.E. Armstrong

Exhibit 56 - Annexure
to the Minutes of
Landmark Corporation
dated 14/11/1966

MINUTES OF MEETING OF DIRECTORS OF LANDMARK CORPORATION LIMITED HELD AT 109 PITT STREET, SYDNEY ON THURSDAY 17TH NOVEMBER 1966 AT 10 A.M.:

Present: Messrs. A.E. Armstrong (Chair) J.O. Bovill A.J.S. Cotter, A. Barton.

In Attendance: Mr. H.R. Marks (Secretary) E. Solomon (Allen Allen & Hemsley).

Chairman: RESOLVED THAT Mr. J.O. Bovill be and he is hereby appointed Chairman of the company. 10

RESOLVED THAT Mr. Bovill's appointment be for 12 months from this date.

Mr. Bovill then occupied the chair.

Paradise Waters Estate: RESOLVED THAT this Company sell 1500 shares in Paradise Waters (Sales) Pty., Limited to United Dominion Corporation (Australia) Limited at par United Dominions Corporation (Australia) Limited undertakes to lend Landmark Corporation Limited \$400,000 immediately under the security they already have. Landmark Corporation Limited further agrees to waive the conditions that money can only be lent on Engineers Certificate and that United Dominions Corporation (Australia) Limited undertake to provide all money necessary to develop Paradise Waters Estate. Subject to United Dominions Corporation (Australia) Limited being granted representation on the Board of Paradise Waters (Sales) Pty., Limited and Paradise Waters Limited. 20 30

Because of his interest in Paradise Waters (Sales) Pty., Limited, Mr. Armstrong did not vote but it was noted that he was not against the resolution.

It was noted that the proposed interest in the Paradise Waters Estate would be -

Finlayside Pty.Ltd. (Armstrong Co.)	25%	
Landmark Corporation Limited	45%	40
United Dominions Corporation Ltd.	30%	
	<u>100%</u>	

RESOLVED THAT Mr. Barton and Mr. Cotter be appointed to carry out future negotiations with Finlayside Pty. Ltd. and United Dominions Corporation Limited in respect of the Paradise Waters Project.

Board Meetings: Mr. Barton stated that in view of the present negotiation that it may be necessary for frequent Board meetings to be called over the next few weeks and that it was proposed to hold the next meeting on the 24th November 1966. 50

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Alternate RESOLVED THAT in the absence of Mr. A.E.
for Mr. Armstrong that Mr. William Sugden Beale
Armstrong: be and is hereby appointed his alternate.

Minutes: Minutes of Meetings held on 28th October
1966 7th, 8th and 14th November 1966
after being read were signed by the
Chairman as a true record.

10

Signed as a correct record this 18th day
of January 196~~6~~7.

A. Barton
(CHAIRMAN).

LANDMARK GROUP OF COMPANIES

FROM THE OFFICES OF LANDMARK CORPORATION LIMITED

109 Pitt Street, Sydney . G.P.O. Box 4211, Phone:
28.0951 . Telegrams: Landcorp, Sydney.

Our Reference: A. Barton:sg.
Your Reference:

17th November, 1966.

The Secretary
The Sydney Stock Exchange
20 O'Connell Street
SYDNEY. N.S.W.

10

Dear Sir,

Please be advised of the following:

1. At a meeting of Directors held on November 17th, 1966, Mr. J.O. Bovill was appointed Chairman of the Board of Directors of Landmark Corporation for a period of twelve months.
2. The Board also announces that negotiations are satisfactorily proceeding with United Dominions Corporation (Australia) Limited with a view to coming to a partnership arrangement in the development and sale of the Paradise Waters Estate in Surfers Paradise. United Dominions Corporation has already provided a substantial amount of finance for this multi-million dollar project.

20

United Dominions Corporation (Australia) Limited is a wholly owned subsidiary of the largest finance company in the United Kingdom.

30

For and on behalf of the Board

A. Barton

A. BARTON

Managing Director.

Exhibit 56 - Annexure
to the Minutes of
Landmark Corporation
dated 17/11/1966

MEETING OF DIRECTORS OF LANDMARK CORPORATION LIMITED
HELD AT 109 PITT STREET, SYDNEY ON WEDNESDAY, 30TH
NOVEMBER 1966 AT 9.15 A.M.

Present: Messrs. A. Barton (Chair), A.E. Armstrong
A.J.S. Cotter.

In Attendance: H.R. Marks (Secretary) A.H. Kewin
(Hungerford Spooner & Kirkhope) J.O.
Bovill, C. Coleman, E. Solomon (Allen
Allen & Hemsley).

After a comment by Mr. Armstrong the Chairman ruled him out of order. 10

Mr. Armstrong replied that he had been out of order many times.

Share Transfers: RESOLVED THAT the transfer of 300 shares appearing on Canberra transfer journal Folio 9A be and is hereby approved and that the common seal of the Company be affixed to the share certificates relative thereto.

Appointment of Director: RESOLVED THAT Mr. J.O. Bovill be and he is hereby appointed a director of the Company. 20

Mr. A.E. Armstrong refrained from voting.

During a short adjournment Mr. Armstrong stated "It looks as though a phony advertisement had been inserted in the Sydney Morning Herald of 29th November 1966 by Mr. Larsen that the Paradise Towers Penthouse had been sold for \$80,000". 30

Mr. Armstrong said that enquiries from Mr. Barton, Mr. Marks and Mr. Plotky had failed to discover who the buyer was.

Proxy for Annual General Meeting of Hawkesbury Development Co. Pty. Limited: RESOLVED THAT a Proxy for the Annual General Meeting of Hawkesbury Development Limited to be held on 2nd December 1966 be given to Mr. C. Coleman. 40

R.A. Brierley Appeal: Mr. Barton reported that judgement had been reserved in the High Court appeal by R.A. Brierley Investment in the Hawkesbury Development Company Limited. (Barwick, C.J. Kitto, J, McTiernan, J. Menzies, J. Windyer, J. - Counsel Byers Melville).

Proposal to purchase Brierley Shareholding: Mr. Barton added that as the Company's legal advisors were uncertain of the result of the appeal he proposed to enter into a contract with R.A. Brierley Investments Pty., Limited to purchase their 50

Exhibit 56 - Minutes
of Landmark Corporation
dated 30/11/1966

shareholding in Hawkesbury Development Company Limited at a price of \$1.40 per share plus a guaranteed 7% dividend, the proposed terms of the purchase being purchased of $\frac{1}{3}$ shareholding on 20th January 1967.

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The balance on 31st December 1968 at 8% simple interest on the balance to be reduced by the amount of dividends paid. Mr. Barton strongly recommended this proposal to the Board and was supported by Messrs. Bovill and Cotter.

Mr. Armstrong stated:-

"I am very strongly against settling with R.A. Brierley Investments Pty., Limited and nominees, the Boards policy, except Mr. Barton, on the advice of Mr. F.W. Millar (Allen Allen & Hemsley) was to delay as long as possible. I believe as Mr. Millar who is more cognisant of the matter than anyone else in his firm we should delay settling with R.A. Brierley Investments Pty., Limited at least until the judgment of the High Court is handed down. (Time of handing down not known). To support this statement I believe that the matter of 30c per share which we may endanger by not settling now is worth taking the risk. I believe that Mr. Brierley's companies are fairly weak financially and that all delaying tactics should be used as by doing so we are saving interest all the time. I believe that it is quite possible that in my opinion and that of the Company Solicitors we may win the appeal, if so, we will all be very sorry that we have settled the matter so quickly even before the High Court judgment is handed down. I strongly recommend that the board does not accept the blackmailing tactics of Messrs. Brierley and Blackburn who have access to information extremely embarrassing to the Managing Director, Mr. Barton and I state categorically that the fact of this embarrassing information is the reason motivating Mr. Barton recommending their offer. I intend to protest very strongly at any forum available to me".

The Chairman asked Mr. Armstrong what he meant by any Forum - Mr. Armstrong said no comment.

Mr. J.O. Bovill - "I note that Mr. Armstrong prefers to take the risky course in this matter. I reject the allegations of embarrassing information alleged by Mr. Armstrong to be available to Messrs. Brierley and Blackburn. I prefer to take the safer course open to us and recommend and vote for a negotiated settlement".

10

At this point Mr. Armstrong produced a copy of the recent press release made by Mr. Barton and was asked by Mr. Barton where he had obtained it. Mr. Armstrong said Mr. Barton should find out himself. Mr. Armstrong said that seven reporters had handed it to him - Mr. Barton said there were only four at the meeting.

20

Mr. Barton - "Regarding the purchase of the Hawkesbury Development Company Limited shares owned by R.A. Brierley Investments Pty; Limited and their nominees I feel that I have for the second time to recommend it to this board to authorise me as Managing Director to enter into legal contract to purchase these shares for the following reasons:-

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3.

1. This Company cannot afford to be party to any further bad publicity which may arise from the judgment.
2. In my opinion a commercial decision is to be made at the time when the Company interests can be protected and in my opinion to buy these shares for \$1.40 on those advantageous terms is in the best interests of the company and we protecting ourselves to find the Company to fulfill its obligations according to the takeover bid which is resulting in not only to make cash payment immediately but also we would have to provide real estate securities as was part of the takeover bid".

40

On Mr. Armstrong's request the meeting was adjourned for $\frac{1}{4}$ hour and resumed at 10.45 a.m.

50

Purchase
of Hawkes-
bury
Develop-
ment Co.
Ltd.
Shares:

RESOLVED THAT the Board hereby authorise that the company's seal be duly affixed to an agreement for the acquisition by the company of the shares held by R.A. Brierley Investments Limited and its nominees in the capital of Hawkesbury

Exhibit 56 - Minutes
of Landmark Corporation
dated 30/11/1966

Development Company Limited at the price of \$1.40 per share such agreement to be in a form and upon such terms and conditions as may be approved by the Managing Director on behalf of the Board.

Mr. A.E. Armstrong dissented.

Share
Transfer:

RESOLVED THAT the transfer, removals, re-issues and transmission appearing on:-

10

- (a) Sydney transfer journal folio/s 9,10
- (b) Canberra transfer journal folio/s 9A,10,11.

be and are hereby approved and that the Common Seal of the Company be affixed to the Share Certificates relative thereto.

Signed as a correct record this 18th day of January 1967.

20

A. Barton
(CHAIRMAN).

MINUTES OF MEETING OF BOARD OF DIRECTORS OF
LANDMARK CORPORATION LIMITED HELD AT 5.00 P.M. ON
WEDNESDAY, 18TH JANUARY, 1967 AT 109 PITT STREET,
SYDNEY.

PRESENT: A. Barton, Chairman, J. Bovill, A.J.S.
Cotter.

IN H. Marks, Secretary, Messrs. E. Solomon
ATTENDANCE: and D.R. Patterson of Messrs. Allen Allen
& Hemsley Solicitors, Mr. P. Bowen,
Solicitor, and Mr. R.I. Grant. 10

AGREEMENT The Chairman tabled a copy of the Deed
WITH dated the 17th January, 1967 between
ARMSTRONG George Armstrong & Son Pty. Limited,
GROUP: Finlayside Pty. Limited, Southern Table-
lands Finance Co. Pty. Limited, Goulburn
Acceptance Pty. Limited and A.E. Arm-
strong Pty. Limited ("the A group"),
Landmark (Qld) Pty. Ltd., Paradise Waters
(Sales) Pty. Limited, Paradise Waters 20
Limited, Goondoo Pty. Ltd., Landmark
Home Units Pty. Limited, Landmark Finance
Pty. Limited, Landmark Housing & Develop-
ment Pty. Ltd. and Landmark Corporation
Limited ("the L group"), Alexander Ewen
Armstrong, and Alexander Barton.

RESOLVED that the said Deed dated 17th
January, 1967 a copy of which was tabled
at this Meeting be and it is hereby ap-
proved and ratified in all respects and
that the counterpart of the said Deed 30
executed by the Companies in the L group
be delivered to the solicitor for the A
group and A.E. Armstrong.

SETTLEMENT RESOLVED further that all instruments re-
OF ABOVE quired to be executed by the Company
AGREEMENT: pursuant to the said Deed be executed un-
der the common seal of the Company in the
presence of the Managing Director and the
Secretary and that all other things re-
quired to be done in order to give effect 40
to the obligations of the Company under
the said Deed are hereby authorised to
be done.

ADJOURN- The Meeting was then adjourned and re-
MENT: sumed at 5.30 p.m.

The Chairman reported that the executed
counterparts of the abovementioned Deed
had been exchanged between the parties
and that settlement of the transactions
referred to in Clause 14 of the said Deed 50
had taken place conditionally upon the
completion of certain other matters men-
tioned in Clauses 17 and 18 of the said
Deed to be completed at this Meeting and
Meetings of subsidiary companies of
Landmark to be held on this day.

2.

SHARE TRANSFERS: RESOLVED that the following transfers of shares in the Company which were tabled at the Meeting be registered subject to stamping thereof:

<u>Transferor</u>	<u>Transferee</u>	<u>No. of Shares</u>	
A.E. Armstrong Pty. Limited	John Osborne Bovill	30,000	10
"	Terrence Barton	30,000	
"	Clare Barton	30,000	
"	Home Holdings Pty. Limited	47,500	
"	Allebart Pty. Limited	47,500	
"	Allebart Investments Pty. Limited	47,500	
"	Alexander Barton	30,000	

APPOINTMENT OF B. H. SMITH AS DIRECTOR: RESOLVED that Bruce Henry Smith be appointed a director of the Company effective upon the termination of this Meeting. 20

CHAIRMAN: Mr. Barton then tendered his resignation as Chairman of Directors of the Company effective upon the termination of this Meeting.

RESOLVED that the resignation of Mr. Barton as Chairman of Directors be accepted effective on the termination of this Meeting. 30

RESOLVED that Mr. B.H. Smith be and is hereby appointed Chairman of Directors of the Company effective on the termination of this Meeting.

RESIGNATION OF A.E. ARMSTRONG: The resignation in writing of Mr. A.E. Armstrong as a director of the Company was then tabled.

RESOLVED that the resignation of Mr. Armstrong as a director of the Company be and is hereby accepted effective upon the termination of this Meeting. 40

APPOINTMENT OF A.S. HAWLEY AS DIRECTOR: RESOLVED that Mr. Arthur Sydney Hawley be appointed a director of the Company effective upon the termination of this Meeting.

Signed as a true record

A. Barton
.....
Chairman 10th Feb 1967 50

1st Floor
Commercial Union House
109 Pitt Street
Sydney

Phone 28 0951

G.P.O. Box 1512

18th January, 1967.

The Directors,
Landmark Corporation Limited,

I, Alexander Barton, hereby tender my resignation
as Chairman of Directors of the Company.

10

A. Barton
A. BARTON

TO: Board of Directors,
~~Hawkesbury-Development-Company-Limited~~ RIG
Landmark Corporation Limited

I hereby resign from the Board of Directors
of the Company, such resignation to be effective
forthwith.

18th January 1967.

A.E. Armstrong
.....
A.E. Armstrong

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WITNESS: R.I. Grant

TO: Board of Directors,
Landmark Corporation Limited

I hereby resign from the Board of Directors of the Company, such resignation to be effective forthwith.

Alexander Ewan Armstrong
by his Attorney

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R.I. Grant
.....

Memorandum whereby the undersigned states that he has no notice of the revocation of the Power of Attorney of Alexander Ewan Armstrong dated 30th August 1966 under the authority of which he has just executed the within resignation.

RIG

DATED at Sydney this 18th day of January, 1967.

R. I. Grant

Signed in the Presence of:

20

D. Patterson

MINUTES OF DIRECTORS MEETING OF LANDMARK
CORPORATION LIMITED HELD AT 109 PITT STREET ON
THURSDAY 19TH JANUARY AT 10 a.m.

Present: Messrs A. Barton (Chair), J.O. Bovill,
A.J.S. Cotter

In H.R. Marks (Secretary)
Attendance:

The Chairman referred to the resolutions passed at the meeting of the Board of Directors held on 18th January, 1967 appointing Messrs. B.H. Smith and A.S. Hawley Directors of the Company and Mr. Smith Chairman of Directors 10

IT WAS NOTED that neither Mr. Smith nor Mr. Hawley held the number of qualification shares required by the Company's Articles of Association and that the Company had not received the consents to act as Directors of Messrs. B.H. Smith and A.S. Hawley. 20

The Chairman reported that he had had a telephone conversation with Mr. Smith in which Mr. Smith had stated that neither he nor Mr. Hawley would accept appointment to the Board

IT WAS FURTHER NOTED that, in consequence, the resolutions passed at the Board meeting held on 18th January, 1967, purporting to appoint Messrs. B.H. Smith and A.S. Hawley Directors and Mr. Smith as Chairman of the Company were of no effect and that those gentlemen had not been validly appointed 30

Resolved; That the appointment of Mr A. Barton as Chairman of Directors of the Company is confirmed in all respects and in order to resolve any doubts as to Mr. Barton's tenure of the office of Chairman of Directors of the Company Mr. A. Barton is hereby reappointed Chairman of Directors of the Company. 40

Signed as a correct record this 16th day of May 1967

A. Barton
(CHAIRMAN)

MINUTES OF DIRECTORS MEETING OF LANDMARK CORPORATION
LIMITED HELD AT 109 PITT STREET, SYDNEY ON FRIDAY
10TH FEBRUARY 1967 AT 10.30 A.M.

Present: Messrs. A. Barton (Chair), J.O. Bovill,
A.J.S. Cotter

In Attendance: H.R. Marks (Secretary)

Minutes: Minutes of the meeting held on the 18th
January, 1967, after being read were
signed by the Chairman as a true record. 10

Seal: RESOLVED THAT the affixing of the Common
Seal of the Company to those documents,
particulars of which are listed in the
Seal Register at pages 1-4 and 1-8 in-
clusive and annexed hereto be and is
hereby approved.

Share Transfers: RESOLVED THAT the transfer removals, re-
issues and transmissions appearing on;
a. Sydney Transfer Journal Folio/s 11,12
b. Canberra Transfer Journal Folio/s 12, 13 20
be and are hereby approved and that the
Common Seal of the Company be affixed
to the Share Certificates relative
thereto.

Finance: The Managing Director tabled the attach-
ed report on the Assets position.

The Board after due consideration of the
Company's Assets position together with
the successful sale of Landmark Island
RESOLVED to give effect to the resolution
of shareholders passed at the last Annual
General Meeting covering the payment of
the dividend. 30

Signed as a correct record this 16th
day of May 1967

A. Barton
(CHAIRMAN)

LANDMARK CORPORATION LIMITED AND SUBSIDIARIES.

BRIEF SUMMARY OF THE CORPORATION'S ASSETS AND LIABILITIES WITH APPROXIMATE FIGURES ONLY AS AT THE 31ST JANUARY, 1967.

ASSETS

<u>Description</u>	<u>Cost</u>	<u>Liability</u>	<u>Equity</u>
<u>LANDMARK FINANCE PTY. LTD.</u> Has a Mortgage Management Company with mortgages on the security of 14 blocks of land, 43 houses, 262 home units and 1 motel. The accounts are very good with total arrears amounting to some \$8,000	\$3,300,000	\$2,120,000	\$1,180,000
<u>LANDMARK HOUSE.</u> A 14 storey commercial building at Wickham Terrace, Brisbane, comprising ground floor shops, 91 medical or professional suites, Manager's residence and 32 car spaces. Total selling value \$1,478,577, At present all of the shops, 23 medical suites and 9 car spaces have been sold and contracts have been exchanged for \$491,077. 1st. Mortgage obtained from I.A.C. Finance Pty.Ltd. for \$600,000 and up till now \$341,000 has been drawn. Balance of the Mortgage will complete the building which is estimated to be completed at the end of March, 1967	\$1,200,000	600,000	600,000.
<u>PARADISE WATERS ESTATE.</u> Located at Surfers Paradise comprising 472 deep water front la land under development. A smaller island called Landmark Island comprising 42 lots is completely sold out for \$341,690. At Paradise Waters Estate 21 blocks with 66 ft. deep water frontage have been sold to the value of \$301,000. This is the Company's largest development. The total selling price is			

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Exhibit 56 - Annexure
to the Minutes of
Landmark Corporation
dated 10/2/1967

approximately
\$6,000,000 on both
islands and \$1,200,000
is required to complete
the development,
excluding Interest and
overhead.

\$1,500,000 716,000 784,000

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Description	Cost	Liability	Equity
-------------	------	-----------	--------

BEACHCOMBER ESTATE.

Land development ap-
proximately 80 miles
north of Brisbane, com-
prising 23 development
blocks and 96 acres of
undeveloped land
written down value

\$ 90,000 Nil 90,000.

20

PARADISE TOWERS.

A project at Surfers
Paradise. The building
has been completed
since June, 1966. Some
cancellations occur
for these reasons: At
present we have 12 un-
sold units to the value
of \$198,600 and 6 units
have been sold and
under settlement to
the value of \$85,740

285,000 165,000 120,000.

30

FACTORY AT LANE COVE.

A two storey building
14,000 sq. ft. presently
let for \$10,000 per
annum

117,000 58,000 59,000

TOFF MONKS

Land at Elizabeth Bay
has been purchased
for \$300,000

335,000 300,000 35,000.

40

DEEP DENE.

Land at Elizabeth Bay.
Council approval of
the project has been
obtained.

69,000. 45,000. 24,000

WARATAH COURT.

Land at Neutral Bay.
Written down value
\$50,000.

50,000. 45,000. 5,000

50

THE ESPLANADE.

Land at Surfers Paradise
Council approval obtained
for a Motel with 53 units,

Exhibit 56 - Annexure
to the Minutes of
Landmark Corporation
dated 10/2/1967

Manager's residence and a large restaurant.	134,000	84,000	50,000
<u>LAURIETON LAND.</u>			
Undeveloped land.	36,000	Nil	36,000
<u>FREEHOLD LAND & BUILDING.</u>			
Rented by Turner, Henderson & Co.	135,000.	Nil	135,000
PLAND, FURNITURE, CARS & OTHER SINGLE ASSETS IN SUBSIDIARY COMPANIES	100,000	Nil	100,000
	<hr/>		
TOTAL.	\$7,351,000	\$4,133,000	\$3,212,000
	<hr/>		

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LANDMARK CORPORATION LIMITED. AND SUBSIDIARIES.

BRIEF SUMMARY OF THE CORPORATION'S ASSETS AND
LIABILITIES WITH APPROXIMATE FIGURES ONLY AS AT THE
31ST JANUARY, 1967.

LIABILITIES

LANDMARK AND SUBSIDIARIES		61,138	10
PARADISE WATERS PROJECT		87,628	
I.A.C.		2,655	
R.A. BRIERLEY		59,000	
KRATZMAN (PARADISE TOWERS)		75,000	
REDUCTION BANK OVERDRAFT		32,000	
BANK		20,000	
DIVIDEND		87,650	
BOLTON SETTLEMENT.		20,000	
BANK OVERDRAFT.		300,000	
R.A. BRIERLEY INVESTMENTS			20
DUE JANUARY, 1967		85,000	
CONTINGENCIES.		100,000	
		<u> </u>	
		TOTAL.	
		<u>\$930,071</u>	
ASSETS.		7,351,000	
LIABILITIES	4,133,000.		
AS RELATED			
OTHER LIABILITIES	930,071	<u>5,063,071</u>	
CAPITAL & RESERVES		<u>\$2,287,929</u>	
CAPITAL		\$1,753,054.	
RESERVES.		<u>534,875.</u>	30
		<u>\$2,287,929.</u>	

A. Barton
Director

H. Marks
Secretary

MINUTES OF DIRECTORS MEETING OF LANDMARK
CORPORATION LIMITED HELD AT 109 PITT STREET SYDNEY
ON FRIDAY 17TH FEBRUARY 1967 at 3.30 p.m.

Present: Messrs. A. Barton (Chair), J.O. Bovill,
A.J.S. Cotter.

In H.R. Marks (Secretary)
Attendance:

Sale of RESOLVED THAT the sale of Landmark
Mortgages: Finance Pty. Limited Mortgages to Commer- 10
cial and General Acceptance Limited, be
and is hereby approved subject to satis-
factory documentation being approved by
Allen, Allen and Hemsley and that the
penalty interest imposed by United
Dominions Corporation (Australia) Limited
be paid under protest and without preju-
dice.

RESOLVED THAT the Managing Director is
hereby instructed to consult the Com- 20
pany's solicitor with a view to recover-
ing the penalty interest imposed by
United Dominions Corporation (Australia)
Limited and instituting an action for
damages resulting from the breach of
their undertaking as set out in their
letter of the 23rd December, 1966, and
mortgage documents.

Signed as a correct record this 16th day
of May 1967.

A. Barton 30
(CHAIRMAN)

MINUTES OF DIRECTORS MEETING OF LANDMARK
CORPORATION LIMITED HELD AT 109 PITT STREET, SYDNEY
ON FRIDAY 14TH APRIL, 1967 at 4.00 p.m.

PRESENT: Messrs. A. Barton (Chair), J.O. Bovill,
A.J.S. Cotter.

IN Mr. H.R. Marks (Secretary)
ATTENDANCE:

SOUTHERN RESOLVED THAT the Managing Director be
TABLELANDS and he is hereby authorised to negotiate
FINANCE with Southern Tablelands Finance Company
MORTGAGE Proprietary Limited for the full amount
PARADISE of the mortgage to be payable on or be-
WATERS: fore the 30th June, 1967.

10

This is to allow the company time to re-
finance so as not to take the risk of
losing the case on a technicality.

Signed as a correct record this 16th day
of May 1967.

A. Barton
(CHAIRMAN)

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MINUTES OF DIRECTORS MEETING OF LANDMARK CORPORATION LIMITED HELD AT 109 PITT STREET, ON TUESDAY 16TH MAY 1967 AT 3.30 p.m.

Present: Messrs A. Barton (Chair), J.O. Bovill, A.J.S. Cotter

In Attendance: H.R. Marks (Secretary)

Minutes: Minutes of the meetings held on the 19th January 1967, 17th February, 1967, 3rd March 1967, and the 14th April 1967, after being read and confirmed were signed by the Chairman as a true record 10

Seal: RESOLVED THAT the Common Seal of the Company be and is hereby affixed to these documents, particulars of which are listed in the Seal Register on pages 5, 9, 10, 11 and annexed hereto be and are hereby approved.

Share Transfers: RESOLVED THAT Transfers, Removals, Re-issues and Transmissions appearing on:- 20

- a. Sydney Transfer Journal Folio/s 14 & 15
- b. Canberra Transfer Journal Folio/s 16 & 17

be and are hereby approved and that the Common Seal of the Company be affixed to the Share Certificates relative thereto

The Managing Directors Report: The Managing Director reported and it was noted that his son Mr. T. Barton was not being paid any salary for any time that he may spend in the offices of the Company as he was a full-time student at the University of Sydney and did not spend a full day in the office. 30

The report of the Managing Director as annexed hereto was submitted and a general discussion on the matters contained therein ensued

The Managing Director also outlined the events and factors leading up to the dispute with Kratzman Holdings Proprietary Limited, contractors for the Paradise Towers Project and advise that the company's solicitors were arranging for this 40

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matter to proceed to arbitration

Financial Report: The Managing Director submitted letters he had written to the Bank of New South Wales requesting temporary over-draft facilities together with a ~~proved~~ summary of the Company's assets and liabilities. 50

AB HM

Exhibit 56 - Minutes
of Landmark Corporation
dated 16/5/1967

The Secretary presented financial statements showing the results of the half year ended the 31st December, 1966, and the nine months ended 31st March, 1967, together with a consolidated balance sheet at the 31st March, 1967.

A statement setting out the indebtedness of the Company to Allebart Investments Proprietary Limited was also tabled. 10

The cash payments book of Landmark Corporation Limited was tabled and inspected by the Members of the Board.

All the above matters were discussed at length.

Real
Estate:

The Managing Director reported that he was currently negotiating the sale of the "Deepdene" site at Elizabeth Bay, and that contracts had been exchanged with a subsidiary of the R.A. Brierley Investments group for the sale of the Lane Cove Factory. 20

Stock
Exchange:

It was decided to defer the half-yearly announcement to the Sydney Stock Exchange until the outcome of the Managing Director's negotiations in respect of the Paradise Waters project.

Signed as a correct record this 31st day of May 1967. 30

A. Barton
(CHAIRMAN)

11th. May, 1967

MANAGING DIRECTOR'S REPORT

TO THE BOARD OF DIRECTORS OF LANDMARK CORPORATION
LIMITED

MEETING TO BE HELD ON 15TH. MAY, 1967.

Paradise Waters Estate

On 14th. March, 1967, I attended a Meeting with representatives of the Land Administration Commission, the Department of Main Roads and the Department of Harbours and Marine with the purpose to check our commitments connected with this project and Development Lease No. 7. 10

The Development Lease provides that we have to complete Area B within twelve months of the signing of the Lease, Area C within twenty-four months of the same date, and we have to commence Area D twenty-five months after that same date and complete it within five years.

Another commitment existing, which is controlled by the Department of Harbours and Marine, is that during the development period 9,000 ft. waterways minus RL6 must be kept open at all times. 20

Joint inspection of the areas revealed that Areas B & C have been completed two months ahead of schedule. I have received confirmation of this in writing. Area D has been commenced two years prior to the date to which we were committed and is reaching completion - no problem exists in this case, as it need not be completed before 20th. May, 1969.

The Department of Main Roads has asked us to create a channel 120 ft. wide in the depths of RL minus 8, close to Area J, which is to be surveyed by our Surveyor in conjunction with the Inspector of the Department of Main Roads. Work at the time of inspection was close to completion and I will immediately organise an increase in our dredging capacity to finish the work, which will satisfy all outstanding requirements. 30

Titles & Lease Inspection

Mr. O'Halloran, Senior Partner of Freehill, Hollingdale & Page, had been instructed by a financial institution to investigate the Title of this estate and find out if any breach exists as far as the Development Lease is concerned. 40

I accompanied Mr. O'Halloran to the Land Commission, where he had a lengthy and detailed meeting with Mr. Heffernan, who satisfied him, there being no existing breach of the Lease and no possible breach can occur later, as all conditions of the Lease have been complied with. 50

Exhibit 56 - Annexure
to the Minutes of
Landmark Corporation
dated 16/5/1967 -
Managing Director's
Report

- 2 -

I also accompanied Mr. O'Halloran to the Marine Board Office, where he talked to the Chief Engineer, Mr. Brittain, who assured him that their requirement for 9,000 ft. has been kept at all times and presently exists and at the same time informed him that the Marine Board has approved our request to release the development under the restrictions of the Canals Act 1960 in eleven sections, instead of three as previously approved. We have received confirmation in writing to this effect. 10

We also visited Mr. H. Lowe, Deputy Commissioner of the Department of Main Roads, who satisfied Mr. O'Halloran that our contract with the Department of Main Roads has been completed, with only minor maintenance requirements existing and the Department has agreed that these be done at a later date. 20

When we visited the Mayor of the Gold Coast, Mr. Ern Harley, he and his Officers assured Mr. O'Halloran that all Council approvals have been obtained and that the Company is complying with the Gold Coast City Council's requirements.

On completion of Mr. O'Halloran's investigation, he informed me that he is fully satisfied with the Title position, Lease position and all aspects of the development and he will advise his principals accordingly. 30

Finance

- A. I am presently negotiation with United Dominions Corporation (Aust.) Limited the re-financing of the Paradise Waters Estate.
- B. I am negotiating with Stocks & Holdings Limited the possibility of a joint venture.
- C. I have approached the Bank of New South Wales for assistance, according to my letters dated 28th. April and 9th. May, 1967, until negotiations for financing of the project are completed. 40

These letters also set out the Company's financial position.

Landmark House

In early April, I inspected the building and also received reports from the Architect, E.G. Nemes, which indicate that the building will be completed some time in June. The progress is slow and completion is well behind schedule, mainly caused by 50

Exhibit 56 - Annexure
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Report

difficulties with the present purchasers, who are specialised doctors having a lot of extra requirements, which they pay for but which slow down the progress. I doubt whether we can imply any penalty against the builder, as the various changes asked for by the doctors may give him justification for extension of time.

10

A. Barton

LANDMARK CORPORATION LIMITED

AB/kms

9th. May, 1967

L.L.W. Dobbie, Esq.,
Deputy Manager
Bank of New South Wales
George Street
SYDNEY. N.S.W.

Dear Sir,

Referring to our letter dated 20th. April, 1967, we wish to inform you that the assistance we were seeking from the Bank to pay \$300,000 to Southern Tablelands Finance Pty. Limited, if it cannot be paid by us from other sources by 30th, June, 1967, is no longer required, as we have agreed with Stocks & Holdings Limited, according to enclosed letter, that they will lend us immediately approximately \$750,000 to pay out First and Second Mortgages on the Paradise Waters project.

10

We are still seeking assistance for a \$200,000 temporary overdraft accommodation, for which we are offering security mortgage over Landmark House in Brisbane, behind existing \$750,000 mortgage, and second equity charge over assets of Landmark Finance Pty. Limited.

20

Referring to our previous discussions, we wish to inform you that we are prepared to enter into mortgage documents on the following real estate in order to secure the present overdraft accommodation:

1. Factory at Surry Hills occupied by Turner & Henderson Pty. Limited, printing company.
2. Beachcomber estate, North Queensland.
3. Laurieton land near Port Macquarie.

30

Dare, Reed, Martin & Grant, Solicitors, are claiming lean over the Laurieton land, but our solicitors, Allen, Allen & Hemsley, are endeavouring to free this land.

Under separate cover, we have sent to you end of March Balance Sheets of various companies, as requested by you.

Yours faithfully,

40

A. Barton
A. Barton,
Managing Director

Enclosure.

Exhibit 56 - Annexure
to the Minutes of
Landmark Corporation
dated 16/5/1967 -
2949. Letter, 9/5/1967

LANDMARK CORPORATION LIMITED AND SUBSIDIARIES

BRIEF SUMMARY OF THE CORPORATION'S ASSETS AND LIABILITIES WITH
APPROXIMATE FIGURES ONLY AS AT THE 20th APRIL, 1967.

DESCRIPTION	ASSETS		LIABILITY	LENDER	INSTALMENT DUE	EQUITY
	COST					
<p><u>LANDMARK FINANCE PTY. LIMITED</u> Is a Mortgage Management Company with mortgages on the security of 14 blocks of land, 43 houses 262 home units and 1 motel. The accounts are very good with total arrears amounting to some \$8,000</p>	\$3,200,000	\$2,150,000	U.D.C.	7th & 8th of month	\$1,050,000	
<p><u>LANDMARK HOUSE</u> A 14 storey commercial building at Wickham Terrace, Brisbane, comprising ground floor shops, 91 medical or professional suites, Manager's residence and 32 car spaces. Total selling value \$1,478,577. At present all of the shops, 23 medical suites and 9 car spaces have been sold and contracts have been exchanged for \$491,077. First mortgage obtained from I.A.C. Finance Pty. Limited for \$600,000 and up till 31st January, 1967, \$341,000 has been drawn. Balance of the mortgage will complete the building which is estimated to be completed at the end of May, 1967. Second mortgage from Caga \$150,000</p>	1,200,000	750,000	I.A.C. Caga	1st of month 30th of month (approx)	\$3000 1,625	\$ 450,000

Exhibit 56 - Annexure
to the Minutes of
Landmark Corporation
dated 16/5/1967 -
Summary of Assets &
Liabilities

2.

DESCRIPTION	COST	LIABILITY	LENDER	INSTALMENT DUE	EQUITY
<u>PARADISE WATERS ESTATE</u> Located at Surfers Paradise comprising 600 deep water front land under development. A smaller island called Landmark Island comprising 42 lots is completely sold out for \$341,690. At Paradise Waters Estate 21 blocks with 66 ft. deep water frontage have been sold to the value of £301,000. This is the company's largest development. The total selling price is approximately \$6,000,000 on both islands and \$1,400,000 is required to complete the development, excluding interest and overhead.	\$1,600,000	\$716,000	U.D.C. \$416,000 S.T.F. \$300,000	11th of month cumulative 18th of month \$3,000	\$884,000
<u>BEACHCOMBER ESTATE</u> Land development approximately 80 miles north of Brisbane, comprising 23 development blocks and 96 acres of undeveloped land written down value	90,000	Bank	-	-	90,000
<u>PARADISE TOWERS</u> A project at Surfers Paradise. The building has been completed since June, 1966. Some cancellations occur for these reasons: At present we have 12 unsold units to the value of \$198,600 and 5 units have been sold and under settlement to the value of \$71,740	271,000	209,000	Bill Acc. \$30,000 Con. Fin. 25,000 Caga 30th of month \$146 7th of month \$1540	\$30,000 due 7.4.67	62,000

Exhibit 56 - Annexure
to the Minutes of
Landmark Corporation
dated 16/5/1967 -
Summary of Assets &
Liabilities

DESCRIPTION	COST	LIABILITY	LENDER	INSTALMENT DUE	EQUITY
<u>DEEP DENE</u> Land at Elizabeth Bay. Council approval of the project has been obtained	\$69,000	\$ 14,000 45,000	Noble U.D.C.	4th month \$450.00	\$10,000
<u>WARATAH COURT</u> Land at Neutral Bay. Written down value \$50,000	50,000	40,000	Bill Accept- ance	\$40,000 due 28.4.67	\$10,000
<u>THE ESPLANADE</u> Land at Surfers Paradise. Council approval obtained for a motel with 53 units, Manager's residence and a large restaurant.	134,000	84,000	Caga \$68,000 Bolton \$16,000	1st of month \$750 Not yet taken up	\$50,000
<u>LAURLETON LAND</u> Undeveloped land	36,000	Bank	-	-	\$36,000
<u>FREEHOLD LAND & BUILDING</u> Rented by Turner, Henderson & Company	135,000	Bank	-	-	\$135,000
<u>PLANT, FURNITURE, CARS & OTHER SINGLE ASSETS IN SUBSIDIARY COMPANIES</u>	\$100,000	Bank	-	-	\$100,000
	\$6,885,000	\$4,008,000			\$2,877,000

Exhibit 56 - Annexure to the Minutes of Landmark Corporation dated 16/5/1967 - Summary of Assets and Liabilities

Allebart Investments Pty. Ltd.
Advances to Landmark Corporation Ltd & Subsidiaries as at 16th May 1967.

Grosvenor Developments P/L	Loan	7% Interest	Repaid	Balance
16/12/66 - Deepdene	6000.00			
8/2/67 - Repaid		56.53	6000.00	56.53
21/12/66 - Deepdene	13000.00	379.15		13435.68
30/1/67 - Toft Monks	30000.00			
29/3/67 - Repaid			22941.60	20494.08
<u>Landmark Corporation</u>				
24/1/67	4000.00			
31/1/67			3000.00	
8/2/67		6.75	1000.00	20500.83
3/4/67	2400.00	19.38		22920.21
Amount owing 16th May 1967	55400.00	461.81	32941.60	22920.21

MINUTES OF MEETING OF DIRECTORS OF LANDMARK CORPORATION LIMITED HELD WEDNESDAY, 11TH OCTOBER, 1967, AT 5 P.M.

PRESENT: This Meeting was held by telephone between Mr A. Barton in Sydney and Mr. J.O. Bovill in Perth.

MANAGING DIRECTORS REPORT: The report by the Managing Director, as annexed hereto, was read by Mr. Barton over the telephone to Mr. Bovill.

SCHEME OF ARRANGEMENT: RESOLVED THAT Mr. Bruce Smith, Trustee Elect for the Schemes, and Allen, Allen and Hemsley, Solicitors for the Schemes, are to be informed that the Corporation does not agree to restrict the Trustee's powers to employ any personnel, regardless of his being a Director, or having been employed by the Corporation previously, and the Corporation does not agree that he should give any undertaking to anybody in connection with the Schemes of Arrangement, unless written approval has been obtained from this Corporation. Southern Tablelands Finance Company Proprietary Limited's request that the Scheme's Trustee should not employ any Director, or any ex-Director, of Landmark Corporation Limited has been rejected. 10
20

Signed as a correct record this 19th day of October 1967. 30

John Bovill
.....
(J.O. Bovill)

A. Barton
.....
(A. Barton)
CHAIRMAN

MANAGING DIRECTOR'S REPORT TO THE BOARD OF LANDMARK CORPORATION LIMITED FOR THE MEETING TO BE HELD ON 12TH. OCTOBER, 1967, BEFORE 12 . NOON.

Schemes of Arrangement

I have held a Meeting with Mr. Bruce Smith, Trustee Elect, and Mr. J. McGlinchey, from Allen, Allen & Hemsley, this morning.

They advised me that solicitors representing various parties submitted the proposed alterations to the Schemes which, in their opinion, are minor alterations and will be presented to this Board in their final form. 10

However, Southern Tablelands Finance Co. Pty. Ltd. has requested an amendment to the Schemes, or a written undertaking from Mr. Bruce Smith, as follows:

"The Schemes' Trustee should not employ any Director or any ex-Director, of Landmark Corporation Limited."

In my opinion, this amendment restricts the power of the Trustee, which is not in the best interest of the Company or its creditors and shareholders, therefore, I recommend to pass the following resolution: 20

"Mr. Bruce Smith, Trustee Elect for the Schemes, and Allen, Allen & Hemsley, Solicitors for the Schemes, are to be informed that the Corporation does not agree to restrict the Trustee's powers to employ any personnel, regardless of his being a Director, or having been employed by the Corporation previously, and the Corporation does not agree that he should give any undertaking to anybody in connection with the Schemes of Arrangement, unless written approval has been obtained from this Corporation. Southern Tablelands Finance Co. Pty. Ltd.'s request that the Schemes' Trustee should not employ any Director, or any ex-Director, of Landmark Corporation Limited has been rejected." 30 40

DATED: 11th. October, 1967. SIGNED: A. Barton
.....
Managing Director.

8th July, 1966.

NOTES ON PRESENT FINANCIAL NEGOTIATIONS

RECEIPTS

1. Paradise Towers.

Negotiations are proceedings for a loan of \$1,000,000-00 secured by way of first mortgage over land and building and settlement will take place on 15th July, 1966. Furthermore, United Dominions Corporation (Australia) Limited agreed to lend 75% on terms sales and establish partial discharges for shops and units which transaction will provide us with a cash amount of \$1,500,000-00 20 10

2. Tahitian Sun Mortgage.

An amount of \$16,000-00 is being held by the solicitor for the Purchasers and United Dominions Corporation (Australia) Limited agreed to lend 70% of the valuation on this against a sub-mortgage over the mortgage on this property which will provide us with a cash amount of \$ 126,000-00 30

3. MacIntosh Island

Settlement will take place on 11th July, 1966 for the contracted amount of \$ 237,000-00 and Progress Certificates 10 and 11 making a total value to be received, in cash, of \$ 300,000-00

4. Landmark House.

Industrial Acceptance Corporation agreed to pay the amount of \$ 100,000-00 40

5. Mortgages held by Bank of New South Wales

When these mortgages are released from the Bank of New South Wales for settlement of Paradise Towers on 15th July, 1966 negotiations should proceed for 70% of that amount to be borrowed which will result in a cash amount of \$ 180,000-00

6. Paddington Land. NOT YET ARRANGED

If this property is sold we can receive a cash amount of \$ 23,000-00 50

7. Insured Mortgages.

only \$208000 8/7/66

At present we have approximately
\$500,000-00 worth of mortgages
insured. I believe at least
\$1,000,000-00 of insured mortgages
will be available within the next
few weeks and at present we have
60%-65% of these mortgages from
United Dominions Corporation
(Australia) Limited. I further
believe that we can sell these
mortgages out which will provide
us with a cash amount of \$ 350,000-00

10

TOTAL RECEIPTS ... \$2,579,000-00
=====

PAYMENTS

Out of the above proceeds the following payments should be made:- 20

- (a) Amounts of \$200,000-00 and \$246,000-00 should be paid to A.E. Armstrong and associates companies \$ 446,000-00
- (b) Release present mortgages from Commercial & General Acceptance Limited and the Bank of New South Wales \$ 905,000-00
- (c) H. & V. Developments Contract for MacIntosh Island plus creditors \$ 160,000-00 30
- (d) Builders and P.C. Items, final payment on Paradise Towers, Harbour Towers and suppliers \$ 300,000-00

AEA

-2-

- (e) Bill Acceptance Corporation \$ 160,000-00
- (f) Reduction of Bank Overdraft \$ 100,000-00

TOTAL PAYMENTS ... \$2,071,000-00 40
=====

SUMMARY

Total Receipts \$2,579,000-00
Total Payments \$2,071,000-00
=====
Surplus \$ 508,000-00
=====

AEA

A. Barton.
MANAGING DIRECTOR.
Exhibit 56 - Annexure
to Minutes dated
8.7.1966

MINUTES OF MEETING OF DIRECTORS OF PARADISE WATERS
LIMITED HELD AT 109 PITT STREET, SYDNEY ON FRIDAY
16TH SEPTEMBER, 1966 AT 11.30 A.M.

PRESENT: Messrs:
A. Barton (Chair)
R.I. Grant (Alternate for A.E. Armstrong)
H.R. Marks (Secretary & Alternate for
J.O. Bovill)

LEAVE OF ABSENCE: RESOLVED THAT leave of absence from 10th
September 1966 to 30 September 1966 be
J.O. BOVILL: granted to Mr. J.O. Bovill. 10

ALTERNATE DIRECTOR: A notice dated 10 September 1966 from
Mr. J.O. Bovill appointing Mr. Howard
Marks as his alternate was tabled:

RESOLVED THAT Mr. H. Marks be and he is
hereby appointed Alternate Director of
the Company pursuant to the aforemention-
ed Notice.

INDEMNITY: RESOLVED THAT Paradise Waters Limited
indemnifies Alexander Ewan Armstrong,
Alexander Barton, Goondoo Pty. Limited
and Landmark Corporation Limited against
all claims and costs re H. & V. Develop-
ments Pty Ltd, and Associated Companies
or Persons, claims present and future in
connection with his contract and seizure
of machines and chattels. 20

SIGNED AS A CORRECT RECORD THIS 22ND DAY OF SEPTEMBER,
1966.

A. Barton
(CHAIRMAN)

30

MINUTES OF MEETING OF DIRECTORS OF PARADISE WATERS
LIMITED HELD AT 109 PITT STREET, SYDNEY ON TUESDAY
1st NOVEMBER 1966 AT 3.00 p.m.

Present: Messrs. A.E. Armstrong (Chair) A. Barton
J.O. Bovill

In Mr. H.R. Marks (Secretary)
Attendance:

Motion by Mr. A.E. Armstrong stated that under a
Chairman: deed dated 11th February 1966 between
Finlayside Pty., Limited, Landmark Cor- 10
poration Limited, Paradise Waters Limited,
Paradise Waters (Sales) Pty., Limited
Paragraph 2(d), (ii) entitles the Nominee
of Finlayside Pty., Limited to be the
chairman with a casting vote.

AEA It was moved by Mr. A.E. Armstrong that
Mr. William Sugden Beale be and is here-
by appointed a director of the Board of
Paradise Waters Limited and his consent
to act was tendered. 20

The motion was not seconded and was op-
posed by Mr. A. Barton and Mr. J.O. Bovill
pending their seeking legal advice.

Mr. Armstrong tendered the deed and it
was perused by Mr. Barton and Mr. Bovill.

Mr. Armstrong stated that he was quite
in accord with the wishes of Mr. Barton
and Mr. Bovill to seek legal advice.

The meeting was then adjourned.

Signed as a correct record this 8th day 30
of November 1966.

A.E. Armstrong
(CHAIRMAN)

MINUTES OF MEETING OF DIRECTORS OF PARADISE WATERS
LIMITED HELD AT 109 PITT STREET, SYDNEY AT 5.00 p.m.
ON TUESDAY 8TH NOVEMBER 1966.

Present: Messrs. A.E. Armstrong, A. Barton,
J.O. Bovill.

In Mr. H.R. Marks (Secretary), Mr. A.J.S.
Attendance: Cotter.

Removal of RESOLVED THAT Mr. A.E. Armstrong be re-
Chairman: moved from the chair.

Appoint- RESOLVED THAT Mr. A. Barton be and is 10
ment of hereby appointed Chairman of Directors
Chairman: of the Company for a period of 2 years
from this date.

Appoint- A letter consenting to act as a Director
ment of was tendered by Mr. A.J.S. Cotter and it
Directors: was RESOLVED THAT Mr. A.J.S. Cotter be
and is hereby appointed a Director of
the Company.

A letter from Finlayside Pty., Limited 20
was tendered nominating Mr. William
Sugden Beale as one of its representa-
tives to the board together with a letter
of consent to act as a Director from
Mr. W.S. Beale and it was RESOLVED THAT
Mr. William Sugden Beale be and is here-
by appointed a Director of the Company
as nominee of Finlayside Pty., Limited.

Signed as a correct record this 14th day 30
of December 1966.

A. Barton
(CHAIRMAN)

MINUTES OF BOARD MEETING OF PARADISE WATERS
LIMITED HELD AT 109 PITT STREET, SYDNEY AT 5.15 p.m.
ON WEDNESDAY, 18TH JANUARY, 1967.

Present: A. Barton, (Chairman), J.O. Bovill,
A.J.S. Cotter, R.I. Grant.

In Attendance: H. Marks (Secretary), Messrs E. Solomon
and D.R. Patterson of Messrs Allen, Allen
and Hemsley Solicitors, and Mr. P. Bowen
Solicitor

Agreement with Armstrong Group: The Chairman tabled a copy of the Deed 10
dated the 17th January, 1967, between
George Armstrong and Son Pty. Limited,
Finlayside Pty. Limited, Southern Table-
lands Finance Co. Pty. Limited, Goulburn
Acceptance Pty. Limited and A.E. Arm-
strong Pty. Limited (the A group),
Landmark (Qld) Pty. Limited, Paradise
Waters (Sales) Pty. Ltd., Paradise
Waters Limited, Goondoo Pty. Limited, 20
Landmark Home Units Pty. Limited, Land-
mark Finance Pty. Limited, Landmark
Housing & Development Pty. Limited (the
L group), Alexander Ewan Armstrong, and
Alexander Barton

RESOLVED THAT the said Deed dated 17th
January, 1967, a copy of which was tabl-
ed at this Meeting be and it is hereby
approved and ratified in all respects
and that the counterpart of the said
Deed executed by the companies in the L 30
group be delivered to the solicitor for
the A group and A.E. Armstrong

Settlement of above Agreement: RESOLVED FURTHER THAT all instruments re-
quired to be executed by the Company pur-
suant to the said Deed be executed under
the Common Seal of the Company in the
presence of the Managing Director and
the Secretary and that all other things
required to be done in order to give ef-
fect to the obligations of the Company 40
under the said Deed are hereby authorised
to be done

Adjournment: The Meeting was then adjourned and
resumed at 5.35 p.m.

The Chairman reported that the executed
counterparts of the abovementioned Deed
had been exchanged between the parties
and that settlement of the transactions
referred to in Clause 14 of the said Deed
had taken place conditionally upon the 50
completion of certain other matters men-
tioned in Clauses 17 & 18 of the said
Deed to be completed at this Meeting and
meetings of subsidiary companies of
Landmark to be held on this day

.....2/

2.

- Resignations of R.I. Grant and W.S. Beale: The resignations of Messrs. Robert Ian Grant and William Sugden Beale as Directors of the Company were then tabled
- RESOLVED THAT the resignations of Messrs R.I. Grant and W.S. Beale as Directors of the Company be accepted effective upon the termination of this Meeting 10
- Appointment of B.H. Smith as Director: RESOLVED THAT Bruce Henry Smith be appointed a Director of the Company effective upon the termination of this Meeting
- Chairman: Mr. Barton then tendered his resignation as Chairman of Directors of the Company effective upon the termination of this Meeting 20
- RESOLVED THAT the resignation of Mr. Barton as Chairman of Directors be accepted effective on the termination of this Meeting
- RESOLVED THAT Mr. B. H. Smith be and is hereby appointed Chairman of Directors of the Company effective on the termination of this Meeting
- Resignation of A.E. Armstrong: The resignation in writing of Mr. A.E. Armstrong as a Director of the Company was then tabled 30
- RESOLVED THAT the resignation of Mr. Armstrong as a Director of the Company be and is hereby accepted effective upon the termination of this Meeting
- Appointment of A.S. Hawley as Director: RESOLVED THAT Mr. Arthur Sydney Hawley be appointed a Director of the Company effective upon the termination of this Meeting 40

Signed as a true record this 10th day
of February 1967

A. Barton
(CHAIRMAN)

Copy Resolution passed at a duly convened Meeting of the Directors of PARADISE WATERS (SALES) PTY. LIMITED held on the 9th day of July 1966 at which a quorum was present.

UNITED DOMINIONS CORPORATION (AUSTRALIA) LIMITED (hereinafter referred to as "the Lender") having agreed to lend the Company up to the sum of SIX HUNDRED AND EIGHTY THOUSAND DOLLARS (\$680,000)
IT IS RESOLVED

"That the Company borrow and obtain from the Lender the said sum 10

AND THAT in order to secure the payment by the Company to the Lender of the said sum and interest thereon and all other monies in accordance with the terms of a certain Mortgage Debenture hereinafter mentioned covenanted by the Company to be paid, the Company execute and the Common Seal of the Company be affixed in the presence of Alexander Barton one of the Directors of the Company and Joseph Stewart the Secretary of the Company, to the Mortgage Debenture in favour of the Lender (which has been submitted by the Lender and approved) over all and singular the company's undertaking property rights and assets whatsoever and wheresoever both present and future 20

AND THAT Joseph Stewart the Secretary of the Company, be and he is hereby authorised and directed to do all acts and things and sign all such documents as may be necessary or requisite for the purpose of enabling the said Mortgage Debenture to be duly registered." 30

AND WE, the undersigned, being the Directors present at the meeting, at which the above Resolution was passed and constituting a quorum of Directors of the Company HEREBY CERTIFY that no Resolution or Regulation has at any time been passed by the Company in any way restricting the borrowing powers of the Company or the powers of giving security in respect of any such borrowing or the exercise of such powers by the Directors of the Company. 40

DATED this 9th day of July 1966.

Directors.

John Bovill
A. Barton

MINUTES OF MEETING OF DIRECTORS OF PARADISE WATERS
(SALES) PTY. LIMITED HELD AT 109 PITT STREET, SYDNEY
ON TUESDAY 8TH NOVEMBER 1966 AT 4.50 p.m.

Present: Messrs. A.E. Armstrong, A. Barton,
J.O. Bovill

In Attendance: MR. H.R. Marks (Secretary), A.J.S. Cotter.

Removal of Chairman: RESOLVED THAT Mr. A.E. Armstrong be re-
moved from the Chair.

Appointment of Chairman: RESOLVED THAT Mr. A. Barton be and is hereby appointed Chairman of Directors of the Company for a period of 2 years from this date. 10

Appointment of Directors: A letter consenting to act as a Director was tendered by Mr. A.J.S. Cotter and it was RESOLVED THAT Mr. A.J.S. Cotter be and is hereby appointed a Director of the Company.

A letter from Finlayside Pty., Limited was tendered nominating Mr. William Sugden Beale as one of its representatives to the board together with a letter of consent to act as a Director from Mr. W.S. Beale and it was RESOLVED THAT Mr. William Sugden Beale be and is hereby appointed a Director of the Company as nominee of Finlayside Pty. Limited. 20

Mr. A.E. Armstrong stated that he would see Mr. Honey of United Dominions Corporation (Australia) Limited and inform him of the foregoing changes. 30

Mr. A. Barton objected and informed Mr. Armstrong that he should not do so without the express permission of the Board.

Signed as a correct record this 24th day of November 1966.

A. Barton
(CHAIRMAN).

MINUTES OF MEETING OF DIRECTORS OF PARADISE WATERS
(SALES) PTY. LTD. HELD AT 109 PITT STREET, SYDNEY
AT 10.00 a.m. ON TUESDAY 15th NOVEMBER 1966.

Present: Mr. A. Barton (Chair) J.O. Bovill,
A.J.S. Cotter A.E. Armstrong, W.S. Beale.

In Mr. H.R. Marks (Secretary)
Attendance:

Motion by RESOLVED THAT this Meeting has been call-
Mr. Bovill: ed without reasonable notice and that 10
the meeting be deferred until Thursday
24th November 1966 at 9.30 a.m. at this
office and that henceforth reasonable
notice for meetings of this Company shall
be 7 (seven) clear days without the unani-
mous approval of all directors being
first obtained.

Motion carried 3-~~te~~-2. with Mr. Armstrong
& Mr. Beale dissenting. HM AB

The Chairman then declared the meeting 20
closed. The next meeting to be held on
Thursday 24th November 1966 at 9.30 a.m.

Mr. Armstrong stated that in his opinion the meet-
ing was not called on unreasonable notice as it was
customary to call Landmark Corporation Limited and
subsidiary company meetings on short notice.
AB HM

Signed as a correct record this 24th day
November 1966.

A. Barton
(CHAIRMAN)

30

MEETING OF DIRECTORS OF PARADISE WATERS (SALES) PTY.
LTD. HELD AT 109 PITT STREET, SYDNEY ON THURSDAY
24TH NOVEMBER 1966 AT 9.35 A.M.

Present: Messrs. A. Barton (Chair) A.E. Armstrong
W.J. Beale J.O. Bovill, A.J.S. Cotter.

In Attendance: Mr. H.R. Marks (Secretary).

Company Solicitor: RESOLVED THAT the Company Solicitor Mr. P. Bowen of Gaden, Bowen & Stewart be and is hereby invited to attend the Meeting. 10

Mr. Bowen then joined the meeting.

Letter from Dare, Reed, Martin & Grant: Mr. A.E. Armstrong tabled a letter from Dare Reed Martin & Grant addressed to the Company without the enclosures referred to.

Mr. Armstrong said it was necessary for a meeting of shareholders to be held to resolve that the number of Directors be increased so that Mr. Grant can be appointed a nominee of Finlayside Pty., Limited to the Board of Paradise Waters (Sales) Pty., Limited and Mr. Thorpe be appointed a nominee of George Armstrong & Son Pty. Ltd. to the Paradise Waters (Sales) Pty. Limited Board. 20

Mr. Armstrong stated that Finlayside Pty. Ltd. as a shareholder in the Company is ready to co-operate to the fullest extent to pass such resolutions. 30

Extra-ordinary Meeting of Shareholder: Mr. Armstrong proposed a motion that an extraordinary General Meeting of shareholders be held forthwith to pass appropriate resolutions to increase the number of Directors of the Company.

The Meeting adjourned for ten minutes and resumed at 10.10.

Mr. Bovill moved an amendment to the resolution that in lieu of the word "forthwith" the words "on the 7th December 1966 be at 9.30 a.m." be inserted. 40

Carried with Mr. Armstrong and Mr. Beale against.

RESOLVED THAT an extraordinary General Meeting of shareholders be held on the 7th December 1966 at 9.30 a.m. to pass appropriate resolutions to increase the number of directors of the Company. Messrs. Barton, Bovill, Cotter for Armstrong & Beale against. 50

-2-

Letter
from
Dare,
Reed,
Martin &
Grant: Moved that the letter from Dare Reed
Martin & Grant be ~~received~~ received but
cannot be dealt with. 10

Action
against
Dare, Reed,
Martin &
Grant: RESOLVED THAT the Company instruct Allen
Allen & Hemsley, Solicitors, to take such
actions as they think necessary against
Dare, Reed, Martin & Grant for refusing
to hand our documents to Steindl, Ward-
robe & Company of Brisbane.

Mr. Barton stated that repeated letters
to do so had been ignored.

Mr. Armstrong & Mr. Beale whilst not op- 20
posing the resolution did not vote.

Mr. Armstrong asked that Dare, Reed,
Martin & Grant be paid all outstanding
accounts.

Mr. Barton replied that Mr. Grant had
not advised why documents had not been
handed over and it was not suggested that
any account was unpaid.

Mr. Armstrong asked that a copy of the 30
Minutes of this meeting be made available
as soon as possible.

Signed as a true record this 14th day of
December 1966.

A. Barton
(CHAIRMAN)

MINUTES OF MEETING OF DIRECTORS OF PARADISE WATERS
(SALES) PTY. LTD. HELD AT 109 PITT STREET, SYDNEY
ON WEDNESDAY 7TH DECEMBER 1966 AT 11.25 a.m.

Present; Messrs. A. Barton (Chair) A.E. Armstrong
W.S. Beale, J.O. Bovill, A.J.S. Cotter.

In Attendance: H.R. Marks (Secretary) P. Bowen (Gaden
& Stewart) E. Solomon (Allen Allen
& Hemsley) R.I. Grant (Dare Reed Martin
& Grant).

Report by
Company
Solicitor
on Court
Proceed-
ings: Mr. P. Bowen tabled the judgment given by 10
Mr. Justice Street in the Equity Proceed-
ings brought against the Company by
Finlayside Pty., Limited.

Loan from
U.D.C.: RESOLVED THAT approval be and is hereby 20
given to affix the Company Seal to any
documents necessary to document the ex-
tension of the loan by at least \$400,000
from United Dominions Corporation
(Australia) Limited subject to the appro-
val of Messrs. Allen Allen & Hemsley to
those documents. It was recorded that
the extension of the loan was subject to
no Engineer's certificate being required
and otherwise upon the terms set out in
the original securities given to U.D.C.
to secure \$680,000.

Repayment
of Loan to
George
Armstrong
& Son Pty.
Ltd.: RESOLVED THAT monies due to George 30
Armstrong & Son Pty., Limited be paid as
soon as possible.

Next
Meeting: The next meeting of Directors to be held
at 109 Pitt Street on Wednesday 14th
December 1966, at 9.30 a.m.

Signed as a correct record this 14th day
of December 1966.

A. Barton 40
(CHAIRMAN)

MINUTES OF MEETING OF DIRECTORS OF PARADISE WATERS
(SALES) PTY. LTD. HELD AT 109 PITT STREET, SYDNEY
ON WEDNESDAY 14TH DECEMBER 1966 AT 9.30 A.M.

Present: Messrs. A. Barton (Chairman) A.E.
Armstrong, W.S. Beale.

In Attendance: H.R. Marks (Secretary) P. Bowen (Gaden
& Stewart) R.I. Grant (Dare Reed
Martin & Grant)

Alternate for Mr. A.J.S. Cotter: The Chairman tabled a letter from Mr. A.J.S. Cotter appointing Mr. P. Bowen as his alternate. 10

Mr. Armstrong said he would agree to the appointment of Mr. Bowen as alternate for Mr. Cotter for this meeting only.

RESOLVED THAT Mr. P. Bowen be and he is hereby appointed Alternate Director for Mr. A.J.S. Cotter to act at this meeting.

Appointment of R.I. Grant as Director: RESOLVED THAT Mr. Robert Ian Grant be and he is hereby appointed a Director of the Company. 20
Carried unanimously.

Share Transfer: Mr. Grant tabled a share transfer for 3,000 shares from Landmark Corporation Limited to George Armstrong & Son Pty. Ltd.

Asked by Mr. Bowen if George Armstrong & Son Pty., Limited was a Public Company or Trustee for a Public Company. 30

Mr. Grant replied -

1. That he was a Director of George Armstrong & Son Pty., Limited and as such was in a position to assure the Board that George Armstrong & Son Pty. Limited was not a Public Company or Trustee of a Public Company.
2. That he can give a Statutory Declaration to that effect as soon as it can be typed if required. 40
3. There seems to be no valid reason why the board should not approve the transfer subject to a Statutory Declaration being produced.

Mr. Bowen asked Mr. Grant to make a statement why the transfer should be contrary to Article 22.(1)(A) of the Company's Memorandum & Articles of Association.

.... /2

Mr. Grant replied -

1. There are two shareholders of the Company Finlayside Pty., Limited and Landmark Corporation Limited.
2. Landmark Corporation Limited is the Transferor mentioned in the transfer and Finlayside Pty., Limited and its Nominees are prepared to consent to it and approve the transfer. 10
3. The Transfer is made pursuant to the covenant contained in the deed dated 22nd February 1966 contained in Clause 4.1. thereof -

Mr. Grant then read the relevant clause and also referred to Clause 3.

Adjournment of Meeting:

RESOLVED THAT this meeting be deferred until Friday 16th December 1966 at 9.30 a.m. as the Board had not been advised that this matter would be coming before this meeting and had had no opportunity to obtain proper legal advice on the matter. 20

Motion carried on the Chairman's casting vote.

Nomination of Director by George Armstrong & Son Pty. Ltd.:

Mr. Grant produced a letter from George Armstrong & Son Pty., Limited nominating Mr. Cyril Garnet Thorpe as a Director of the Company to which was attached Mr. Thorpe's consent to act, and referred to Clause 4J of the deed dated 22nd February 1966. 30

In moving the appointment of Mr. Thorpe to the Board, Mr. Grant stated that there was a clear covenant in the deed to make this appointment. A request had been made 3 weeks ago and had not been complied with. 40

Mr. Barton moved an amendment that because of legal advice coming from Queensland in this matter that this matter be deferred until Friday 16th December at 9.30 a.m.

Carried with the Chairman's casting vote.

Minutes:

Minutes of Meetings held on 24th November 1966 and 7th December 1966 after being read and confirmed were signed by the Chairman as a correct record. 50

Signed as a correct record this 20th day of December 1966.

A. Barton (CHAIRMAN)
Exhibit 58 - Minutes
of Paradise Waters
(Sales) Pty. Limited -
dated 14/12/1966

MINUTES OF EXTRAORDINARY GENERAL MEETING OF SHARE-
HOLDERS OF PARADISE WATERS (SALES) PTY. LIMITED
HELD AT 109 PITT STREET SYDNEY AT 9.30 A.M.,
WEDNESDAY 7TH DECEMBER 1966

Present: Messrs. A. Barton (chair and proxy of Landmark Corporation Limited), W.S. Beale, R.I. Grant (proxy for Finlayside Pty. Limited) P. Bowen (G.B.S.) H.R. Marks (secretary).

Notice of Meeting: RESOLVED THAT the Notice of Meeting be taken as read. 10

Proxies: Proxy forms were received from

Finlayside Pty. Limited - appointing R.I. Grant as its proxy

Landmark Corporation Limited - appointing A. Barton as its proxy

Consent to Short Notice: Consent to short notice of meeting signed by Finlayside Pty. Limited and Landmark Corporation Limited was tabled.

Alteration of Articles: RESOLVED THAT in lieu of an alteration of the Articles of association the proposal be dealt with in accordance with article 63 (a). 20

Increase of Number of Directors: RESOLVED THAT pursuant to article 63(a) until otherwise determined by the company in General Meeting the Numbers of Directors shall not be less than one nor more than seven of whom at least one shall be a natural person ordinarily residing in the Commonwealth of Australia. 30

Signed as a correct record this 9th day of December 1966.

A. Barton
(CHAIRMAN)

MINUTES OF MEETING OF BOARD OF DIRECTORS OF PARADISE
WATERS (SALES) PTY. LIMITED HELD AT 5.10 P.M. ON
WEDNESDAY, 18TH JANUARY, 1967 AT 109 PITT STREET,
SYDNEY.

PRESENT: A. Barton, Chairman, J. Bovill, A.J.S.
Cotter, R.I. Grant.

IN H. Marks, Secretary, Messrs. E. Solomon
ATTENDANCE: and D.R. Patterson of Messrs. Allen
Allen & Hemsley Solicitors, and Mr. P.
Bowen, Solicitor. 10

AGREEMENT The Chairman tabled a copy of the Deed
WITH dated the 17th January, 1967 between
ARMSTRONG George Armstrong & Son Pty. Limited,
GROUP: Finlayside Pty. Limited, Southern Table-
lands Finance Co. Pty. Limited, Goulburn
Acceptance Pty. Limited and A.E.
Armstrong Pty. Limited ("the A group"),
Landmark (Qld) Pty. Ltd., Paradise
Waters (Sales) Pty. Limited, Paradise
Waters Limited, Goondoo Pty. Ltd., 20
Landmark Home Units Pty. Limited, Land-
mark Finance Pty. Limited, Landmark
Housing & Development Pty. Ltd. and
Landmark Corporation Limited ("the L
group"), Alexander Ewen Armstrong, and
Alexander Barton.

RESOLVED that the said Deed dated 17th
January, 1967 a copy of which was tabled
at this Meeting be and it is hereby ap-
proved and ratified in all respects and 30
that the counterpart of the said Deed
executed by the Companies in the L group
be delivered to the solicitor for the A
group and A.E. Armstrong.

SETTLEMENT RESOLVED further that all instruments
OF ABOVE required to be executed by the Company
AGREEMENT: pursuant to the said Deed be executed under
the common seal of the Company in the
presence of the Managing Director and
the Secretary and that all other things 40
required to be done in order to give
effect to the obligations of the Company
under the said Deed are hereby authorised
to be done.

ADJOURN- The Meeting was then adjourned and re-
MENT: sumed at 5.35 p.m.

The Chairman reported that the executed
counterparts of the abovementioned Deed
had been exchanged between the parties
and that settlement of the transactions 50
referred to in Clause 14 of the said Deed
had taken place conditionally upon the
completion of certain other matters men-
tioned in Clauses 17 and 18 of the said
Deed to be completed at this Meeting and
meetings of subsidiary companies of Land-
mark to be held on this day.

Exhibit 58 - Minutes
of Paradise Waters
(Sales) Pty. Limited -
dated 18/1/1967

SHARE
TRANSFER:

RESOLVED that the transfer of 2,000
shares of \$2.00 each in the capital of
the Company

2.

from Finlayside Pty. Limited to Landmark
Corporation Limited, which transfer was
tabled at the Meeting, be registered sub-
ject to stamping of the said transfer.

10

RESIGNA-
TIONS OF
R.I. GRANT
& W.S.
BEALE:

The resignations of Messrs. Robert Ian
Grant and William Sugden Beale as
directors of the Company were then tabl-
ed.

RESOLVED that the resignations of
Messrs. R.I. Grant and W.S. Beale as
directors of the Company be accepted
effective upon the termination of this
Meeting.

20

APPOINT-
MENT OF
B.H. SMITH
AS
DIRECTOR:

RESOLVED that Bruce Henry Smith be ap-
pointed a director of the Company effec-
tive upon the termination of this Meet-
ing.

CHAIRMAN:

Mr. Barton then tendered his resignation
as Chairman of Directors of the Company
effective upon the termination of this
Meeting.

30

RESOLVED that the resignation of Mr.
Barton as Chairman of Directors be ac-
cepted effective on the termination of
this Meeting.

RESOLVED that Mr. B.H. Smith be and is
hereby appointed Chairman of Directors of
the Company effective on the termination
of this Meeting.

RESIGNA-
TION OF
A.E.
ARMSTRONG:

The resignation in writing of Mr. A.E.
Armstrong as a director of the company
was then tabled.

40

RESOLVED that the resignation of Mr.
Armstrong as a director of the Company
be and is hereby accepted effective upon
the termination of this Meeting.

APPOINT-
MENT OF
A.S.
HAWLEY AS
DIRECTOR:

RESOLVED that Mr. Arthur Sydney Hawley
be appointed a director of the Company
effective upon the termination of this
Meeting.

50

Signed as a true record

A. Barton
Chairman.

10th February, 1967.
Exhibit 58 - Minutes
of Paradise Waters
(Sales) Pty. Limited -
dated 18/1/1967

MINUTES OF DIRECTORS MEETING OF PARADISE WATERS
(SALES) PTY. LIMITED HELD AT 109 PITT STREET, SYDNEY
ON FRIDAY 14TH APRIL, 1967 AT 4.15 P.M.

PRESENT: Messrs. A. Barton (Chair), J.O. Bovill,
A.J.S. Cotter.

IN Mr. H.R. Marks (Secretary).
ATTENDANCE:

SOUTHERN
TABLE-
LANDS
FINANCE
MORTGAGE
PARADISE
WATERS:

RESOLVED THAT the Managing Director be
and he is hereby authorised to negotiate
with Southern Tablelands Finance Company
Proprietary Limited for the full amount
of the mortgage to be payable on or be-
fore the 30th June, 1967.

10

This is to allow the company time to re-
finance so as not to take the risk of los-
ing the case on a technicality.

Signed as a correct record this
day of 16th May, 1967.

A. Barton
(CHAIRMAN)

20

liable
her.

No 22313

16th Jan 1961

B. J. Smith & Son

cash

\$ 4,000-00



PAY _____

THE SUM OF _____

No 22314

16th Jan 1961

B. J. Smith & Son

cash

\$ 4,000-00



PAY _____

THE SUM OF _____

MATRIMONIAL CAUSES ACT 1959

IN THE SUPREME COURT

OF NEW SOUTH WALES

MATRIMONIAL CAUSES JURISDICTION

)
No. 1907 of 1962
)

Amended this BETWEEN
8th day of November
1962 in pursuance
of leave granted the
26th day of AND
October 1962
Lorton Duke & Co.
per M.A. McKelvey
Solicitors AND
for Petitioner

MARJORIE ALMA ARMSTRONG

Petitioner

ALEXANDER EWAN ARMSTRONG

Respondent

MARGARET ROSE CLEARY

Co-Respondent

10

TO THE ABOVE NAMED SUPREME COURT:

The Petitioner, whose address is 9 Coolong Road, Vaucluse and whose occupation is Domestic Duties, petitions the Court for a Decree of ~~Judicial~~ Dissolution of Marriage ~~Separation~~ against the Respondent, whose address is care of the Union Club Sydney whose occupation is Grazier on the ground of adultery with the co-respondent whose address is 4 Dumaresque Road, Rose Bay and whose occupation is unknown.

20

MARRIAGE

1. The Petitioner, then a spinster, was lawfully married to the Respondent then a bachelor, at Sydney on the 10th day of February, 1945 according to the rites of the Presbyterian Church.

30

2. The surname of the Petitioner immediately before the marriage was Goodhew.

3. Neither the Petitioner nor the Respondent had been previously married.

BIRTH OF PETITIONER AND RESPONDENT

4. The Petitioner was born at Teralga on the Fifth day of June, 1914, and the respondent was born at Sydney on the 15th day of June, 1916.

Exhibit 60 - Documents
extracted from
Matrimonial Causes
Jurisdiction

5. The Petitioner and the Respondent were both born in Australia.

DOMICILE OR RESIDENCE

6. The Petitioner is, within the meaning of the Act, domiciled in Australia. The facts on which the Court will be asked to find that the Petitioner is so domiciled are as follows: 10

-2-

- (i) Both the Petitioner and the Respondent were born in Australia.
- (ii) The permanent residence of the Petitioner and the Respondent has always been in Australia.
- (iii) Neither the Petitioner nor the Respondent intends to leave Australia to reside permanently elsewhere. 20

COHABITATION

7. Particulars of the places at which and periods during which the Petitioner and the Respondent have cohabited are as follows:

- (i) From marriage until 1946 at Albury.
- (ii) From 1946 till 1952 at Collector in the State of New South Wales.
- (iii) From 1952 until 1955 at Goulburn.
- (iv) From 1955 till the 1st day of April, 1960 at 574 New South Head Road, Point Piper. 30
- (v) Thereafter at 9 Coolong Road, Vaucluse until the 11th day of June, 1962.

8. The date on which and circumstances in which

cohabitation between the Petitioner and Respondent
ceased are as follows:-

The Petitioner and the Respondent both con-
tinued to live at 9 Coolong Road, Vaucluse
until the 11th day of June, 1962 when the
Respondent left.

10

CHILDREN

9. Particulars relating to the infant children
of the marriage who are living at the date of this
petition are as follows:

- (i) Mary Ewan Armstrong born on the 31st
day of January, 1946.
- (ii) Margaret Anne Armstrong born on the
10th day of November, 1948.
- (iii) Both children are residing at the ad-
dress at 9 Coolong Road, Vaucluse.

20

PREVIOUS PROCEEDINGS

10. Since the marriage there have not been any
previous proceedings in a Court between the Peti-
tioner and the Respondent.

11. Since the marriage there have not been any
proceedings, instituted other wise than between the
parties to the marriage, concerning the custody,
guardianship, welfare, advancement or education of
a child of the marriage.

-3-

30

FACTS

12. The facts relied on by the Petitioner as
constituting the ground specified above are as
follows:-

Exhibit 60 - Documents
extracted from
Matrimonial Causes
Jurisdiction

- (i) Between the month of June, 1959 and the date of this petition the Respondent has committed adultery with the Co-Respondent.
- (ii) On or about the 8th day of May, 1960 the Respondent and the Co-Respondent informed the Petitioner together that they were very much in love with each other. There after the Respondent who is a member of the Legislative Council took the Petitioner out with him only on formal occasions when it was important that the Respondent should have the Petitioner with him as his wife. 10
- (iii) Otherwise the Respondent has spent all his leisure time with the Co-Respondent. 20
- (iv) The Respondent has spent practically each weekend with the Co-Respondent.
- (v) The Respondent obtained for the Co-Respondent her present place of residence which is a Flat at 4 Dumaresque Road, Rose Bay.
- (vi) The Respondent supports the Co-Respondent by paying her the sum of £30.0.0 per week. 30
- (vii) On the occasion of the Co-Respondent's birthday on the 26th day of April, 1962 the Respondent presented the Co-Respondent with a Valiant motor car.

- (viii) In or about the month of July, 1961
the Respondent left on a world tour.
The Co-Respondent had left Sydney
approximately a week beforehand. The
Respondent and the Co-Respondent met in
Delhi and continued on the world tour 10
together from there.
- (ix) The Respondent and the Co-Respondent
committed adultery at various times
and various places while upon such
world tour.
- (x) While in London the Respondent and the
Co-Respondent were known as Mr. and
Mrs. A.E. Armstrong.
- (xi) On the 22nd day of May, 1962 the Re- 20
spondent informed the Petitioner that
the Co-Respondent was quite contented
to go on living with him (the Respon-
dent) in their present circumstances.
The
- 4-
- Respondent informed the Petitioner
that he would like a separation.
- (xii) The Respondent informed the Petitioner
that he would provide her with a con-
fession of his adultery with the Co- 30
Respondent.
- (xiii) Since the Respondent provided for the
Co-Respondent the flat at 4 Dumaresque
Road, Rose Bay the Respondent and the

Co-Respondent have committed adultery
at such address.

CONDONATION, CONNIVANCE AND COLLUSION

13. The Petitioner has not condoned or connived
at the ground specified above, and is not guilty of
collusion in presenting this petition.

10

OTHER MATTERS

the Petitioner proposes that she be granted
the custody of the said two children of the marriage
and that provision for their maintenance by the
Respondent should be made. The Petitioner proposes
to do all in her power in the interests of the wel-
fare, advancement and education of each of such
children.

14. The property of the Petitioner is as follows:-

- (i) Half share in vacant land purchased
with S.L.M. Eskell at Alexander Head-
lands near Maroochydore, Queensland for
£4000 being purchased by instalments.
- (ii) Commonwealth Trading Bank of Australia,
Mascot Branch, Current Account Credit
£4000.0.0.
- (iii) Commonwealth Trading Bank of Australia,
Mascot Branch, A.E. Armstrong Settle-
ment of which I am the Trustee,
£4694.17.7.
- (iv) Furniture in home 9 Coolong Road,
Vaucluse, £6000.0.0.
- (v) Goodhew Bros. Pty. Ltd. 500 Shares £1
each fully paid £ 500

20

30

Exhibit 60 - Documents
 extracted from
 Matrimonial Causes
 Jurisdiction

(vi)	Jaywoth Industries Ltd. 500 Shares of 5/-d. each paid to 3/-d.	£ 75	
(vii)	Palgrave Corporation Ltd. 5000 shares of 5/- each fully paid	£1250	
(viii)	George Armstrong Holdings Pty. Ltd. 1 Share of £1 each fully paid	£ 1	10
(ix)	A.E. Armstrong Holdings Pty. Ltd. 1 Share of £1 each fully paid	£ 1	
(x)	A. & M. Armstrong Pty. Ltd. 1 Share of £1 each fully paid	£ 1	
-5-			
(xi)	Finlayside Pty. Ltd. 1 Share of £1 each fully paid	£ 1	
(xii)	Goondoo Pty. Ltd. 1 Share of £1 each fully paid	£ 1	
(xiii)	Lachlan Hotels Pty. Ltd. 1 Share of £1 each fully paid	£ 1	20
(xiv)	Dickson Primer Pty. Ltd. 500 Shares 18/- each	£ 450	
(xv)	Queens Club Pty. Ltd. £250 5 $\frac{1}{4}$ % Debenture due 1984	£ 250	
(xvi)	Landmark Ltd. 1st Mortgage Debenture	£1250	
(xvii)	Contract for Sale re Share Natel Service Holdings Ltd. Balance due on sale at 10,000 Units 5/- each at par	£1900	30
(xviii)	The property of the petitioner has been managed and controlled by the Respondent and the Petitioner says		

that there may be other assets in her name and that some of the above assets may no longer be in her name.

15. The income of the Petitioner is as follows:-
- (i) A.H. Armstrong settlement approximately
£1000 10
 - (ii) Directors fees from Companies in which
the A.H. Armstrong Settlement holds
shares £ 500
 - (iii) Dividends £ 24
 - (iv) Interest Queens Club Pty. Ltd.
Debenture £ 13
16. The financial commitments of the Petitioner are as follows:
- (i) Quarterly instalments on purchaser of
vacant land at Alexander Headlands 20
£ 325
 - (ii) Balance of Purchase Money out-
standing, about £1200
 - (iii) Rates on vacant land Alexander
Headlands £76.17.1
 - (iv) Premium A.M.P. Society on Policy
over Respondent's Life £ 250
 - (v) Premium National and General
Insurance Co. on jewellery and
fur Policy £88.5. 0 30
 - (vi) Normal living expenses of a wife in
position of Petitioner and in the man-
ner in which she has become accustomed
to living.

- (vii) Motor car for Petitioner's personal use has been furnished by the Respondent and all expenses in connection with same have been paid by Respondent.

-6-

17. The capability of the Petitioner to earn income is as follows: 10

Apart from the income from her investments as hereinbefore set out the Petitioner has no capacity to earn an income.

18. The property of the Respondent, so far as is known to the Petitioner is as follows: Shareholder and Director in the undermentioned Companies:

- (i) Australian Factors Ltd.
- (ii) Palgrave Ltd.
- (iii) George Armstrong Holdings Pty. Ltd. 20
- (iv) A.E. Armstrong Holdings Pty. Ltd.
- (v) A. & M. Armstrong Pty. Ltd.
- (vi) Family residence 9 Coolong Avenue, Vaucluse is held by A.E. Armstrong Holdings Pty. Ltd. The home and vacant land at 11 Trickett Street, Surfers Paradise is believed to be held by one of the Respondent's family companies. Other extensive interests in vacant land at Surfers Paradise and Alexander Headlands are held in family Companies of the Respondent. 30

19. The income of the Respondent so far as is known to the Petitioner is as follows:

(i) The Respondent has many commercial interests and many directorships in companies.

(ii) The Petitioner is not aware of the income of the Respondent and is aware only that it is very large.

10

20. The financial commitments of the Respondent so far as they are known to the Petitioner are as follows:

(i) Apart from normal living expenses and a financial commitment to support the Petitioner and the said two children of the marriage the Petitioner is not aware of the financial commitments of the Respondent.

21. The capability of the Respondent to earn income so far as it is known to the Petitioner is as follows:

20

So far as is known to the Petitioner the capability of the Respondent is to continue to earn a very large income.

22. There are no financial arrangements in operation between the Petitioner and the Respondent.

-7-

23. The ownership of the home in which the Petitioner is residing is in the Respondent.

30

24. The Petitioner's means of knowing the above-mentioned particulars relating to the property, income, financial commitments and capability of the Respondent to earn income are the facts that they

have lived together as husband and wife, that she has been able to observe the standard of living maintained by the Respondent and the luxurious standard of living which the Respondent has heretofore been able to provide for the Petitioner and the children of the marriage.

10

25. The premises at 9 Coolong Road, Vaucluse are luxuriously appointed and provide every comfort for the Petitioner and the said two children of the marriage. Such comforts include a swimming pool and tennis court. The Petitioner and the said two children have become accustomed to enjoying such facilities.

26. During the week commencing the 4th day of June, 1962 the respondent assaulted the Petitioner inflicting bruising upon her of such a nature as to cause her to seek medical examination and advice. The Respondent also informed the Petitioner that he was leaving the premises on the following weekend and that by the end of the month of June, 1962 he would have:

20

- (a) Compelled the Petitioner to leave the premises and to reside at one of his country properties, and
- (b) Installed the two children of the marriage in boarding schools.

30

27. On the 10th day of June, 1962 the Respondent returned from Collector. He told the Petitioner that he was leaving the premises and that by the end of the month he would have her and the children

out and that he was "closing the premises down".
He also informed the Petitioner that his address
would be care of the Union Club, Sydney. The Respon-
dent left the said premises on the 11th day of June,
1962.

28. It would not be in the best interests of the 10
said two children that they be removed from the sur-
roundings to which they have become accustomed and
installed in boarding schools nor would it be in
their best interests that they be separated from
the Petitioner at their present respective stages
in life. The Petitioner does not desire to be
separated from her children.

29. The Respondent has frequently brought the
said two children into contact with the Co-Respon-
dent and this is not in their best interests. 20

-8-

ADDITIONAL ORDERS

The Petitioner seeks the following additional orders:

- (i) That the custody of the said two children of
the marriage be granted to the Petitioner
pending the disposal of these proceedings and
thereafter.
- (ii) That the Respondent do pay to the Petitioner
maintenance for the said two children of the
marriage pending the disposal of these pro- 30
ceedings and thereafter.
- (iii) That the Respondent do pay to the Petitioner
maintenance for herself pending the disposal
of these proceedings and thereafter.

- (iv) That the Respondent do be restrained from interfering with the quiet and peaceful enjoyment of the said lands and premises situated at 9 Coolong Road, Vaucluse by the Petitioner and the said two children of the marriage pending the disposal of these proceedings and thereafter for a period of at least five years or until the further order of the Court. 10
- (v) That it do be made a condition of the Petitioner being required to leave the said lands and premises that the Respondent do provide for the Petitioner a residence or home unit in an area at least as attractive as that in which she presently resides and of a standard reasonably comparable to her present place of residence and commensurate with her needs having regard to the circumstances and her station in life. 20
- (vi) That the Respondent do be ordered to make for the benefit of the Petitioner or the Petitioner and the children of the marriage such a settlement of property to which the Respondent is entitled as the Court considers just and equitable in the circumstances of this case. 30
- (vii) That the Respondent do be restrained from doing any act or thing or causing or permitting to be done any act or thing which may have the effect of defeating any of the

additional orders hereinbefore sought.

-9-

(viii) That the Respondent do be ordered to pay the
Petitioner's costs of and incidental to this
suit including preliminary and interim costs.

This Petition was settled by Mr. B.M. Hogan 10
of Counsel.

DATED this 14th day of June 1962.

(Sgd.)

SOLICITOR FOR THE
PETITIONER

This Petition is filed by Lorton Duke & Co.,
on behalf of the Petitioner whose address for ser-
vice is care of Messrs. Lorton Duke & Co., Solici-
tors, 77 Castlereagh Street, Sydney.

AFFIDAVIT VERIFYING PETITION

I, MARJORIE ALMA ARMSTRONG of 9 Coolong Road, 20
Vaucluse in the State of New South Wales, Married
Woman, being duly sworn make oath and say as follows:

1. I am the within named Petitioner.
2. The facts stated in the within Petition of
which I have personal knowledge are true.
3. Every other fact stated in the within Peti-
tion is in my belief true.

SWORN by the Deponent
on the 14th day of June
One thousand nine hundred
and sixty two, before me:)

Marjorie A. Armstrong 30

P. Foyster JP

A Justice of the Peace.

-10-

CERTIFICATE RELATING TO RECONCILIATION

I, ANTHONY WILLIAM MICHAEL DUKE certify that I am
the Solicitor representing the Petitioner and that
I have brought to the attention of the Petitioner
the provisions of the Matrimonial Causes Act 1959 10
relating to reconciliation of the parties to a mar-
riage and the approved marriage guidance organiza-
tions reasonably available to assist in effecting a
reconciliation between the Petitioner and the Re-
spondent and that I have discussed with the Peti-
tioner the possibility of a reconciliation between
the Petitioner and the Respondent being effected
either with or without the assistance of such an
organization.

DATED this 14th day of June 1962. 20

(Sgd.)

SOLICITOR FOR THE PETITIONER

Exhibit 60 - Documents
extracted from
Matrimonial Causes
Jurisdiction

MATRIMONIAL CAUSES ACT 1959

IN THE SUPREME COURT
OF NEW SOUTH WALES
MATRIMONIAL CAUSES JURISDICTION

No. 1907 of 1962

SUPREME COURT, N.S.W. 10
£6 FILED
14 JUN 1962
No. 31651
DIVORCE REGISTRY.

ARMSTRONG)
v.)
ARMSTRONG)
CLEARY)
Co-Re.)

DISSOLUTION
PETITION FOR JUDICIAL
SEPARATION
OF MARRIAGE
J.S. 20

CORAM: SELBY J.
7 SEP 1962

On resp's undertaking not to
interfere with Petr's quiet
enjoyment of 9 Koolong Rd.
Vaucluse & not to interfere
with 2 children. Dismiss
apl'n. Resp. pay costs.

(sgd.) Assoc. 30

LORTON DUKE & CO.

Solicitors

77 Castlereagh Street,

SYDNEY.

DW 1092

BW 1093

(Matrimonial Causes Act 1959)

IN THE SUPREME COURT)
OF NEW SOUTH WALES) No. 1907 of 1962
MATRIMONIAL CAUSES JURISDICTION)

BETWEEN:

MARJORIE ALMA ARMSTRONG

10

Petitioner

- and -

ALEXANDER EWAN ARMSTRONG

Respondent

- and -

MARGARET ROSE CLEARY

Co-respondent

The respondent, in answer to the petition in these proceedings, says:-

1. That he admits that he has been guilty of adultery with the co-respondent. 20
2. The respondent admits the truth of paragraphs 1, 2, 3, 4, 5 and 6.
3. In answer to paragraphs 7 and 8 the respondent says that his recollection is that he left the matrimonial home on the 7th day of June, 1962.
4. The respondent admits the truth of paragraphs 9, 10 and 11.
5. The respondent admits the truth of paragraph 12(i) and 12(ii) so far as it relates to the confession that the respondent was in love with the co-respondent but says that he took the petitioner out on many occasions other than formal occasions. 30
6. The respondent does not admit the truth of paragraphs 12(iii) and (iv).

7. The respondent denies the truth of paragraphs 12(xi) and (xii).

-2-

8. The respondent says that the petitioner has connived at and condoned the adultery with the co-respondent charged in the petition. The facts relied upon by the respondent in support of such charges are as follows:-

10

a. On or about Sunday the 8th May, 1960 the respondent and co-respondent, at the matrimonial home at Number 9 Coolong Road, Vaucluse, informed the petitioner that they were in love with each other and that they had committed adultery for a period exceeding the previous twelve months. On the same day at a later time it was agreed between the petitioner and the respondent that she, the petitioner, would continue to live with the respondent and that he would continue his adulterous association with the co-respondent.

20

b. In pursuance of such agreement the petitioner and respondent lived together at 9 Coolong Road, Vaucluse until the 7th day of June, 1962 when the respondent left in consequence of a quarrel.

30

9. In the event of a decree being granted the respondent does not oppose the petitioner have custody of the children of the marriage but requires reasonable access.

10. In answer to paragraph 14 the respondent request an enquiry into means and resources before the Registrar whereat all matters relating to the respective means of the parties may be determined and says that the contents of paragraph 14 are substantially correct other than that the shares in Jayworth Industries Ltd. referred to in paragraph 14(vi) have been disposed of.

10

11. In answer to paragraph 15 the respondent says that he estimates the petitioner's income to be about the sum of £2,000.0.0 per annum and that this income is derived from property, and settlements amounting to about £20,000.0.0, which have been provided by him throughout the marriage. The

-3-

petitioner has jewellery, which was given to her by the respondent, valued at about £18,000.0.0.

20

12. In answer to paragraph 16 the respondent does not admit but cannot deny the truth thereof but says that in addition to the home provided by him the sum of £20.0.0 per week is more than sufficient to cover the petitioner's expenses and outgoings for food and similar household items.

13. The respondent denies the truth of paragraph 17 and says that the petitioner, before marriage, followed the occupation of a shop assistant and is capable of earning about £15.0.0. per week.

30

14. The respondent admits the truth of paragraphs 18(i) to (v) inclusive.

15. The respondent admits the truth of paragraph 18(vi) other than that the house at 9 Coolong Road, Vaucluse is held by A.E. Armstrong Pty. Ltd.

16. In answer to paragraph 19 the respondent says that his gross income for the financial year ending 30th June, 1961 was about £7,300.0.0. and he estimates that it will be in about the same amount for the financial year ending 30th June, 1962. 10

17. The respondent denies the truth of paragraph 21 and says that his income for the present financial year will be about £7,300.0.0.

18. The respondent denies the truth of paragraph 22 and says that he has been supporting the petitioner and the children of the marriage since the separation. 20

19. The respondent denies the truth of paragraph 23 and says that the said residence is owned by A.E. Armstrong Pty. Ltd.

20. In answer to paragraph 25 the respondent says that they have, in fact, only been living in the premises at 9 Coolong Road, Vaucluse since April, 1960 and denies that the petitioner and the children have become accustomed to enjoying such facilities.

21. The respondent denies the truth of paragraph 26. 30

22. The respondent denies the truth of paragraph 26(a) but admits that he requested the petitioner to leave the matrimonial home at 9 Coolong Road,

Vaucluse and go and live with him on his station property at Collector.

23. The respondent denies the truth of paragraph 26(b) but admits that he told the petitioner that he was considering placing the children in boarding school.

10

24. The respondent denies the truth of paragraph 27 but admits that he said that he desired the petitioner to live in the country as hereinbefore stated and admits that he told the petitioner that he would be residing at the Union Club, Sydney and says that he left the premises on the 7th day of June, 1962.

25. The respondent denies the truth of paragraph 28.

26. In answer to paragraph 29 the respondent admits that the children have been brought into contact with the co-respondent but says that such meetings have been with the knowledge and acquiescence of the petitioner.

20

27. The respondent therefore prays:-

- a. That the petition be dismissed and that the other orders sought be refused.
- b. In the event of a decree being pronounced the respondent opposes the granting of the additional orders as asked and says that he is prepared to consent to the following orders:-

30

- (i) That the petitioner have custody of the children of the marriage

during the pendency of the suit
and permanently with reasonable
access to him.

(ii) He is prepared to pay reasonable
maintenance for the petitioner
and the children of the marriage
during the pendency of the suit.

10

c. The respondent opposes any order for
the permanent maintenance of the
petitioner or settlement for her bene-
fit

-5-

as he says that he has already made
ample provision for her maintenance
during the marriage.

d. The respondent will abide by such
order as to costs as the Court thinks
proper.

20

DATED the 28th day of June 1962.

(sgd.)

Solicitor for the respondent.

This answer is filed by Messrs. Adrian Twigg & Co.
on behalf of the respondent whose address for ser-
vice is Number 160 Castlereagh Street, Sydney.

AFFIDAVIT VERIFYING THE ABOVE ANSWER

I, ALEXANDER DWAN ARMSTRONG care of Union Club,
Bent Street, Sydney in the State of New South
Wales, grazier, make oath and say as follows:-

30

1. I am the abovenamed respondent and have
read the hereinbefore written answer.

2. The statements set forth in all paragraphs
of the answer are true.

SWORN by the deponent on the)
28th day of June 1962 at) A.E. Armstrong
Sydney before me:)

R.H. Nielson JP

10

A Justice of the Peace for
the State of New South Wales.

Exhibit 60 = Documents
extracted from
Matrimonial Causes
Jurisdiction

IN THE SUPREME COURT
OF NEW SOUTH WALES
MATRIMONIAL CAUSES JURISDICTION

No. 1907 of 1962.
(Matrimonial Causes Act 1959)

SUPREME COURT, N.S.W.
FILED
28JUN 1962
No. 31959
DIVORCE REGISTRY.

10

ARMSTRONG)

v

ARMSTRONG)

&

CLEARY
(Co-rspt))

A N S W E R

20

ADRIAN TWIGG & CO.
Solicitors,
160 Castlereagh Street,
SYDNEY.

TEL: MA 1178

2999. Exhibit 60 - Documents
extracted from
Matrimonial Causes
Jurisdiction

APPLICATION FOR CERTIFICATE OF MEANS.

Form 52.

Matrimonial Causes Act 1959.

IN THE SUPREME COURT OF
NEW SOUTH WALES
MATRIMONIAL CAUSES JURISDICTION

}
} No. 1907 of 1962.
}

10

BETWEEN MARJORIE ALMA ARMSTRONG

Petitioner

AND: ALEXANDER EWAN ARMSTRONG

Respondent

AND MARGARET ROSE CLEARY

Co-Respondent

Application is made to a Registrar of the
Court on behalf of the Petitioner for a certificate
of means (~~by reason of a Registrar being unable to~~
~~make an assessment until the certificate has been~~
~~issued).~~*
Leave out if applicable.

20

This application has been set down for hear-
ing by a Registrar at the Supreme Court, Macquarie
Street, Sydney, on the 12th day of March, 1963, at
the hour of 10 o'clock in the forenoon, or so soon
thereafter as the course of business will permit.

Dated this 12th day of November, 1962.

30

(sgd.)

Solicitor for the Petitioner.

It is intended to effect service of this applica-
tion on the Respondent, co-Respondent and their
Solicitors, Messrs. Adrian Twigg & Co.

Exhibit 60 - Documents
extracted from
Matrimonial Causes
Jurisdiction

Coram: REGISTRAR IN Tuesday 12.3.62
DIVORCE 23 APR 1963
DUKE for Pet'n.
B/C SO/4.5.63 GC
IN THE SUPREME COURT OF
NEW SOUTH WALES
MATRIMONIAL CAUSES 10
JURISDICTION
Coram: REGISTRAR IN
DIVORCE
4 MAY 1963 No. 1907 of 1962.
No appearance by 4 PM SUPREME COURT N.S.W.
struck out GC £1 FILED
12 NOV 1962
No. 29888
DIVORCE REGISTRY

ARMSTRONG) APPLICATION
v.) FOR 20
ARMSTRONG) CERTIFICATE
CLEARY Co-Re.) OF
MEANS

Coram: REGISTRAR IN DIVORCE
12 MAR 1963

Hogan for applicant
SO 2.4.63 (settled) GC

Coram: REGISTRAR IN DIVORCE
2 APR 1963

Hogan for applicant 30
B/C SO 23.4.63 (settled)
GC

LORTON DUKE & CO.
Solicitors

77 Castlereagh Street
SYDNEY

BW 1092

BW 1093

(Matrimonial Causes Act, 1959)

IN THE SUPREME COURT

OF NEW SOUTH WALES

MATRIMONIAL CAUSES JURISDICTION

}
} No. 1907 of 1962
}

BETWEEN

MARJORIE ALMA ARMSTRONG

Petitioner

10

- and -

ALEXANDER EWAN ARMSTRONG

Respondent

- and -

MARGARET ROSE CLEARY

Co-Respondent

TAKE NOTICE that ROBERT IAN GRANT C/- Dare, Reed,
Martin & Grant, 11c Castlereagh Street, Sydney has
been appointed Solicitor for the Respondent in this
cause and matter in place of Adrian C.R. Twigg.

20

All documents may be served at the above mentioned
Office to the said Robert Ian Grant.

DATED this 22nd day of January, 1963.

R.I. Grant

R.I. Grant
11c Castlereagh Street,
SYDNEY

To the above named Petitioner

Exhibit 60 - Documents
extracted from
Matrimonial Causes
Jurisdiction

Matrimonial Causes Act, 1959.

IN THE SUPREME COURT
OF NEW SOUTH WALES
MATRIMONIAL CAUSES JURISDICTION.

No. 1907 of 1962.

SUPREME COURT N.S.W.
£1 FILED
22 JAN 1963
No. 33101
DIVORCE REGISTRAR.

10

ARMSTRONG)

v.)

ARMSTRONG)

and)

CLEARY)

NOTICE OF
CHANGE OF
SOLICITOR.

20

MESSRS. DARE, REED, MARTIN & GRANT,
SOLICITORS,
11c CASTLEREAGH STREET,
SYDNEY, BW 2112.

3003. Exhibit 60 - Documents
extracted from
Matrimonial Causes
Jurisdiction

Exhibit 60 - Documents
extracted from
Matrimonial causes
Jurisdiction

LORTON, DUKE & CO.
Solicitors.
A.W.M. Duke, B.A., LL.B.
Telephone: 281092
" 281093

Record Chambers,
(fifth floor)
77 Castlereagh Street
Sydney.

Cables: "LOLIDU"
Code: Bentleys.

10

In reply please quote
AWMD/GH

3rd May, 1963.
SUPREME COURT, N.S.W.
RECEIVED
6- MAY 1963
DIVORCE REGISTRAR

Registrar in Divorce,
Divorce Office,
Macquarie Street,
SYDNEY.

20

Dear Sir,

Re: ARMSTRONG v. ARMSTRONG
No. 1907 of 1962

We act for the Petitioner in this matter and request that this suit be transferred from the defended to the undefended list for hearing. We enclose letter from the Solicitor acting for the Respondent and the Co-Respondent which corroborates this request.

30

We confirm also that the matters of ancillary relief which were the subject of an application to you have been settled and reduced to the form of a Deed which will be submitted in due course for approval of the Court.

The adjourned Summons which was to come before your Court on the 14th instant will not now proceed.

Yours truly,
LORTON DUKE & CO.

40

Per: A.M. Duke

Exhibit 60 - Documents
extracted from
Matrimonial causes
Jurisdiction

DARE, REED, MARTIN & GRANT
Solicitors
David W. Reed, B.A.
Antony T. Martin, LL.B.
Robert I. Grant, LL.B.

Telephones: 28 2112
28 1847
28 1848

Consultant to the Firm,
Lionel Dare, B.A., LL.B.

Suite 705-706
Cathcart House
11c Castlereagh Street
Sydney

10

Cables & Telegrams
"Daredawes"

RIG/DP.

1st May, 1963.

Registrar in Divorce,
Divorce Office,
Macquarie Street,
SYDNEY. N.S.W.

SUPREME COURT, N.S.W.
RECEIVED
6- MAY 1963
DIVORCE REGISTRY

Dear Sir,

20

re Armstrong v. Armstrong
No. 1907/ of 1962.

We act on behalf of Alexander Ewan Armstrong the Respondent herein and Margaret Rose Cleary the Co-Respondent herein, and desire to advise that we have been instructed to withdraw the Defences filed on behalf of the Respondent and Co-Respondent, and request that the matter be placed in the Undefended List for hearing.

We would also advise that all matters of Ancilliary Relief claimed by the Petitioner have been the subject of a settlement and that at the Hearing the Deed of Settlement will be produced to the Court to seek its sanction thereto.

30

Yours faithfully,

R. I. Grant
DARE, REED, MARTIN & GRANT.

Exhibit 60 - Documents
extracted from
Matrimonial Causes
Jurisdiction

REGISTRAR'S CERTIFICATE THAT SUIT IS READY FOR TRIAL
Form 34.

Matrimonial Causes Act 1959

IN THE SUPREME COURT OF
NEW SOUTH WALES
MATRIMONIAL CAUSES JURISDICTION

No. 1907 of 1962.

10

BETWEEN MARJORIE ALMA ARMSTRONG
Petitioner
AND ALEXANDER EWAN ARMSTRONG
Respondent
AND MARGARET ROSE CLEARY
Co-respondent

1. In pursuance of paragraph (c) of sub-rule (5.) of rule 178 of the Matrimonial Causes Rules, I certify that this suit is ready for trial.

~~1.-----This suit has been set down for trial by leave of the Court.~~

20

~~1.-----This suit has been set down for trial in pursuance of a request under sub-rule (2.)/(3.) of rule 175 of the Matrimonial Causes Rules notwithstanding that, in my opinion, the following matters are not in order:-~~

2. No proceedings, other than proceedings comprising this suit, are pending in this Court between the petitioner and the respondent.

~~2.-----In addition to proceedings comprising this suit, the following proceedings are pending in this Court between the petitioner and the respondent;~~

30

3. Division 6 of Part XI, of the Matrimonial Causes Rules does not apply in relation to any proceedings comprised in this suit.

~~3.-----A compulsory conference was held in accordance with the provisions of Division 6 of Part XI of the Matrimonial Causes Rules and agreement between the petitioner and respondent was/was not reached at that conference.~~

40

~~3.-----The petitioner/respondent complied with the provisions of sub-rule (1.) of rule 166 of the Matrimonial Causes Rules but the respondent/petitioner failed to attend/take part in a conference for the purpose of Division 6 of Part XI, of those Rules;~~

Exhibit 60 - Documents
extracted from
Matrimonial Causes
Jurisdiction

~~3.-----This-suit-has-been-set-down-for-trial-in
accordance-with-sub-rule-(2.)-of-rule-166-of-the
Matrimonial-Causes-Rules.~~

4. I certify that I have duly complied with the provisions of paragraphs (a) and (b) of sub-rule (5.) of rule 178 of the Matrimonial Causes Rules in relation to this suit.

10

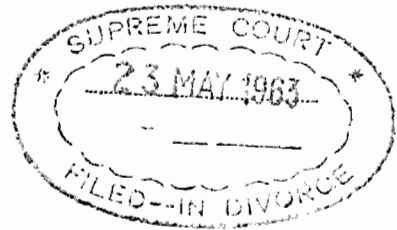
Dated this Twenty fourth day of May, 1963.

S. Doyle
Acting Deputy Registrar.

Exhibit 60 - Documents
extracted from
Matrimonial Causes
Jurisdiction

IN THE SUPREME COURT OF
NEW SOUTH WALES
MATRIMONIAL CAUSES JURISDICTION

No. 1907 of 19 62.



M.A. ARMSTRONG

o.

A.E. ARMSTRONG

& M.R. CLEARY Co-respondent

REGISTRAR'S
CERTIFICATE
THAT SUIT
IS READY
FOR TRIAL.

CORAM. DOVEY, J. 23 JUN 1963

Esq. Goldstein

*Dec sat re cohabitation or condonation
Mar. Dow. Adult proceed
DN. 21 day.*

*Sanct. & approve depd for D.
Order in terms of para. 2.3.4.
7.5.9 10 & 11 of Ex D.*

Dec sat re children for D.

18/7/63
L. G. [Signature]
asse

Divorce can be shortened
Mrs. Armstrong

- (1) Redeem the "E" preference shares from Mrs. Armstrong (25.0.0)
- (2) No reference to any shares whether held by her in court settlement document
- (3) If she does not transfer the 4 "B" shares & 5 single in PTY COS it wont matter anyway
- (4) Leave all shares out of document of settlement. 10
- (5) If we did divest AEA of income saving would only be about 300.0.0 per annum.
- (6) In consideration of forgiving debt of 10000 approx she be paid accumulated income on that.

In view of forgiving debts she should agree to our clause about 8000.0.0 flat settlement.

See Bent before presenting !! document
DUKE 20

Notes 12/1/63

Formal letter offering her occupancy of home unit until she remarries be sent now letter to state that AEA P/L needs the house for the purposes of resale & letter stating further that AEA's primary interest is to secure financial future of his two children (Cant swim or play tennis).

Not much worry over custody at present
good idea to take children for holiday. 10

Mandatory injunction to vacate house for flat.

- 4) May have been wise to hear injunction (Selby)
- 5) No use in sueing for debt as bargaining counter
- 6) Cant bank on registrar not finding out that my asset position is not fully disclosed by income.
- 7) Show all of her assets plus jewellery 20
- 8) DIVORCE IS Secondary to the Commercial situation.

Change control of companies without odium attaching it AEA

P.D.S. Could call up loan

2.

Why not sell house & provide unit & give Court statement as to urgent need for money

- 12) Mrs. A could have been presented as a very unreasonable person through not going to Goulburn or unit. 30
- 13) No point in defending except on money. but leave condonation & connivance.
- (14) Check on possibility of property settlement.
- 15) Debt could be raised in answer & also fact of settlements not strongly raised.
- 16) Should I return to Matrimonial Home (perhaps)
Re House (1) Negotiation (2) Default in Mortgage (3) Need for Cash & Injunction.
(Bob Grant) (Dare, Reed Martin & Grant) 40
(Cec C.M.F.)

Twigg not a good commercial lawyer
Bill Ash as a barrister.

Exhibit 61

- 17) Children must decide who they will live ~~them~~ with. Make an interim application for custody (Evidence)
- 18) We seem to have never had any initiative.

STRICTLY PRIVATE & CONFIDENTIAL.

NOTES ON DIVORCE - JANUARY 12TH, 1963.

It appears from a discussion held today on the matter of Twigg's handling of this case, that there is room for a difference of opinion.

Firstly, I seem to have never had the initiative in the matter. Mrs. Armstrong firstly secured an Injunction for me to leave the house - secondly, secured a Separation Order, and finally changed it to a Divorce Petition. We are now waiting on Mrs. Armstrong's convenience for this Petition to be held. I believe that as the plaintiff normally has the initiative, the defendant's legal advisers must, if possible, do something to put the plaintiff off balance. This has not yet been done.

10

The main issue in this divorce appears to be a commercial one. There is no serious argument about the custody of the children, and there is no denial of guilt as regards the defendant.

The commercial aspect is, I am convinced, foreign to Mr. Twigg. The complexity of my settlements is not known to him, and he is relying completely on Income Tax Returns. I do not think Mr. Pawley would know a great deal about these matters either.

20

It would be unwise to bank on the fact that the Registrar of Means will not very easily find out that the true asset position of A.E. Armstrong is not disclosed by income. However the Court views the matter, it would be wise to arrive at a settlement, if at all possible before March 12th when the means application is to be heard.

30

HOUSE.

The one serious difference between the plaintiff and the defendant seems to be the occupancy of 9 Coolong Road. Mrs. Armstrong does not want to occupy 9 Coolong Road, but I am sure that she believes that I do, and that she will use this as a bargaining counter to obtain a larger settlement. I feel that Mr. Twigg has not, although I have stressed this matter on numerous occasions, used any ingenuity in moving her from this home. It has been suggested that a formal letter offering her the occupancy of a home unit until she remarries be now sent to her, the letter to state that after consultation with my accountants,

40

-2-

A.E.A. Pty. Ltd. needs the house for the purpose of resale, and needs to use the money for other financial ventures, which could prove to be very profitable. The letter would also state that my primary interest is to secure the financial future of my two children, and therefore I do not want to see £60,000 tied up in a house for the remainder of Mrs. Armstrong's life, or until she remarries.

50

A mandatory injunction to vacate the house for a home unit in Clivedon, Point Piper, which Mrs. Armstrong has inspected, and stated she was happy to occupy, would possibly have some chance of success, and at least would serve to put the plaintiff off balance. Other means of securing possession of the house, suggested, are:-

- (a) Possible default in the mortgage to Producers & Citizens Insur. Company, which would cause them to enter as mortgagees 10

and

- (b) Urgent need for cash which could be caused quite easily in AEA Pty. Ltd. and an injunction to sell the house on those grounds.

All these matters could also be thought of when issuing the mandatory injunction to vacate the house. Do not forget the urgent need for money in A.E.A. Pty. Ltd., as it is the owner of the house, and A.E.A. is neither a shareholder nor director in it. 20

It is doubtful whether it would not have been wiser to have pressed this position at the hearing before Mr. Justice Selby in September, and my feeling is that it was an error that this was not done. Mrs. Armstrong could have been presented at that hearing as a very unreasonable person, in that she would:-

- (a) not go to our station property at Collector, a beautiful home which was offered to her, 30
and
(b) would not under any circumstances move out of Coolong Road,

the purpose being to show the Court that she has a "dog in the manger" attitude - she neither swims not plays tennis, but wishes to keep a large home with these conveniences. It is a matter of opinion whether these things should have been put up at the injunction petition heard before Mr. Justice Selby, and even if he had still granted the injunction, he would have been influenced to some extent that the petitioner is an 40

-3-

unreasonable person.

ASSETS.

Another point was discussed, that Mrs. Armstrong's full assets, including her jewelry, have not been very clearly raised, and the fact that a debt of £10,000 incurred by her to Mr. Armstrong in 1952, has never been called up, and she has been allowed to have the use of this money for this time. It is not recommended that the debt be called up at present. 50

The fact that Mr. Armstrong settled money on Mrs. Armstrong as early as 1948, showed his interest in providing her with an income, and his good intentions towards her.

It has also not been shown that as late as July 1961 Mr. Armstrong formed a company named Alexmar Pty. Ltd., which left Mrs. Armstrong with sole voting power after his death. This fact could be used to strengthen the connivance position, as it would be unlikely that if Mr. Armstrong believed that Mrs. Armstrong was going to divorce him at this time he would have put her in the position he did in this company.

10

CONNIVANCE AND CONDONATION.

The discussions held did not concur with the views of Mr. Twigg and Mr. Paeley on connivance and condonation. They were almost opposite to those views, and go so far as to say that even if:-

- (a) I could not win on condonation,
- (b) I may prove my case of connivance, but even in so doing, Mrs. Armstrong would probably win her suit for divorce.

20

In any event it would not be a desirable situation if Mrs. Armstrong loses her suit. Therefore, I cannot see why Twigg and Pawley have played so much on this facet of the case, except that it was first raised as a good defence to a legal separation. It would be very easy to adduce evidence that Mrs. Armstrong repeatedly stated that she would never divorce her husband, and I believe this fact, in the early part of the case, led Mr. Twigg to feel that it may be wise to try and get the judicial separation petition as a bargaining counter for a later divorce. The strength of connivance and condonation has lost a great deal of force now Mrs. Armstrong has changed her plea from judicial separation to divorce.

30

-4-

One must also remember that the proving of the facts of condonation and connivance would probably be extremely embarrassing to all parties concerned in the case, including the children, and must tarnish the reputation of all. In addition, much of the evidence would be merely the plaintiff's word against the defendant's.

40

It was also felt that the Trial Judge must, whatever his views on the facts of condonation and connivance, lean towards the plaintiff as, after all, she is the injured party.

50

To sum it up, the discussions held on this point were strongly to the effect that except perhaps slightly in the question of damages, these facts were not of moment to the case.

COMMERCIAL.

The discussions held brought forth confirmed views held by myself, that the commercial aspect of this case is by far the most important, and it was felt that the main point in the matter is that a competent negotiator is much more important than a lawyer who is competent simply in divorce, and whose pride is upheld by winning a divorce case.

It was felt that Mrs. Armstrong would not be likely to get less than £40 per week, and a home unit to the value of £15,000 as a minimum, and as a maximum, a house or home unit of £25,000, the total including her settlements, and £80 per week. However, the jurisdiction given to the Trial Judge is so wide, that it is impossible to predict his attitude in the circumstances, and it may well be that if anything is done to move Mrs. Armstrong from 9 Coolong Road before the hearing, the Judge may say that perhaps £40. per week is sufficient but that she should not be moved from the marital home. Therefore, Mrs. Armstrong will have a very useful counter to extract a sum of money to move out of 9 Coolong Road. However, it was felt that a skillful negotiator could negotiate a settlement now on the basis of a total sum of around £50 per week for Mrs. Armstrong, and the right to live in the unit at Clivedon until she remarries or dies.

As a final counter to negotiation, one might decide to give Mrs. Armstrong £25,000 outright, but having regard to the extreme value of her jewelry and other matters, it was felt that this should not be necessary.

However, it was stressed that in any negotiation that the first move should be to present Mrs. Armstrong to the Court as a difficult woman, who, although she has no real use for the tennis court and

-5-

swimming pool at Coolong Road, will not vacate it for a luxury unit at Point Piper, and give her husband and children the right to enjoy the amenities at Coolong Road, or sell, if required.

CHILDREN.

It was considered that the children should make up their minds as to which party they wish to go with for the purposes of this application.

It would strengthen the defendant's position if at this time the children told the Court they wish to live with me, and would make Mrs. Armstrong's attitude even more unreasonable. The court would be bound to take notice of the children's views in this matter.

Finally, it was considered that negotiations, if at

all possible, should take place before the 12th March, and all possible pressures should be brought on Mrs. Armstrong to do this. In any event, however, no harm could be done to the case by the mandatory injunction to remain possession of 9 Coolong Road, and it must serve to unsettle the plaintiff.

The plaintiff's solicitors are very anxious not to negotiate before the 12th March, and it must be born in mind that Mrs. Armstrong and a friend have had much access to the books of the various private companies, and may be advising Lorton Duke & Co. to this effect.

10

Also it is felt that it would be very difficult to change the views of Mr. Twigg, who is aged 67, very definite in his ideas, and I would imagine crude as a negotiator. It was decided to seek advice as to whether another solicitor should be used in the matter.

DIRECTORSHIP & GOVERNING SHAREHOLDING.

20

I have always been advised not to change Mrs. Armstrong's situation in regard to company director of family companies, and her governing shareholding in Alexmar Pty. Ltd. I consider this advice unsound, as no Judge would expect me to leave Mrs. Armstrong in full control of my assets when she has ordered me from the matrimonial home.

NOTES:

1. Never had initiative in case.
2. Should have heard the injunction with Selby, and presented Mrs. Armstrong as unreasonable person.
3. Mandatory Injunction to vacate 9 Coolong Road should have been issued on these grounds:-
 - (a) Necessity for cash in A.E.A. Pty. Ltd. 10
 - (b) Lack of need for Mrs. Armstrong to have house.
 - (c) Need to sell house to meet mortgage.
4. Doubtful if connivance and condonation will make much difference to case.
5. Not much worry over custody of children. Good idea to take children for a holiday.
6. Do not sue for debt at present.
7. Registrar will find out true asset position.
8. Control of companies could be changed without any odium attaching to A.E.A. 20
9. Divorce secondary to commercial matters.
10. Interim application for custody of children should be made.

January 23rd, 1963.

A.E. Armstrong, Esq.

Received this day the following documents:-

- 1) Deed of Trust Alexander Ewan Armstrong and Marjorie Elmar Armstrong. Registered at Stamp Duty Office No. N.3832 and dated 4th June, 1948. 30
- 2) Supplementary Deed of Trust dated 24th December 1949 between same parties.

IN THE SUPREME COURT }
OF NEW SOUTH WALES }
IN EQUITY }

No. 298 of 1967.

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Australia and her other realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

TO ALEXANDER EWAN ARMSTRONG of 9 Coolong Road, Vaucluse, New South Wales

GREETINGS

10

WE command you, that laying all other matters and business aside and notwithstanding any excuse you be and appear in your own proper person before our Supreme Court of New South Wales, in its Equitable Jurisdiction, at the Equity Court No Court, situate in Macquarie Street, in the City of Sydney, in the said State, on Monday the 17th day of April now instant at the hour of ten of the clock in the forenoon, and thence from day to day, at the same hour of each day until the suit hereinafter mentioned shall be heard, to testify all and singular those things which you know in a certain suit now pending in our said Court between PARADISE WATERS (SALES) PTY. LIMITED, LANDMARK CORPORATION LIMITED, GOONDOO PTY. LIMITED and PARADISE WATERS LIMITED Plaintiffs and SOUTHERN TABLELANDS FINANCE CO. PTY. LIMITED Defendant on the part of the Plaintiffs and on that day to be heard And that you diligently search and enquire for and procure and bring with you and produce at the time and place aforesaid:-

20

30

1. All your diaries, whether personal or otherwise, and other records relating to discussions with Mr. Alexander Barton or Mr. Bruce Smith or any other officer or employee of Landmark Corporation Limited or its subsidiaries from the 1st July, 1966 to the present concerning the settlement of disputes between you or any company in which you are interested on the one hand and Mr. Barton or Landmark Corporation Limited or any subsidiary of Landmark Corporation Limited on the other hand, or concerning the loan by Southern Tablelands Finance Co. Pty. Limited of the sum of \$300,000.00.
2. Your personal diaries for the whole of the period from the 1st July, 1966 to the present.
3. All Powers of Attorney given by you to Robert Ian Grant.

40

And this you shall be no means omit, under the penalty upon you of two hundred dollars.

WITNESS - The Honourable Charles McLelland, Chief Judge in Equity of our said Court at Sydney, the 12th day of April in the sixteenth year of our reign, A.D. 1967.

A.G. NEVILL (L.S.)

Acting Chief Clerk in Equity

Solicitor for the Plaintiffs.

Eskell April 6 '61

1. Cannot go on being a fairy godmother to Landmark forever.
 - (a) Loan should be repaid or turned into 15% with quarterly rests regular repayments.
 - (b) Supporting the shares check amount spent.
 - (c) Quinn grossly overpaid & does not work.

2. I feel we should not upset Quinn until after the Korpand takeover, but unless Palgrave follows within say (three months) Eskell must come in as managing director & Quinn return to development. 10

3. I have been far too good to Quinn remember he has put NO CASH into L/L & has been overpaid on his collections for all companies before Landmark was formed.

4. I must get some market for Landmark Shares or get some placed privately. 20

5. Constable owes us a favour, he was very lucky to have Nessel & float so easily.

6. Discuss sale of Cowra property & hotel Riverstone & Woodburn.

Necessary to DO something about my organisation (illegible)

GOULBURN for instance needs attention.

Eskell May 14 1962 PRINCIPLE NOT EXPEDIENCY
cheaper in long run

1. I believe that the difficult period just passed has shown each of the three of us a new & more intimate side of the other person, & also brought out far more clearly various inherent qualities & character traits. I believe it is necessary for Eskell & I to get somewhat closer now.
2. I now want to ask Eskell after having had time to settle down a few questions. 10
 - (a) Is he happy to settle down as chief executive or joint chief executive of Aust. Factors, but with the following thoughts in mind.
 - (b) We shall develop Aust. Factors as our base & once it is organised & running correctly, I believe both Lamerton & you should be able to DIRECT NOT manage, various profitable activities. 20

At present we have much to do including the disposal of Palgrave & the salvaging of as much money as possible therefrom.
 - (c) Eskell however must settle down also to being close to me & not divert his thoughts to other people.

Eskell May 14 (2)

I wish Eskell to realise that he is somewhat inclined to spread his loyalties I.E., be nice to everyone, for example 30

- (1) Suggesting I loan money to Cullen.
- (2) Buying my Landmark debentures from Dawes.
- (3) Countenance the situation with T.S.C. Cullen etc. when he was on the board.
- (4) suggest we accept the Cullen Anderson service agreements etc.

All these things good in themselves did not work for any particular benefit.

I believe Eskell to be very loyal to me, but from now on I want one object to be. 40

- (a) Does it benefit the shareholders, if a public company.
- (b) Is it beneficial or likely to be beneficial to Eskell having in mind the amount of work involved & time consumed.

I believe Eskell has two faults.

6. (a) Because he is a clever person, he does not like to admit he does not know the

answer to every subject, sometimes he should say "I DON'T KNOW.

3.

6. (b) He has a tendency because of being not an overtalkative person to tell not all about a subject & sometimes conceals the truth a little. I want him to tell me everything he knows & then we can truly evaluate a subject. 10
6. (c) Being a very fluent quick & decisive speaker, he is sometimes too definite at a meeting & is inclined to influence it more than his conclusions may warrant.
6. (d) Does not always read papers carefully.
7. Please remember at all times that the original aim of his association with me was to take over & streamline MY AFFAIRS & to so organise the situation that I did less, NOT MORE work, please keep this in mind. & recognise that my affairs are important & for mutual benefit we must fully utilise my assets. 20
8. Having had this talk, let us go on happily together, remember he is SUPPOSED to organise not do all the work himself.

Confidential

Eskell Notes June 27

1. Leaves Yaffa & comes to help me re Professor Messel recommendation.
 2. We form Landmark Ltd in period May - November 1960. Filley's reniged on U/W.
 3. Urged strongly by Eskell to form Landmark Lent Eskell & Quinn money to buy shares ~~Relas~~ Ian Walton helped us to do so & get nominees
 4. Undermined Quinn & urged me to get Messel on Landmark Board. 10
 5. January 3 '61. Armstrong & Cullen were influenced to merge companies.
 6. We buy Rorfena at a fairly reasonable price.
 7. We buy Barlex at a reasonable to cheap figure.
 8. We merge with Palgrave with strong mental reservations as to advisability of service on Armstrongs part & strong mental reservations on all except Eskell on Palgrave board. 20
 9. Cullens informs that he may not have objected to service agreements being made public.
 10. Eskell informed Jamison Nielson & I that the price of the merger was the service agreements.
 11. Different story on negotiations re Sale of T. & H. from Cullen & Eskell.
- 2.
12. Eskell nominated own salary.
 13. Eskell sell Downs Rorfena debenture to AEA & lends extra money from AEA to Palgrave subsidiaries. 30
 14. Eskell stops sale T. & H. to Dodge in July '61 to consolidate his own position.
 15. Did not conform to Andersons instructions re Miller or re Gas Co. printing mistake.
 16. Did not allow Anderson to participate in T. & H. management at all.
 17. Caused Hudson to waste time in Europe through bad advice.
 18. Told Cullen & Anderson before merger that Eskell would arrange the merger of Factors & Palgrave (in June '61) when there was no thought in my mind of a merger. BAD 40
 19. Probably signed agreement wrongly to bring 18 on & caused row with Cannon.

20. His mind is devious & sick, he is either a "con" man or an idiot & is either a liar or a concealer & perverter of the truth.
21. He caused great loss on the Factor law case, & has caused Sizer to issue a writ - for 96000 by his poor handling of this matter.

All in all a shameful record.

Notes Eskell & Cleary 30/6/62

1. In January 1962 Eskell asked A. to ask Mrs. C. if she knew anyone who would admit to adultery with him to hasten his divorce case.
2. After discussion C. agreed to sign a confession of adultery & did so at Twiggs office in February 1962.
3. Mrs. C. told Eskell her sole motive was to help me by assisting him to clear up his divorce & work well with me, as she thought he & I would make a good team in business. 10
4. At this time & up to last week Mrs. C. A. & Nessel believed Eskell to be a very good type of man.
5. At a meeting in February Eskell told Cleary that he & his wife had agreed to an amicable divorce, but his wife did not need to know who the CO-RE was or anything about her. He also expressed concern over Clearys future security & suggested A. should provide for it. 20
6. At times in recent months he expressed the same views to AEA but coloured them a little
7. About June 10 Eskell saw Cleary & told her to expect a call to sign a supplemental petition & have it served on her. At this time Mrs. Dunn's name was on the same petition. Mrs. Cleary declined to acquaint A of this fact & did not ever ask Eskell. She was very trusting & loyal to Eskell. 30
8. About a week later C. rang Twigg & was told she sworn to adultery but would have no chance to avoid going to Court & would be subpoenaed. Mrs. Cleary asked Twigg if Court appearance would hurt A's case & was advised it would not.

2.

9. On June 23, Cleary spoke to A. & Eskell & was told that if she wished he would withdraw the whole case & stop the divorce, his divorce) going through (stated by Twigg & Joel to be impossible at that stage). 40

Court Monday 25th

- 10 A.M. Eskell & wife, Dunn & Cleary attended.
Counsel Toose for Mrs. Eskell
" Pawley for Mr. Eskell
" Laywell " Mrs. Dunn.
- Mrs. Cleary was completely unrepresented as Twigg did not appear as he was too busy. Mr. Denarnaulds partner of Bryce Jones told her that it would be all over in five minutes. Mr. Jones told Mrs. Cleary the same thing. Mr. Pawley told Cleary he would be representing her in Armstrong & all counsel appear to have told Cleary & Eskell it would all be over quickly. 50

Evidence

- Called Mrs. Eskell. Toose asked usual questions. Dovey asked her had she ever seen or heard of Cleary. She said no. 60

Dovey. How did she hear of Cleary? Mrs. Eskells husband told her he met at social functions. Dovey then asked her if she had felt that her husband was interested in Cleary & she said no. Dovey. what date did you know of association. Ans. Only when petition served. Dovey lead this witness quietly.

Called S.L. Eskell (Usual questions) Eskell denied adultery with Mrs. Dunn but admitted familiarity. 10

3.

Evidence.

Dovey. Why admit adultery with Cleary & not Dunn. Answer it was truth that Dunn & I did not commit adultery but Cleary & I did. Previous. Dovey to Eskell was Cleary married or divorced. Eskell doubtful answer. Dovey to Eskell very honourable of you to tell your wife about Eskell & you say you did this because of a guilty conscience. 20

Evidence Cleary.

Before Cleary as witness Dovey stated that case was unusual & he had looked at it a week before.

Dovey; Where is Cleary's Counsel. Cleary NO.

Dovey asked Cleary if married or divorced.

Cleary said fact.

Dovey; Being in Court not new for you. Asked Occupation & whole history & asked how you live lately.

Judge then stated how generous you were & that it was most unusual case. 30

Evidence Dunn.

Dovey did not her much, she admitted that her husband was getting a Mexican divorce.

Browne

1. What was reason for Dovey making a fuss over the case.
 - (a) Damage Eskell.
 - (b) Damage Armstrong in future proceedings in divorce.
Recollect P. Hogan friend of Dovess.
- (2) Mannix & Downing were considering reopening case & calling for transcript of evidence.
- (3) Mrs. Armstrong knew of this matter on the Wednesday before case opened. Hogan may have been told by ~~Byrne~~ Dovey. 10
- (4) Is there any political implication to discredit Upper House & damage Lib. AP. with view to causing trouble.
- (5) Any tie up with Packers attach on Nessel.
- (6) Remember case can be reopened up to Sept.25.
- (7) Keep very quiet for a time. & let matter drop.
- (8) If Eskell pushed too far may put AEA in as well. 20
- (9) What do we want to achieve
 - (a) Save Alex
 - (b) Punish Eskell.

Brown (2)

10. Write nothing in T.I.H. - things I hear. Say very little, but listen. Get evidence from newspaper report.
11. Would like to know why Dovey so rough on case.
12. Seems to me that I may be being set up for trouble by Marjorie as she has tried to discredit Margaret. 30
13. Can we attack or strike DOVEY.
14. Best line for me & Margaret to take
Get different counsel & see at times different times.
Lindsay Clinch instructed his reporter to cover case. we go to Court at 10 AM check typesetting.
Believe we should hasten slowly & not allow Eskell to believe Marget & I dislike. 40
Check did he give information to Muir.
Remember Bennyhoff.

January 22nd, 1963.

Memo of informal occasions when Mrs. Armstrong was taken out by me:-

1960.

May 18th	To dinner with Mr. Rudder at Surfers' Paradise.	
" 27th	Took Mrs. Armstrong, the children, Mrs. Cleary and Mr. Cansdale to "Jolly Frog" Restaurant in evening.	
" 31st	Went to Farewell Party for Mr. & Mrs. Stewart Hay at Pickwick Club (Canadian Trade Commissioner).	10
June 2nd	Went to dinner at Mr. L.J. Foster's home in evening (quite informal).	
" 6th	Went to "My Fair Lady" with Mrs. H.P. Reynolds and Mr. Jeffrey Jackson in evening.	
Aug. 20th	Went out for drive in afternoon, and pictures in evening.	
" 27/28th	Mrs. Armstrong and I spent these at "Winderadeen", Collector.	20
Aug. 30th to Sept. 9th	With my family at Surfers' Paradise, and went out on certain occasions during this period.	
Nov. 14th	Took Mrs. Armstrong to dinner at Chelsea Restaurant.	
" 25th	Went for plane flight to Palm Beach with Mr. & Mrs. Soos and Mrs. Armstrong, and later had dinner with them.	
Dec. 15th	Went to Dinner Party Dr. & Mrs. Listwan.	30
" 22nd	Went to Cocktail Party Dr. & Mrs. Listwan, and later went out with Mr. & Mrs. Fearon.	
	-2-	
Dec. 31st	Went to party at Palm Beach at Mr. Arthur Browning's.	

This pattern continued right through 1961, except for a period from July to December, when I was overseas.

Mrs. Armstrong gave me a Farewell Party before leaving, and a Welcome Home Party on my return. 40

The Alexmar Settlements were made in Canberra on July 19th in the presence of Mrs. Armstrong, Mr. Ray Nielson, Mr. John Cotter and Mr. McPhillamy, Solicitor, was in attendance.

1962.

Jan. 9th Dinner with Mrs. Armstrong at Professor Messel's home.

" 22nd Took family to pictures and dinner.

" 23rd Went to dinner at Mr. Fallon's.

" 27th/31st Spent at Surfers' Paradise with Mrs. Armstrong and daughter Mary.

Feb. 4th Had dinner with Mr. & Mrs. Bennyhoff. 10

" 10th Chelsea Restaurant in evening with Mr. & Mrs. Bennyhoff and Mr. & Mrs. Reynolds - 17th Wedding Anniversary.

" 12/14th Spent at "Winderadeen" with Mrs. Armstrong.

March 8th Went to Dinner Party with Mr. McCall-Powers.

Pattern continues the same.

Took Mrs. Armstrong to Surfers' Paradise with American friends on week-end of Sunday, 18th March. 20

Pattern continued through until about April 1st, when arguments became much more frequent between Mrs. Armstrong and myself.

-3-

In spite of this, I will give you a brief pattern from the 15th April.

March 18th Took Mrs. Armstrong to Cocktail Party at Union Club with Mr. Eskell.

" 20th/25th Spent at "Winderadeen" with Mrs. Armstrong. 30

May 7th Took Mrs. Armstrong to pictures in evening.

" 11th Went to dinner at Mrs. McCall-Power's.

" 15th From this date on relations with Mrs. Armstrong seriously deteriorated, and I first consulted Mr. Twigg on Monday, May 21st, 1962. He advised me to move to "Winderadeen" and take Marjorie with me.

Mrs. Armstrong consulted her solicitor on Tuesday, 22nd, and advised me that he advised her to sue for a separation with me living in the house and her moving out. 40

I feel sure this action was precipitated by my telling her that we intended to move to "Winderadeen"

June 4th Spent day with Mrs. Armstrong, Professor and Mrs. Messel at Lower Portland.

" 6th Took Mrs. Armstrong to dinner at Australia Club with Mr. & Mrs. Perkins, and went to the premiere of "West Side Story". Drove Mrs. Faulkner and Adrian Quist home. On this evening Mrs. Armstrong and I had a serious argument, which culminated in my leaving home.

10

Notes re Cannon etc. April 10 1962

1. Before Eskell left for England he was repeatedly warned by Messel not to allow the London group to control company in fact, Messel felt E. would control AEA & protect him. Messel also stressed this fact in letters to AEA.
2. After negotiations with Cannon in which it was stressed verbally that the next share issue in January would be pro rata & from then on at Boards discretion, (frankly, quite easy to make this clear in an agreement), SLE signed a very important agreement hurriedly & apparently without even reading it through. This was a very serious error, from which all our subsequent mistakes arose. 10
3. Eskell did not send a copy of this letter to AEA which I would have expected him to do, as after all I negotiated the original deal, as far as I can ascertain at present did not send a copy to Messel or table it very clearly at the Board Meeting after his return. This seems peculiar, in view of his meticulous staff work generally. This delayed action until my return when legal pinion was sought on the agreement. 20
4. It does seem very careless of Eskell not to have sent the agreement to Messel or AEA, perhaps he was frightened of Messels reaction. It also seems strange that if Eskell felt any doubt about the agreement he did not seek legal opinion earlier. All in all, we need ~~any~~ an explanation. Eskell does tend to conceal material agreements. 30

2.

Consequences of Actions

1. As Eskell took so long to discover his mistake & as no copies were circulated it would have been difficult to tell Cannon straight out at that time. 40
2. Eskell first became ~~upset~~ aware of this mistake after I returned, & we then commenced a course of action which was basically wrong.
3. I take full responsibility for the wrong actions FROM DEC. ON as Messel & I were both ready to be seduced by Eskell into a basically dishonest & weak action, which we were also happy to gain from if it had succeeded. Therefore from this point on we are all to blame. 50
4. From this point many things occurred.
 - (a) We concentrated on Factors instead of Palgrave & on forming the two inter-state Cos.

- (b) We were caught unprepared by not allotting our shares in the correct manner & disappointed staff & friends.
 - (c) We formed the two new companies in a way which made everyone feel suspicious of us, & laid us after to the charge of taking up shares wrongly.
 - (d) I was put in a bad light with Cannon.
5. Side issues (a) Chate telling us Cannon was sharp & influencing us slightly.
- (b) Eskell changing his ground on the position of voting control after being influenced by Lamerton.
 - (c) Lamerton influencing Eskell & self

10

Notes Twigg 6/9/62

1. What is going to happen tomorrow in court & will there be publicity in press? Read petition (I have no present intention to remove without ample notice.

Should not be publicity.
2. What is to be gained by not doing as suggested by Duke in his letter of Aug. 22, with the exception of paying costs, this would save appearance in court. 10

Must defend. be difficult etc.
3. Will Mrs. Armstrong succeed in her application for costs before the case is heard.

Doubtful.
4. Approximate cost of Case. to its outcome.

1500 - 2000
5. Will I ever be able to obtain a divorce, (Not likely at present). 20

Depends on Judge.
6. If Mrs. Armstrong commits adultery & it is proved what is my position. We want to know. We can divorce her.

2.
8. Does the fact of Mrs. Armstrongs collusion & condonation reduce the amount of alimony she receives? Yes.
9. When will I be able to enter into possession of 9 Coolong Road & should I repossess car now? 30

NO Perhaps 12 months or longer.
10. Mrs. Armstrong is not spending capital, she is spending income from her settlement.
11. I wish to know what amounts I should pay her maintenance of garden house etc. telephone electric light etc. & would like you to write me re this.

20.0.0 plus school & medical etc.
12. What sums should I expend on behalf of the children? 20.0.0 & school. 40
13. What will be my public position as regards Parliament etc. when I am living with Mrs. Cleary as my de facto wife?

No different.

14. Are you sure Mrs. Armstrong will not succeed in getting more money from me also what about division of household goods etc. ----

Notes Millar Sept. 10.1962.

1. Do you advise me to seek a second legal opinion on my divorce position & its probable outcome? 10
- If so, who, & what counsel.
2. Do you consider it would be possible to gain possession of 9 Coolong Road by any quick legal means having regard to the undertaking I have given the Divorce Court.
3. Will I prejudice my position in further litigation by attempting to remove my wife & family from this home to a suitable unit or to my country residence?
4. Twigg advises patience in this matter as he believes Mrs. A. will change her views in the next 12 months. What do you think. 20

Notes for Millar October 2.

Decision on courses open to me at present:-

- (a) To fight on with divorce proceedings for say 12-18 months with Mrs. Armstrong occupying Coolong Road & spending her own money, thus weakening her position.
- The outcome of this according to Twigg, will be that she will be awarded her present income & unit to value of £10 - 15000. 30
- If Twigg is wrong she will perhaps retain possession of 9 Coolong Road & we will have lost the chance of moving her out of this asset, value 70,000.
- (b) If we offer her a unit at "Cliveden" value £25000 for her life or until she remarries we have a chance she may remarry, which I believe doubtful if case drags on for 2 years & she gets ill or older. 40
- It seems to me that we are arguing about 10-15000 with a good deal of chance of losing, & Mrs. Armstrong remaining in the house.

There are side issues such as public opinion

& waste of time in argument etc. which
weigh against going to court.

Notes Grant 21/1/63

- (1) Give Mrs. Armstrong a life tenancy of unit,
unless she remarries.
- (2) It is the childrens & my own opinion that
she will endeavour to re-marry. 10
- (3) Subject to Grants views I would like to pro-
ceed with a mandatory injunction to get her
to vacate the flat & occupy a home unit
which I have purchased for her at Cliveden
or if this can be effected by negotiation so
much the better.
- (4) Was informed that Mrs. A. believes she will
get 1/3 of Total Income & Capital.

If this is so, it will be difficult to nego-
tiate with her. 20
- (5) I am naturally inclined to prefer a settle-
ment out of court & before the hearing of
Means Application but I believe we should
endeavour to negotiate now once & for all,
& if she will not do so, get as difficult
as possible & perhaps catch her.
1. Type out 6 instances of informal.
occasion in past two years.
- (2) Get copy of trust document AEA settlement.
(3) Surrender value of AMP policy. 30

Notes. Grant & Bent March 5.63

Best method for tax purposes of paying alimony.
(Covered).

What do we propose to do about settlement. (Use
for alimony & resettle.)

Mrs. Armstrong outstanding debts & tax liabilities
etc. Tax 1300 due April 2.

Regularisation of Mrs. Armstrongs position re land
jointly owned by Eskill.

to be owned by AEA P/L? 40

Treatment of A.M.P. policy on AEAs life.

Treatment of loan of about 10000.0.0 from AEA to
Mrs. Armstrong. Offset against amount of settlement.

Exhibit 64 - Documents
in 1st Defendant's
handwriting

Must resign all directorships etc Alexmar.
Custody of children. (Need to get them with me).
Vacate 9 Coolong Road by May 31.
Agreement by March 22 if at all possible.

3035. Exhibit 64 - Documents
in 1st Defendant's
handwriting

IN THE SUPREME COURT
OF NEW SOUTH WALES
IN EQUITY

No. 23 of 1968,

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Australia and her other realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

TO ALEXANDER BARTON 187 Edinburgh Road,
Castlecrag.

GREETINGS

10

WE command you, that laying all other matters and business aside and notwithstanding any excuse you be and appear in your own proper person before our Supreme Court of New South Wales, in its Equitable Jurisdiction, at the Equity Court No. 10 Court, situate in Mena House Macquarie Street, in the City of Sydney, in the said State, on Wednesday, the twenty-first day of August new 1968 at the hour of ten of the clock in the forenoon, and thence from day to day, at the same hour of each day until the suit hereinafter mentioned shall be heard, to testify all and singular those things which you know in a certain suit now pending in our said Court between ALEXANDER BARTON Plaintiff and ALEXANDER EWAN ARMSTRONG and OTHERS Defendants on the part of the Defendant and on that day to be heard And that you diligently search and enquire for and procure and bring with you and produce at the time and place aforesaid.

20

All documents in your possession or under your control which either are or are believed by you to be in the hand writing of the Defendant, Alexander Ewan Armstrong.

30

And this you shall by no means omit, under the penalty upon you of two hundred dollars.

WITNESS - The Honourable Charles McLelland, Chief Judge in Equity of our said Court at Sydney, the 19th day of August, in the seventeenth year of our reign, A.D. 1968.

. Hayes (L.S.)
for Chief Clerk in Equity

40

R.I. Grant
Solicitor for the first to sixth Defendants.

X 1518
FM-6519
Personal & Confidential

Pacific.
River Terrace
Surfers Paradise
~~Buckhurst~~
~~574-New-South-Head-Road~~
~~Point-Piper~~
Monday

C.M. Alders Esq. September 8. 1958.
Box 113 Goulburn.
Dear Carl,

10

I am writing to confirm our phone talk yesterday as to policy regarding the six finance companies. We may adopt a different policy after we meet, but at present, proceed as below:-

1. No further lending whatever except on Powells floor plan this to be restricted as much as possible.
2. Concentrate on collection of outstanding debts, I wish to be quite ruthless as regards debtors whose contracts are in arrears & whose cars, when repossessed & sold will easily cover our loans. In the case of others whose asset is not so good proceed cautiously, but try to collect it.
3. Try & get all hirers paying in on the correct dates according to the terms of their contract. Employ a solicitor in any difficult cases.
4. Do not repay any persons who have deposited money with us until you consult me, & do not pay OUT any money at all until we meet & discuss procedure.
5. Do not regard the actions you are taking

20

30

(2)

Private & Confidential Buckhurst
574 New South Head Road
Point Piper

from the point of view of goodwill only from the angle of collection, as I do not feel disposed to carry on the companies unless my views change after discussion with you.

I feel that it is wise not to say too much about the general picture until we meet. Chester may be too optimistic, & Halls too pessimistic, & your view may be the correct one.

40

I must inform you however, that I had no idea until yesterday that there was any trouble at all at Goulburn. When I saw Jack a couple of weeks ago at Winderadeen, he seemed nervous & tense & unwilling to participate in a Public Company & to undergo an investigation for a proposed float. He suggested that he was so busy that it be put off till February.

50

To be frank you will forgive me for now thinking that there may have been other reasons for his not wanting an investigation at the present time.

Exhibit 66 - Letter
To C.M. Alders

I feel that Chester should have told me himself at Winderadeen if he was in any trouble or difficulty even if only slight. As you know it is much better if you all

(3)

Buckhurst
574 New South Head Road
Point Piper.

10

doubtful about anything to tell your principal & not let him find out for himself, this applies especially in this case when I trusted Jack implicitly & never subjected him to any outside check or audit not even my own.

I feel (I think you will understand) extremely hurt & let down over the whole matter. Jack could easily have been frank about the position to me & not allowed me to make statements to Cowley & other people of importance that the business was run on sound lines & that everything was in good shape, you can imagine how I felt when I heard about it from a comparative stranger such as Hulls.

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However I wish you to keep the contents of this letter confidential except as to policy, & to understand that the statement expressed are subject to correction if matters are not in fact as reported to me by Hulls.

It is urgent for me to see you as soon as possible (by Monday Sept. 15 at latest). I shall arrive in Sydney by 4 P.M. on Saturday Sept. 13 & could see you at any time from 6 P.M. Saturday onwards. With kind regards

30

Yours sincerely,

Alec Armstrong.

LANDMARK LIMITED

RESPONSIBILITIES, DUTIES AND LIMITATIONS OF THE
CHAIRMAN, MANAGING DIRECTOR AND SECRETARY.

THE CHAIRMAN

is appointed by and responsible to the Board of Directors for:

1. Advising the Secretary in regard to, and with him arranging details for, calling and holding the meetings of the Board of Directors.
2. Presiding at the meetings of the Board to ensure that there is adequate consideration and discussion of relevant matters, and an orderly and efficient conduct of proceedings. 10
3. Advising the guiding the Secretary in regard to the formal recording of Board proceedings and decisions.
4. Advising the Secretary in regard to, and with him arranging details for, calling and holding the Statutory and other meetings of the shareholders.
5. Ensuring that correct and adequate information is given by the Board of Directors to shareholders in regard to the current progress and position of the Company, and its relevant future prospects. 20
6. Presiding at meetings of shareholders.
7. Advising and guiding the Secretary in regard to the formal recording of proceedings of shareholders' meetings, and satisfying himself on behalf of the Board of Directors that all legal requirements have been correctly and adequately accomplished. 30
8. Ensuring that the same responsibilities are adequately carried out in all subsidiary companies.
9. Consulting with, and advising the Managing Director, in so far as required on behalf of the Board, in regard to the interpretation of Board decisions on policy and their communication to the executive members of the organisation.
10. Consulting with the Managing Director, and advising him as required on behalf of the Board, in regard to directions in which the performance and activities of the Company suggest occasion for amendment or modifications to policy, or for proposals for new formulation of policy. 40
11. Keeping a broad and general observation on the Company's activities and affairs in order to be able to contribute detached and objective viewpoints to the deliberations of the Directors.
12. Supervise and generally be responsible for

the day-to-day finances of the Company in line with Board policy.

13. Watching for and bringing to the attention of the Board opportunities for promising development of the Company's activities in new fields.

14. Be responsible for the supervision of all top level salaries.

10

15. As authorised by the Board, carrying out contracts with officials and institutions when the goodwill or interests of the Company require it.

16. As authorised by the Board, representing the Company on formal or official occasions, and serving as spokesman within the duties of approved policy.

-2-

17. Generally speaking, watching over the activities and progress of the Company, so as to be able to ensure effective deliberations and decisions at Board meetings.

20

18. On behalf of the Board, maintaining external contacts for information, development, consultation with associate enterprises, &c., as approved by the Board.

THE SECRETARY

appointed by and responsible to the Board of Directors for the following items:

1. Ensuring on behalf of the Board that the Company's legal responsibilities under the Companies Acts and other statutes and by-laws are correctly fulfilled, and full compliance maintained with the Memorandum and Articles of Association.

30

2. In consultation with the Chairman, preparing agenda, and other documents for regular and special meetings of the Board of Directors.

3. Arranging with the Chairman to call and hold meetings of the Board and taking and presenting a correct record of the proceedings thereat.

40

4. Attending at Board meetings in order to ensure that legal requirements are fulfilled, to provide such information as may be required.

5. In consultation with the Chairman, preparing agenda and other documents for the Annual General and Extraordinary Meetings of shareholders.

6. Arranging with the Chairman for calling and holding the Annual and Extraordinary Meetings of shareholders and attending such meetings in order

Exhibit 67 - Document
listing Responsibilities
and duties

to fulfil the legal requirements, and to make correct records thereof.

7. Carrying out all matters concerned with the issue of shares, including maintaining statutory Share Registers and conducting the appropriate activities connected with share transfers.

8. Ensuring that the Company's properties and interests are adequately insured and dealing with all insurance matters arising. 10

9. The custody and administration of the Company's property investments, other investments, patents, trade-marks and trade agreements.

10. Preparing, approving and signing and sealing of agreements, leases, legal forms and other official documents on the company's behalf, when authorised by the Board of Directors or the executive responsible. 20

11. In conjunction with the Company's solicitors, advising the Managing Director or other executives in respect of legal matters as requested.

12. Ensuring that official returns, statistics, accounts, &c. are duly completed and submitted, and will be Public Officer for the Company and its subsidiaries.

13. Paying all members of the staff as well as the Directors.

14. Ensuring that all banking is carried out and all cheques drawn in accordance with the Company's Articles of Association. 30

15. Liaising with the Company's auditors.

16. Implementing the Chairman's directions with regard to all finances.

MANAGING DIRECTOR/.....

-3-

THE MANAGING DIRECTOR

appointed by and responsible to the Board for the effective implementation of Board policy. This is an executive responsibility summarised under the following major items; 40

1. Carrying into effect the detail policy laid down by the Board.

2. Preparing annually a budget of anticipated revenue and agreed expenditure in accordance with the over-all programme agreed to by the Board.

Exhibit 67 - Document
listing Responsibilities
and duties

Exhibit 67 - Document
listing responsibilities
and duties

3. Referring to the Board specific requests for approval of an activity or purchase or expenditure above the budget level.
4. Implementing and recording a sales programme.
5. Organising, supervising and recording all collections.
6. Keeping the financial position of the Company under review to ensure that there is an appropriate balance of long term and short term finance and a provision of adequate cash for day to day working. 10
7. Reporting to the Board on trade conditions and other relevant factors immediately when these factors may influence their judgment in making or changing policy.
8. Ensuring that there is a sound organisation with all activities and dealings recorded so that any delegations or changes may be made without dislocation or interruption to the Company's activity and progress. 20
9. Submit to the Board as required periodic statements of account and reports of progress of business.
10. In conjunction with the Secretary ensure the correct operation of the management accounting procedures.
11. Presenting to the Board as soon as practicable all information relating to any opportunities that may occur in the field and scope of the Company's operations. 30
12. Receiving and objectively reporting to the Board the views and comments of any associates and other organisations with which the Company is working or co-operating.
13. Present all accounts of sufficient magnitude to the Board for approval for payment, and if the Chairman wishes it, as determined from time to time, all accounts for approval for payment. 40
14. Confirm all orders given to outside organisations for provision of services or materials, in writing.
15. Make recommendations to the Board from time to time as to change of status of any of the Company subordinates and also report to the Board on any recommended dismissals.
16. Advise the Board whether any changes are contemplated and recommended with outside suppliers or associates. 50

Exhibit 67 - Document
listing Responsibilities
and duties

17. Record all negotiations with local councils,
authorities and local advisers.

18. Consult the Board before taking any legal
action.

19. Ensuring that adequate arrangements are made
in regard to the safe custody of the Company's pro-
perty.

10

20. Ensuring that any commercial agreements re-
commended to the Board are proper and in keeping and
are in accordance with regulations and the law as
it stands.

24th July, 1963.

Report to the Chairman of Directors of Australian Factors Limited,
Mr. A.E. Armstrong.

Gentleman;

When I was appointed General Manager of Australian Factors Ltd. in July, 1962, I fully realised the trust and responsibility the Board of Directors placed in me, in appointing me to this position. I also fully realised that with the peculiar position of having both a Managing Director and a General Manager, that in the first instance all instructions from the Board must come from my Managing Director, and that all my reports and requests to the Board must also come from me to my Managing Director. 10

With the situation that has arisen, I deeply regret my failure to report either direct, firstly, to you, or then to the Board, the steps that have been taken to protect Australian Factors Ltd., in the cases of fraud which have occurred to this date, but I do wish to point out that the steps taken by both Mr. Cox and myself were taken with the full knowledge of my Managing Director, Mr. Lamerton, who in his own words instructed both Mr. Cox and I to get over these problems in the best method possible, and that he would leave these matters entirely in our hands. 20

I realise that I have taken on responsibilities which I had no right to do without your approval and direction, and I hope you will see fit to accept my sincere regrets and apologies for assuming such responsibilities, but I also hope that you will accept the fact that the actions which I took were carried out by myself in conjunction with Mr. Cox for no other reason than to protect Australian Factors Ltd., and in each and every transaction carried out I personally and Mr. Cox did not in any way receive personal gain. 30

All transactions were carried out and securities taken in these cases of fraud in companies registered by Mr. Cox and myself, who were the only shareholders & the shares were held in Deeds of Trust for Australian Factors Ltd. All securities and transactions can be made available and Trusts for your inspection, and the transactions are clearly set out showing where the money used for this purpose, and this purpose only, went, in separate reports by both Mr. Cox and myself. 40

I feel my greatest mistake was when we decided to cover the problem accounts by raising of fictitious invoices by companies registered to pay out the problem accounts, which we felt, at this stage, showed no movement, and would be queried. The money raised on these fictitious accounts were not only an extremely bad mistake, but also had the effect of increasing the margin of profit for June by approximately £9,000 incorrectly. But again I 50

Exhibit 68 - Document
initialled by
Mr. Corne

emphasise that in all these transactions the money drawn and deposited went back through the problem accounts to Australian Factors Ltd.

If you will bear with me, I feel that the following explanation will bring some bearing as to why these problems have occurred, but I wish in no way for this explanation to be taken as an excuse. It is given as a guide to the problems and pressure both myself and Mr. Cox and the staff have worked under to this date, and to the frustrations caused by what I feel personally were misguided directions and decisions by Mr. Lamerton as Managing Director.

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-2-

The problems, company-wise, not from the fraud angle, started in February, 1962, when the decision to form the Interstate Companies was made, and at that time, as Credit Manager of Australian Factors Ltd., I requested Mr. Lamerton to let me install accounting machines, and have the office system and organisation ready to cope with the new business which was envisaged, as it had been decided, I believe, that everything was to be controlled centrally from Sydney. This request was turned down because it was thought that we might use computers.

20

Survey of the type of machines we may use had been carried out since early January, and during the time of the survey and my request to Mr. Lamerton, I wrote several reports setting out my objections to computers. These objections were based on my experience in the use of three different types of computers in previous positions held.

30

In April, before Mr. Lamerton departed overseas, I again requested, in fact very nearly begged, him to let me install accounting machines. This request was again turned down, for the same reason as before. On this occasion I warned Mr. Lamerton that the N.S.W. Company alone, at that stage, was then too large to handle by means of handpostings, and unless something was done quickly, the consequences, when the Interstate Companies opened, would be out of my control.

40

The plans outline of the openings happenings from that date on, until October, is set out in a report to Mr. Lamerton dated 15th October, 1962, which although may appear to be rather presumptuous of the two-and-a-half month old General Manager, was quite true and correct. I showed this report to Mr. Lamerton, and had intentions of sending it to the full Board, seeing you first, but at Mr. Lamerton's request, after he had read it, I did not do so, as he said I did not understand what was going on fully, and the repercussions of such a report might not work out with what the Board and he had in mind. This report is attached, and marked with the letter "A".

50

From July onwards, amongst all the happenings set out in this report, Mr. Cox was appointed General Manager of Victoria, and I was left with Sydney, with, at that stage, not enough staff for the expansion that was transpiring at that time, and quite honestly I could not obtain the staff I wanted, as I was unable to pay the salaries which we needed to obtain the type of staff I required. 10

During this time I also had to set up procedures for all stages of the company's business, and even though I had requested urgently when I was first appointed General Manager to Mr. Lamerton that with the expansion of all three companies at that stage we must immediately look for larger office space, but my request was turned down.

The conditions the staff worked under were atrocious, and even if we were able to obtain good staff, once they saw the conditions, they turned the positions down. The expansion rate is set out pretty clearly in my report, and was ever increasing. 20

The acceptance of clients, previous to my appointment, I felt was too lax, and I had to re-organise the whole of the selling system, and organise the general office procedures at one time. Of course, in the middle of this, three months after my request, I was told to find new premises, and that we must move within a matter of eight weeks. So on top of everything else, the organisation of the building in the new premises, and the move, came one after the other. 30

The first of the problems occurred with a firm by the name of Temple Engineering Pty. Ltd., and fortunately Mr. Cox was in Sydney at that time, and I knew that a problem such as this must be handled by at least two members of the staff, and could only be handled by myself and Mr. Lamerton, or Mr. Cox. This problem was clearly pointed out to Mr. Lamerton. As previously set out, he instructed us to solve the problem in our own manner. 40

After the move to George Street, the efficiency of the company, as predicted to Mr. Lamerton, improved out of sight, and with the expansion programme still under way, the ten problems occurred one after another. The majority of these problems refer to the very early accounts, or accounts which we accepted late in May, at the height of the first Sydney expansion programme, where we were told that the money must be placed as quickly as possible. Unfortunately, a few executives cannot handle work which could quite easily have taken three times the amount of executives, without disasters, such as has happened, and, in fact, as I look back now, I am rather amazed and extremely relieved that the problems are not greater than they are. 50

It is hoped that the new system which has been devised and put in, for selling since January of this year, will now cut down these problems to the bearest minimum, but by this I do not mean that these problems are not going to occur throughout the years of our general business. They are bound to occur, but as the efficiency of the company and the staff increases each month, these problems will be picked up very quickly before they get out of hand.

10

In September of last year, at the request of the Board, I suggested what I thought to be a system that we should use in regard to documentation. After a great amount of work put into this system, nothing further was carried out. I am attaching this report, and marking it "B".

My files are open for inspection for the amount of work put into suggested systems and reports given to Mr. Lamerton, and one in particular I am attaching, marking it "C", on Outside Ledgers, for your attention. All other reports are available, should you require them.

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Once again, Sir, I can only say how sorry I am this has occurred, but again I will emphasise and hope that you will believe, that every step that was taken, was taken to protect Australian Factors Ltd., and it is my personal opinion that with the securities that we have taken over the companies in which these problems have occurred, the amount of money involved will be well covered, viz. £200,000, and over the period, say, three to five years, no loss will be incurred by Australian Factors Ltd.

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Also, I would like to point out that not one problem was tackled without the advice of a Solicitor and Barrister, and here I again feel I have failed you, as the Barrister was not a Barrister appointed by the Board officially, but everything we did was fully understood by Mr. Lamerton, and with his full authority. This I now realise was a mistake, and a great mistake on our part not to report it personally to you.

40

AC.

Wentworth Chambers,
180 Phillip Street, Sydney

2nd July, 1963.

Memorandum of fees due to Mr. D.L. Mahoney
Q.C.

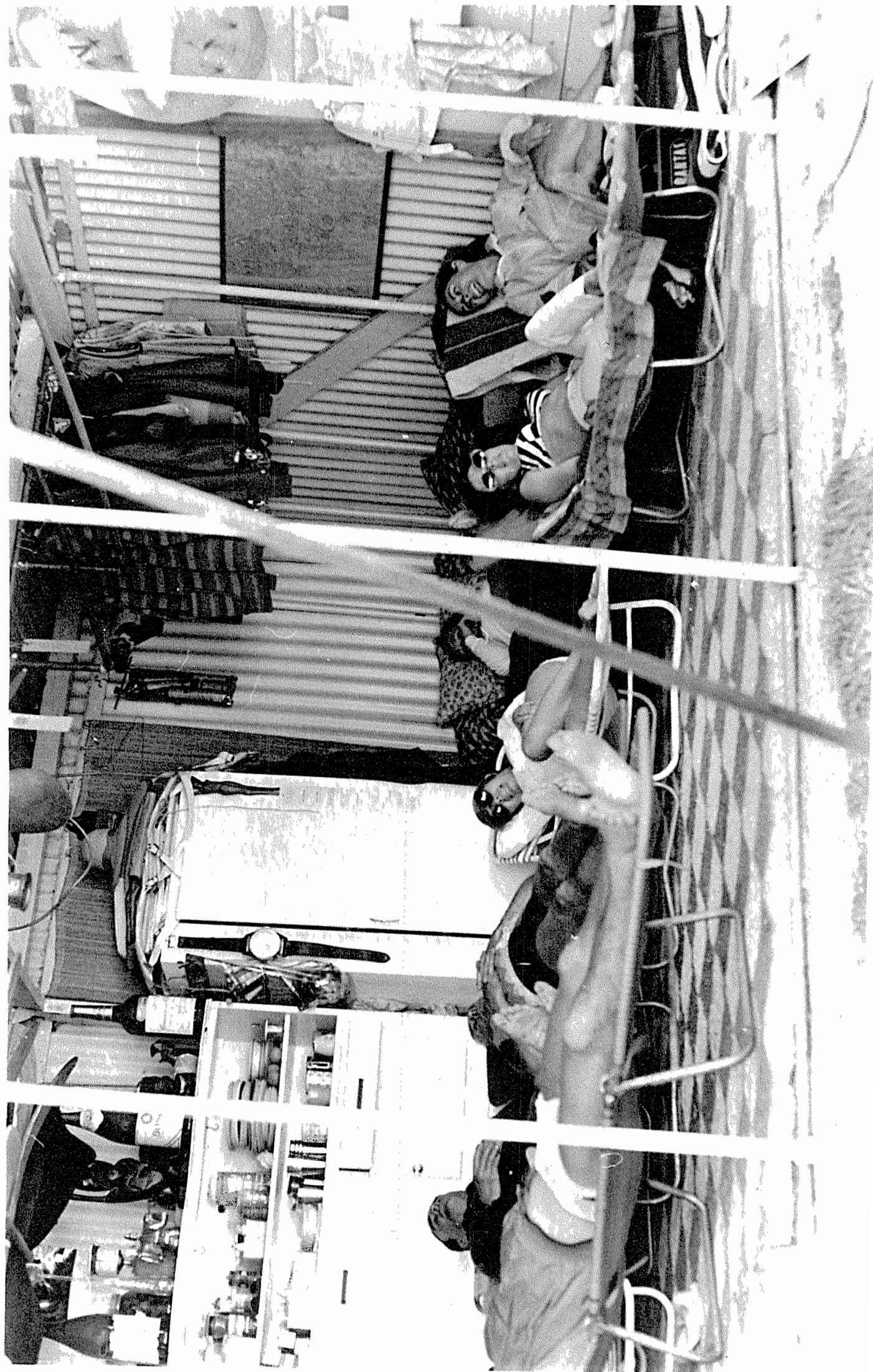
ARMSTRONG ats ARMSTRONG.

1963				
June	27	Brief upon application by		
"	28	Respondent in respect of		
		statements made at hearing		10
		of Petition for dissolution		
		of marriage etc.	£42 0 0	
		Conference.	5 5 0	
		Conference with Messrs.		
		Goldstein, Grant and		
		Armstrong advising as to		
		rights, contempt of		
		court, etc.	10 10 0	
			<hr/>	
			£57 15 0	
			<hr/>	

Solicitors:- DARE REED MARTIN & GRANT



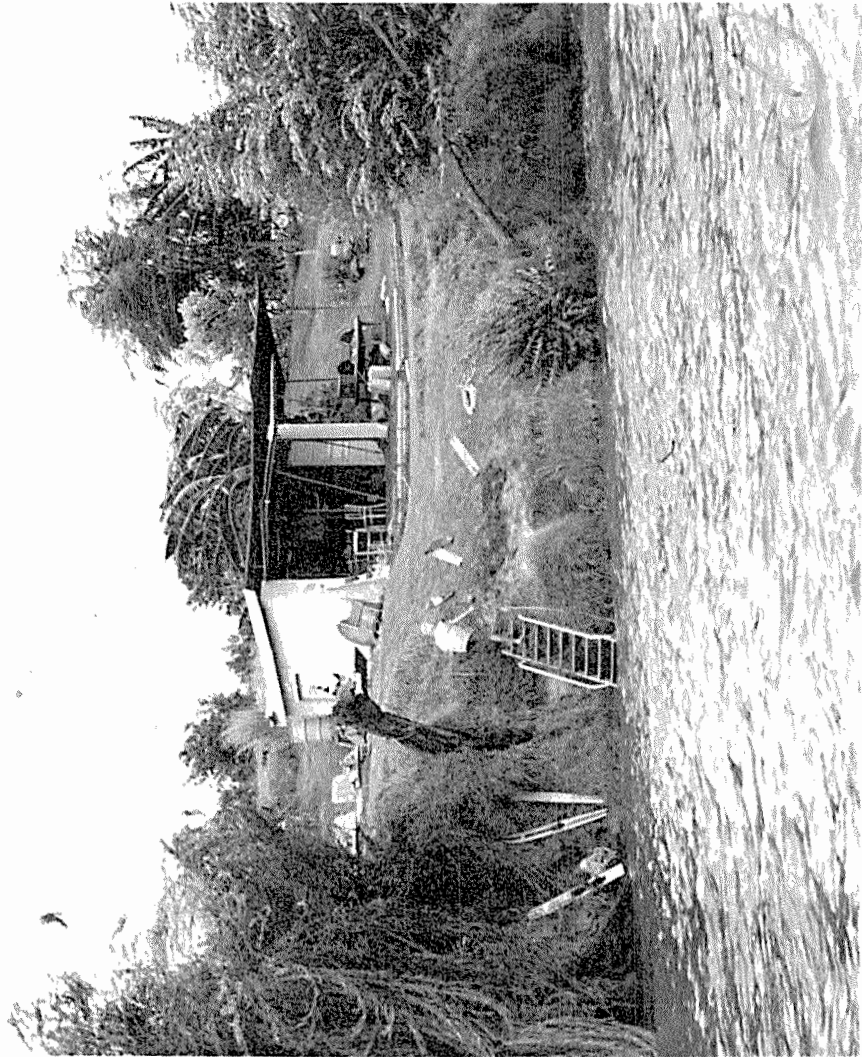
3049. EXHIBIT 70 - THREE PHOTOGRAPHS OF MR. MURRAY'S SKI SHACK.



3050. EXHIBIT 70 - THREE
PHOTOGRAPHS OF MR.
MURRAY'S SKI SHACK

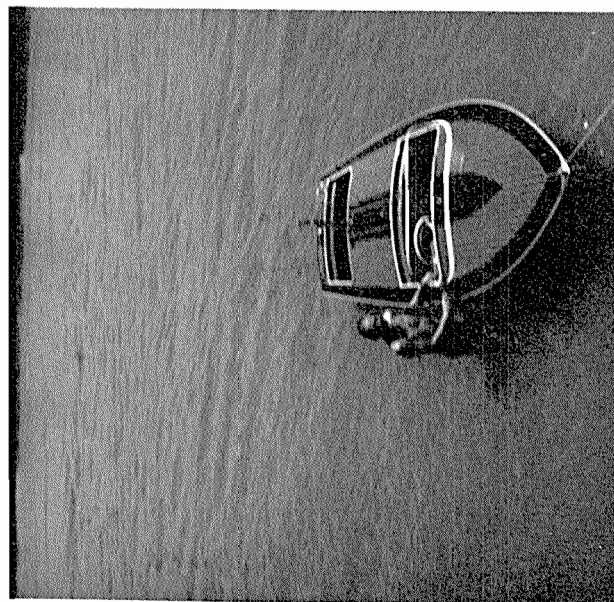


3051. EXHIBIT 70 - THREE
PHOTOGRAPHS OF MR.
MURRAY'S SKI SHACK

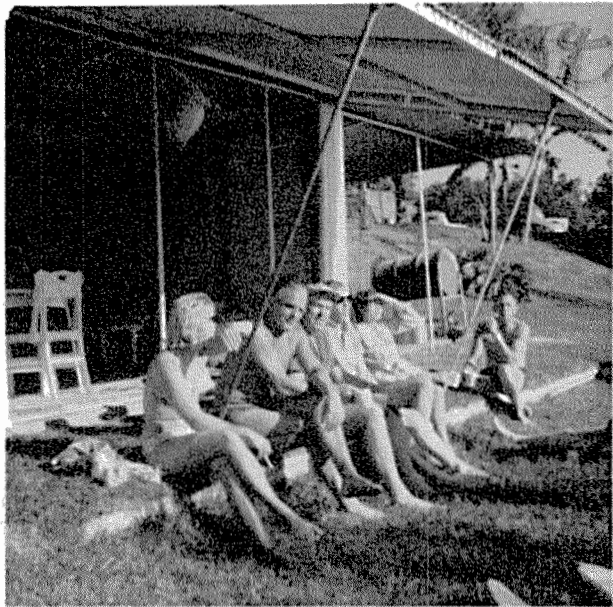


3052. EXHIBIT 71 - PHOTOGRAPHS
NUMBERED BY WITNESS

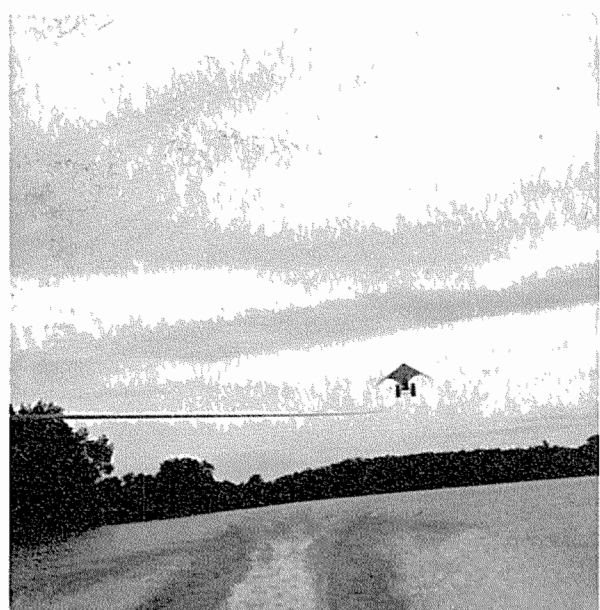
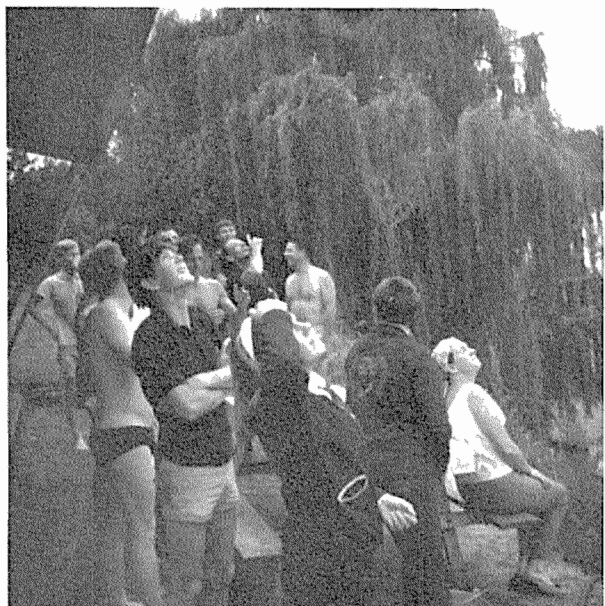
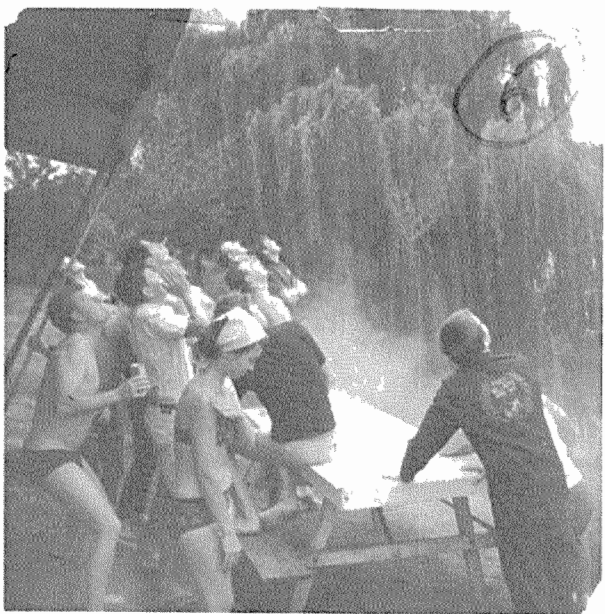




5054. EXHIBIT 71 - PHOTOGRAPHS
NUMBERED BY WITNESS



3055. EXHIBIT 71 - PHOTOGRAPHS
NUMBERED BY WITNESS



TESTIMONIUM BAPTISMI

U matici krštenih rimo-katoličke župe sv. Blaža u Zagrebu,
Matricula baptisatorum romano-catholicae Parochiae S. Blasii Zagrebiae,

svez. VIII str. 183 br. 150 ubilježeno je ovo:
tomo pag. Nr. Inscriptum est:

Anno: _____

mjeseca: _____
mense: _____

dana: _____
die: _____

a godine: _____
anno vero: _____

mjeseca: _____
mense: _____

dana: _____
die: _____

kršten je:
baptisat est:

rođen
nat


Krštenika: Baptisati:	Ime: Nomen:	Želimir Mirko		
	Zakonit ili nezakonit: Legitimus vel illegitimus:	zakoniti		
Roditelja njegovih: Parentum ipsius:	Porodično i rođeno ime te stališ: Cognomen, nomen et conditio:	oca: patris:	Dr. Dragan Draganović-Harasti, vlasnik trgovine boja i	
		matere: matris:	Draga rođj. Malačić	
	Prebivalište i nadležnost: Domicilium et indigenatus:	Zagreb, Vinogradska 15.		
Kumova: porodično i rođeno ime te stališ: Patrimorum cognomen, nomen et conditio:	Mirko Malačić, građ. potrošač i žena mu Panika, rktoi			
Porodično i rođeno ime te služba onoga, koji je krstio: Baptisantis cognomen, nomen et officium:	Matej Srša, kapelan			
Opaska: Observatio:				

Da se ovaj izvadak iz gore spomenute matice krštenih s tom maticom posve slaže, potpisani svjedoči vlastoručnim potpisom i župnim pečatom.

Extractum hunc e supradicta matricula baptisatorum cum eadem matricula concordare, infrascriptus testatur proprio manu subscriptione et appensione sigilli parochialis.

U ZAGREBU, dana 6. mjeseca veljače godine 1947.
ZAGREBIAE, die mense anno

Župnik:



Staatliche Meisterschule für angewandte Kunst in Graz

Brockmanngasse 70

Kat.-Zahl *1/e.*

Zeugnis

geboren am *7. 4. 1934.* zu *Zagreb* in *Jugoslawien*
Zelimir Dragomir - Horvatić



hat die

Berufsschule

der Abteilung für

Keramik, Ofenbau u. Töpferei

als *ausserordentlicher* Schüler des *1.* Semesters vom *13. 9. 1948.*

bis *12. 2. 1949.* besucht und ist folgendermaßen beurteilt worden:

Führung und Mitarbeit *sehr zufriedenstellend*

*modellieren
werkstätte*

*besucht
besucht*

Exhibit 72 - Birth Certificate
and Education Certificate of

3058. F. Hume

Wahlfreier Gegenstand

Notenreihe

Fortgang: sehr gut, gut, befriedigend, auszeichnend, mangelhaft, ungenügend.
 Führung und Mitarbeit: sehr zufriedenstellend, zufriedenstellend, minder zufriedenstellend, nicht zufriedenstellend.

Zahl der versäumten Unterrichtsstunden: ; davon nicht entschuldigt:

Der Schüler hat die für das Semester vorgeschriebenen Unterrichtsgegenstände
 besucht und wird auf Grund des Prüfungsergebnisses als
 ordentlicher Schüler in das Semester versetzt.

Graz, am 12. 2. 1949.

H. Obauer

Der Direktor.



Hans Ullmann

Der Abteilungsleiter.

KNOW ALL MEN BY THESE PRESENTS that I the undersigned FREDERICK HUME of Number 352 Darling Street, Balmain in the State of New South Wales, Taxi Driver and now and lately called ZELIMIR DRAGANOVIC HARASTI do hereby on behalf of myself and my heirs and issue lawfully begotten absolutely renounce and abandon the use of my names of ZELIMIR DRAGANOVIC HARASTI and in lieu thereof assume and adopt the names of FREDERICK HUME and for the purpose of evidencing such change of name I hereby declare that I shall at all times hereafter in all records deeds documents and other writings and in all actions suits and proceedings as well as in all dealings and transactions and matters and things whatsoever and upon all occasions use and subscribe the said names of FREDERICK HUME as my names in lieu of the names of ZELIMIR DRAGANOVIC HARASTI so abandoned as aforesaid and I therefore hereby expressly authorise and require all persons whomsoever at all times to designate describe and address me and my heirs and issue by such adopted names of FREDERICK HUME only. IN WITNESS whereof I have hereunto set my hand this twenty-second day of December in the year one thousand nine hundred and fifty-nine.

10

20

SIGNED by the said
 FREDERICK HUME (formerly
ZELIMIR DRAGANOVIC HARASTI
 in the presence of:

}
 FREDERICK HUME
 formerly
 ZELIMIR DRAGANOVIC
 HARASTI

30

N.V. MENLOVE
 Solicitor
 Sydney.

ROSE NICHOLAS, Clerk to Neville Vivian Menlove of
 160 Castlereagh Street, Sydney in the State of New

Exhibit 73 - Copy
Deed Poll changing
name

South Wales, Solicitor, being duly sworn maketh
oath and saith:-

The writing contained above has been com-
pared by me with the original Deed Poll and is a
true copy thereof.

SWORN at Sydney this 22nd day of December,
1959. Rose Nicholas Before me: S. Quigley 10
DEPUTY REGISTRAR

RECEIVED into the Registration of Deeds Office at
Sydney this 22nd day of December one thousand nine
hundred and fifty-nine at fifty two minutes past
Two o'clock in the afternoon from Rose Nicholas,
Clerk to Neville Vivian Menlove of 160 Castlereagh
Street, Sydney,

S. Quigley
DEPUTY REGISTRAR. Frederick Hume formerly 20
Zelimir Draganovik
Harasti.

ZIONS' LODGERS REGISTER

BEDS		NAME	USUAL ADDRESS	ARRIVAL		DEPARTURE		AMOUNT CHARGED	
D.	S.			DATE	TIME	DATE	TIME	\$	C
		Boyer	200 Bond Street - St. Bonaventura Bldg.					CWO	670
		John	11 Madison St. Worcester, Mass.					"	"
		Went	97A Huntington St. Astoria					"	"
5.		Joe Jones & LeRoy Kern	27 Manning Rd. Double Bay						
17		F. B. Webb	Washington W. A. U.S.T. 112						
24		Paul Lass	416 OXFORD RD. - HERRINGTON BAY					NUN	293
1	24	K. Hume	"					"	"
	15	F. Hume	33 Gardiner Street Lane Cove						
		X. Hume	"						
1		Burke	46 Eslington St. Waverley NSW					DDE	948.
1	22	J. Hume	138 Hobart St. Waverley NSW					DDE	698
		brother	14. 11. 66.						
		J. Hume	117 Kingsley St. Waverley NSW						
20		K. Hutchins	25 Miller Drive Pitt Rivers					EDK	055
19		L. Hume	88 Broadway St. Waverley NSW					FH	545
15		W. Hume	First Ave. Gallop Bend S. Aust.					HA 39-	619
7		J. Kelly	Princeton Es. Via Buckley QLD					JR	428
16		W. Hume	14 Victoria St. Waverley NSW					JH	353 611
5		W. Hume	35 Ashburton St. 29 Melbourne						
24		W. Hume	241 High St. Cumberland R.I. U.S.A.					NSW	XSG15
25		W. Hume	150 ... St. ...						
36		W. Hume	...						
		W. Hume	...						
		R. SPRESCHI.	303 RAINBOW ST. COOGEA.						

Exhibit 74 - Two signatures of F. Hume and address in Guest Register, Commodore Hotel-Motel, Jindabyne

ZIONS' LODGERS REGISTER

Page No

BEDS	NAME	USUAL ADDRESS	ARRIVAL		DEPARTURE		AMOUNT CHARGED	
			DATE	TIME	DATE	TIME	\$	C
1	J. H. Thurnside	155 ...						DLR 120
5	J. H. Thurnside	155 ...						DLR 70 70 6
Friday 25-11-66								
	P. Fraxino	Johns boat East Lakes						DLR 50 5
5	H. P. Smith	Taree						DLR 150 6 43
1	C. Gomez	48 Wilson St, Cheltenham	26/11/66					
4	M. M. Carson	90 Nicholson St Bris.						NWV 122
5	J. B. Douglas	23 Raymond St. Agnes S.A.						DLR 96 6
7	R. W. M. D. George	56 Mc BORMICK ST. EVANIN	27/11/66					553-71
12								
4	L. C. ...							
1	T. J. ...	3/22 Charnwood St.						

Exhibit 74 - Two signatures of F. Hume and address in Guest Register, Commodore Hotel-Motel, Jindabyne

THE LANDMARK BECAME TOO CONSPICUOUS

COMMENT

The failure of Landmark Corporation Ltd, Sydney, to send out its balance sheet and announce a date for its annual meeting, attracted the official curiosity of the Sydney Stock Exchange yesterday.

The exchange approached the managing director, Mr. Alexander Barton, and was told that Landmark anticipated making a statement by Monday.

10

Later, Mr. Barton was unable to say whether the statement would contain a date for the annual meeting.

Landmark last year published its accounts, a regularly glossy brochure of its home-unit building activities, in October and held the annual meeting in November.

This year, with Hawkesbury Development Co. incorporated into the group, there appears to be a statutory requirement to hold the meeting by December 2, 15 months after Hawkesbury's last annual meeting.

20

If two weeks notice are to be given of the meeting, as required by the Companies Act, then the date of the meeting must be announced before next Friday.

Mr. Barton commented that the accounts were currently with the printer, and this was the only reason for Landmark's meeting being set back.

The accounts were late, he said, because the chairman, Mr. A.E. Armstrong who was overseas until late in October, wanted to go through them personally when he got back.

30

However, the stock market has taken alarm and the company's shares have been pushed down to a low level of 30c buyer this week on high turnover.

Yesterday they rose to the buyer with no sales, and the only buyer in the market was a broker acting for Mr. Barton.

Mr. Barton commented: "I am not a seller, I am a buyer."

40

He said that last week he refused an offer to buy his holding, 170,000 shares and the company's second largest, at 70c share. He declined to say who the buyer was.

However, it seems unlikely to be Mr. Armstrong, who on July (?) sold 39,000 shares from his holdings of (illegible).

On the day that Mr. Armstrong sold his parcel, Mr. Barton's private company, Alebart Pty. Ltd, took a parcel the same size.

50

This week a parcel of (illegible) shares were sold at 44c. compared to Landmark's normal about 10,000 shares and its steady price of 60c up to three months ago.

Mr. Barton said he did not buy these. The sale however was "married" within the office of one broker.

10

The question being put in the city is whether some sort of corporate raid is either being made or planned on Landmark.

And whether the fall in price of the company's shares is connected with this.

The company's profit was down slightly this year, but the board has recommended a 5 per cent dividend; no reason apparent there for a fall of one-third, taking the shares below par.

There is an appeal pending in the case in which Brierley Investments Ltd is seeking redress over the Hawkesbury Developments takeover.

20

But there is no cause for a price drop here as Landmark notched up a clear points victory in the first round in the Equity Court.

However, while the managing director feels confident enough to stay in the market as a buyer of the company's shares, there should be no reason for other shareholders to panic.

We will see what happens on Monday.

30

NEW SOUTH WALES

21 = 1966/67

Members is Limited

SUMMARY OF EXPENDITURE

1967
Western Hill
00

... etc., will
... till cleared)

HUMES
Western Hill

Teller

NEW SOUTH WALES
Members is Limited

1967
Western Hill

00

... etc., will
... till cleared)

HUMES
Western Hill

Teller

TOTAL DEPOSITS FOR THE WEEK

GRAND TOTAL LAST WEEK

TOTAL DEPOSITS FROM JULY 1ST 5

WEEKLY CASH BALANCE & TAKINGS CHECK

CASH ON HAND AT END OF THE WEEK	38.49
PLUS CASH PAID OUT FOR PURCHASES	44.18
EXES. & OTHER EXPENDITURE	
CASH BANKED DURING WEEK	
LESS CASH ON HAND AT THE BEGINNING OF THE WEEK	82.67
TAKINGS FOR THE WEEK	—

994.98

1039.16

NOTES (-160)

27.00

PERSONAL EXPENDITURE (NON-DEDUCTIBLE)

33A INCOME TAX	
33B LOAN RE-PAYMENTS	
33C WITIF DRAWAL	
33D	
33E	

AMOUNT	A C NO.	ACCOUNT	THIS WEEK	LAST WEEK'S GRAND TOTALS	GRAND TOTALS TO DATE
✓ 19.00	1	PURCHASES		423.21	423.21
✓ 8.00	2	ACCOUNTANCY FEES			
50.60	3	ADVERTISING		17.30	17.30
	4	BANK CHARGES		12.37	12.37
33.00	5	CLEANING		1.15	1.15
	6	ELECTRICITY 116 108	20.22	16.15	36.37
	7	EQUIPMENT LEASING			
110.60	8	FREIGHT & CARTAGE			
3.410.94	9	GAS & FUEL			
3.521.54	10	INSURANCES (FIRE, ETC.)		103.03	103.03
	11	INTEREST			
3.597.45	12	LAUNDRY			
	13	LEGAL FEES		310.00	310.00
✓ 19.00	14	LICENSES 109 <i>etc</i>	12.00		12.00
✓ 8.00	15	MOTOR RUNNING EXPENSES <i>etc</i>	23.93	142.86	166.79
50.60	16	PAPER, BAGS, TWINE, TAPE, ETC.			
	17	PLANT PURCHASES		112.60	112.60
33.00	18	PRINTING & STATIONERY		4.15	4.15
110.60	19	RATES			
3.250.94	20	RENT 16. - 13. II. 67 <i>1/10 10c</i>	24.00	371.20	395.20
3.361.54	21	REPAIRS TO MOTOR VEHICLES		121.68	121.68
	22	REPAIRS TO PLANT		8.80	8.80
	23	REPAIRS TO PROPERTY			
	24	REPLACEMENTS		121.30	121.30
	25	SALARIES & WAGES <i>etc</i>	356.60	410.38	766.98
	26	STAMPS, TELEGRAMS & TELEPHONE <i>229.099</i>	64.95	147.47	212.42
	27	TRADE SUBSCRIPTIONS			
	28	TRAVEL EXPENSES <i>etc</i>	8.11	590.85	599.10
	29	WATCHMAN			
	30	Parking		14.00	14.00
	31				
	32A	DONATIONS			
	32B	EDUCATIONAL			
	32C	LIFE ASSURANCE			
	32D	MEDICAL & HOSPITAL FUND		0.10	0.10
	32E	CHEMIST		2.65	2.65
	32F	DENTAL			
	32G	DOCTOR			
	32H	OPTICAL			
	33A	INCOME TAX			
	33B	LOAN RE-PAYMENTS			
	33C	WITIF DRAWAL		538.00	538.00
	33D				
	33E				

TOTALS \$ 509,915.34 22 397,917

If keeping progressive totals, check the accuracy of four additions by ensuring that (a) plus (b) always equals (c).

Exhibit 76 - (1) Cheque butt pinned to 33rd week page of Mr. Hume's

cash balance: 1100.33

HARVEST. 1967. 1100.33

DATE	DAY	THIS WEEK	LAST WEEK & GRAND TOTALS	GRAND TOTALS TO DATE
19.2	MONDAY			
20.2	TUESDAY			
21.2	WEDNESDAY			
22.2	THURSDAY			
23.2	FRIDAY			
24.2	SATURDAY			
25.2	SUNDAY			
TOTAL THIS WEEK				
GRAND TOTAL LAST WEEK				
GRAND TOTAL TO DATE \$				
RECORD OF BANK DEPOSITS				
19.2	MONDAY			
20.2	TUESDAY			
21.2	WEDNESDAY			
22.2	THURSDAY			
23.2	FRIDAY			
TOTAL DEPOSITS FOR THE WEEK				
GRAND TOTAL LAST WEEK				
TOTAL DEPOSITS FROM JULY 1st \$				
WEEKLY CASH BALANCE & TAKINGS CHECK				
CASH ON HAND AT END OF THE WEEK				
PLUS CASH PAID OUT FOR PURCHASES				
EXES. & OTHER EXPENDITURE				
CASH BANKED DURING WEEK				
LESS CASH ON HAND AT THE BEGINNING OF THE WEEK				
TAKINGS FOR THE WEEK \$				
PERSONAL EXPENDITURE (TAX DEDUCTIBLE)				
32A DONATIONS				
32B EDUCATIONAL				
32C LIFE ASSURANCE				
32D MEDICAL & HOSPITAL FUND				
32E CHEMIST				
32F DENTAL				
32G DOCTOR				
32H OPTICAL				
PERSONAL EXPENDITURE (NON-DEDUCTIBLE)				
33A INCOME TAX				
33B		15% CHQ 12144 LOAN RE-PAYMENTS to Armstrong	500.00	
33C				
33D				
33E				
TOTALS \$				

week: To Self
67 For Expenses
68
3.2

Balance Bt. Fd.	646	01
Deposited ..	40	00
Deposited ..	595	09
Total ..		
This Cheque	500	00
Balance Cd. Fd.	142	14

Loan re-payments

Exp. / Job Work

25th week - 1966/67

DATE	DAY	AMOUNT
12/12	MONDAY	
13/12	TUESDAY	
14/12	WEDNESDAY	4.00
15/12	THURSDAY	
16/12	FRIDAY	
17/12	SATURDAY	
18/12	SUNDAY	
TOTAL THIS WEEK		4.00
GRAND TOTAL LAST WEEK		2,010.39
GRAND TOTAL TO DATE		2,014.39

RECEIPTS		SUMMARY OF EXPENDITURE	
DATE	DAY	AMOUNT	
		16/12	992528
		To M. Hume	
		For 1966	
		Balance Bl. Fd.	420.35
		Deposited	20.00
		Deposited ..	440.35
		Total ..	10.00
		This Cheque	135.00
		Balance Cd. Fd.	305.58
		LAST WEEK'S GRAND TOTALS	238.73
		GRAND TOTALS TO DATE	238.73
			8.15
			6.40
			1.15
			10.00
			103.03
			103.03

RECORD OF BANK DEPOSITS		
12/12	MONDAY	
13/12	TUESDAY	
14/12	WEDNESDAY	4.00
15/12	THURSDAY	
16/12	FRIDAY	
TOTAL DEPOSITS FOR THE WEEK		4.00
GRAND TOTAL LAST WEEK		1,960.39
TOTAL DEPOSITS FROM JULY 1ST		1,964.39

10	INSURANCES (FIRE, ETC.)		
11	INTEREST		
12	LAUNDRY		
13	LEGAL FEES		3.00
14	LICENSES		
15	MOTOR RUNNING EXPENSES	CSA 72.98	122.88
16	PAPER, BAGS, TWINE, TAPE, ETC.		
17	PLANT PURCHASES	CSA 74.60	38.00
18	PRINTING & STATIONERY		4.15
19	RATES		
20	RENT	492.56	29.00
21	REPAIRS TO MOTOR VEHICLES		171.75
22	REPAIRS TO PLANT		97.21
23	REPAIRS TO PROPERTY		
24	REPLACEMENTS		114.05
25	SALARIES & WAGES	CSA 135.00	249.25
26	STAMPS, TELEGRAMS & TELEPHONE		147.47
27	TRADE SUBSCRIPTIONS		
28	TRAVEL EXPENSES	CSA 11.00	579.85
29	WATCHMAN		
30			14.00
31			14.00

WEEKLY CASH BALANCE & TAKINGS CHECK		
CASH ON HAND AT END OF THE WEEK		
PLUS CASH PAID OUT FOR PURCHASES	74.60	
EXES. & OTHER EXPENDITURE	23.98	
CASH BANKED DURING WEEK		98.58
LESS CASH ON HAND AT THE BEGINNING OF THE WEEK		
TAKINGS FOR THE WEEK		843.63

32A	CONTRIBUTIONS		
32B	EDUCATIONAL		
32C	LIFE ASSURANCE		
32D	MEDICAL & HOSPITAL FUND		0.10
32E	CHEMIST		0.20
32F	DENTAL		
32G	DOCTOR		
32H	OPTICAL		

15/12	132.17
16/12	136.17
17/12	136.00
18/12	380.17

PERSONAL EXPENDITURE (NON-DEDUCTIBLE)		(A)	(B)	(C)
33A	INCOME TAX			
33B	LOAN RE-PAYMENTS			
33C	WITNESS FEES		440.00	440.00
33D				
33E				
TOTALS		262.58	2,349.37	2,611.95

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If keeping progressive totals, check the accuracy of your additions by ensuring that (a) plus (b) always equals (c).

Exhibit 76 - (3) Cheque butt No. 992528 pinned to 25th week page of Mr. Hume's Cashbook

DATE	DAY	AMOUNT
1 5	MONDAY	24.00
2 5	TUESDAY	13.00
3 5	WEDNESDAY	
4 5	THURSDAY	43.00
5 5	FRIDAY	
6 5	SATURDAY	
7 5	SUNDAY	30.00

4th May 1967
 Forty three
 Dollars
 43.00
 Heavens Amplitude
 Re Michael Novak

To: Mr Novak
 For: Week Notes

BALANCE Bt. Fd.	518	48
Deposits		
TOTAL	46	00
This Cheque	47	2
BALANCE Co. Fd.		

879220
 88.58

TOTAL THIS WEEK	110.00
GRAND TOTAL LAST WEEK	5.022.85
GRAND TOTAL TO DATE	5.132.55

326.75.91

DATE	DAY	AMOUNT
1 5	MONDAY	24.00
2 5	TUESDAY	13.00
3 5	WEDNESDAY	
4 5	THURSDAY	43.00
5 5	FRIDAY	

TOTAL DEPOSITS FOR THE WEEK	80.00
GRAND TOTAL LAST WEEK	4.826.85
TOTAL DEPOSITS FROM JULY 1ST	4.906.55

226 CASH

DESCRIPTION	AMOUNT
CASH ON HAND AT END OF THE WEEK	27.67
PLUS CASH PAID OUT FOR PURCHASES	2.33
EXES. & OTHER EXPENDITURE	
CASH BANKED DURING WEEK	
LESS CASH ON HAND AT THE BEGINNING OF THE WEEK	30.00
TAKINGS FOR THE WEEK	30.00

1442.83
 2.33
 144.16 = 196

NOTES 1249.16
 G. 636.22
 80.00
 G. 716.22
 D. 157.50
 G. 558.72

8	FREIGHT & CARTAGE		
9	GAS & FUEL		
10	INSURANCES (FIRE, ETC.)	103.03	103.03
11	INTEREST		
12	LAUNDRY		
13	LEGAL FEES	315.22	315.22
14	LICENSES	4.00	16.00
15	MOTOR RUNNING EXPENSES	256.85	256.85
16	PAPER, BAGS, TWINE, TAPE, ETC.		
17	PLANT PURCHASES	112.60	112.60
18	PRINTING & STATIONERY	39.36	39.36
19	RATES		
20	RENT	24.00	683.20
21	REPAIRS TO MOTOR VEHICLES		138.30
22	REPAIRS TO PLANT	8.80	8.80
23	REPAIRS TO PROPERTY		
24	REPLACEMENTS	1.50	165.04
25	SALARIES & WAGES	88.00	1.080.10
26	STAMPS, TELEGRAMS & TELEPHONE		257.67
27	TRADE SUBSCRIPTIONS		18.00
28	TRAVEL EXPENSES		601.10
29	WATCHMAN		
30	Parking Fines		14.00
31	General Exp		41.16
PERSONAL EXPENDITURE (TAX DEDUCTIBLE)			
32A	DONATIONS		
32B	EDUCATIONAL		
32C	LIFE ASSURANCE		
32D	MEDICAL & HOSPITAL FUND	33.06	33.06
32E	CHEMIST	2.75	2.75
32F	DENTAL	160.00	160.00
32G	DOCTOR		
32H	OPTICAL		
PERSONAL EXPENDITURE (NON-DEDUCTIBLE)			
33A	INCOME TAX		
33B	LOAN RE-PAYMENTS		
33C	General WIP	40.00	808.00
33D			
33E			
TOTALS		5.795.45	5.955.28

If keeping progressive totals, check the accuracy of your additions by ensuring that (a) plus (b) always equals (c).

Exhibit 76 - Cheque butt
 No. 879220 and Deposit
 Slipp 4/5/1967 pinned to
 45th week page of Mr.

STATEMENT OF ACCOUNT WITH
Commonwealth Trading Bank of Australia
KINGS CROSS
 N.S.W.

KINDLY NOTIFY ANY
CHANGE OF ADDRESS

HUMES INVESTIGATIONS

PLEASE EXAMINE THIS STATE-
MENT PROMPTLY AND ADVISE
US OF ANY DISCREPANCY

DATE	PARTICULARS	DEBIT	CREDIT	BALANCE
APR2166	BALANCE FORWARD	NEW ACCOUNT	30.60	30.60 CR
APR2666	CH I		20.00	50.60 CR
APR2766	CH 2		19.00	69.60 CR
APR2866	425	15.00		54.60 CR
APR2966	CH I		6.00	
APR2966	422	20.00		40.60 CR
MAY 366	Search Fees	.50		
MAY 366	42I	6.30		33.80 CR
MAY1166	CH 3		41.75	75.55 CR
MAY1266	CH 2		109.30	184.85 CR
MAY1366			12.50	
MAY1366	429	20.00		177.35 CR
MAY1666	426	20.00		157.35 CR
MAY1966			4.00	161.35 CR
MAY2066	424	4.00		
MAY2066	CH I		4.00	161.35 CR
MAY2466	430	54.24		107.11 CR
MAY2766	CH 3		14.50	
MAY2766	432	60.00		61.61 CR
MAY3166	423	4.95		56.66 CR
JUN 266	CH 4		25.00	81.66 CR
JUN 366	433	10.00		71.66 CR
JUN 666	434	42.00		29.66 CR
JUN1066	CH 2		28.20	
JUN10	436	20.00		37.86 CR
JUN1666	CH 2		57.75	
JUN1666	437	20.00		
JUN1666	43I	10.00		65.61 CR
JUN2066	438	8.00		57.61 CR
JUN2366	CH I		8.00	
JUN2366	439	10.00		55.61 CR
JUN2466	435	10.00		45.61 CR
JUN2766	CH 6		70.30	115.91 CR
JUN2966	CH I		10.00	
JUN2966	44I	60.00		65.91 CR
JUL 566	442	5.15		
JUL 566	440	11.69		49.07 CR
JUL1166	TR 2		64.00	113.07 CR
JUL1266	FEE	2.00		111.07 CR
JUL1566	444	20.00		
JUL1566	443	54.24		36.83 CR
JUL2166	446	1.75		35.08 CR
JUL2266	448	40.00		4.02 DD
JUL2266	CH 6		42.75	37.83 CR

CONTINUED OVERLEAF

CHEQUES, ETC., ALTHOUGH PASSED TO CREDIT, ARE ACCEPTED FOR COLLECTION ONLY, AND WILL NOT BE AVAILABLE UNTIL CLEARED

EXPLANATION OF ABBREVIATIONS USED			
AL(T)	means Allotment.	CSH	means Cash.
B/C	" Bill collected for you.	CT(I)	" Interest on Commonwealth Treasury Bonds or Stock.
CB(K)	" Cheque Book.	D(DV)	" Dividend.
C/C	" Cash and Cheque(s).	EX(C)	" Exchange on Cheques paid in.
C/E	" Child Endowment.	FE(E)	" Charge for keeping A/c.
CH(Q)	" Cheque(s) included in Deposits	IN(T)	" Interest on A/c.
CR	" Account in Credit.	OD	" Account in Debit.
		P/A	means Payment or Transfer Under Authority.
		P/N	" Promissory Note.
		REP.	" Unpaid Cheque re-presented.
		RET	" Cheque returned unpaid and debited to your account.
		T/T	" Telegraphic Transfer.

Exhibit 78 - Ledger Sheet,
Commonwealth Trading Bank,
King's Cross, a/c Hume's
Investigations

COPY

A

H. 61

STATEMENT OF ACCOUNT WITH
Commonwealth Trading Bank of Australia

KINGS CROSS
N.S.W.

HUMES INVESTIGATIONS

KINDLY NOTIFY ANY
CHANGE OF ADDRESS

PLEASE EXAMINE THIS STATE-
MENT PROMPTLY AND ADVISE
US OF ANY DISCREPANCY

DATE	PARTICULARS	DEBIT	CREDIT	BALANCE
JUL22 66	BALANCE FORWARD			37.83 <u>CR</u>
JUL25 66	447	6.40		31.43 <u>CR</u>
JUL27 66	449	21.00		
JUL27 66	445	3.59		6.84 <u>CR</u>
AUG 3 66	CH 3		420.00	426.84 <u>CR</u>
AUG 4 66		1.20		425.64 <u>CR</u>
AUG 9 66	CH 2		102.25	527.89 <u>CR</u>
AUG10 66	CH I		5.75	533.64 <u>CR</u>

CONTINUED OVERLEAF

CHEQUES, ETC., ALTHOUGH PASSED TO CREDIT, ARE ACCEPTED FOR COLLECTION ONLY, AND WILL NOT BE AVAILABLE UNTIL CLEARED

EXPLANATION OF ABBREVIATIONS USED			
AL(T) means Allotment.	CSH means Cash.	P/A means Payment or Transfer Under Authority.	
B/C " Bill collected for you.	CT(I) " Interest on Commonwealth Treasury Bonds or Stock.	P/N " Promissory Note.	
CB(K) " Cheque Book.	D(I)V " Dividend.	REP. " Unpaid Cheque re-presented.	
C/C " Cash and Cheque(s).	EX(C) " Exchange on Cheques paid in.	RET " Cheque returned unpaid and debited to your account.	
C/E " Child Endowment.	FF(E) " Charge for keeping A/c.	T/T " Telegraphic Transfer.	
CH(Q) " Cheque(s) included in Deposits	IN(T) " Interest on A/c.		
CR " Account in Credit.	OD " Account in Debit.		

3071. Exhibit78 - Ledger Sheet,
Commonwealth Trading Bank,
King's Cross, a/c Hume's
Investigations

A

copy

STATEMENT OF ACCOUNT WITH
Commonwealth Trading Bank of Australia

KINGS CROSS
N.S.W.

KINDLY NOTIFY ANY
CHANGE OF ADDRESS

PLEASE EXAMINE THIS STATE-
MENT PROMPTLY AND ADVISE
US OF ANY DISCREPANCY

HUMES INVESTIGATIONS

DATE	PARTICULARS	DEBIT	CREDIT	BALANCE
	BALANCE FORWARD			
AUG1066				533.64 CR
AUG1066	450	54.24		479.40 CR
AUG1166	791	51.88		427.52 CR
AUG1266	793	50.00		377.52 CR
AUG1566	792	33.60		343.92 CR
AUG24CH			100.00	
AUG2466	794	42.00		401.92 CR
AUG25CH			95.00	496.92 CR
AUG2966	797	54.00		442.92 CR
AUG30CH			11.00	
AUG3066	796	50.00		403.92 CR
SEPI66	798	7.00		396.92 CR
SEP266	795	100.00		296.92 CR
SEP866	799	21.00		275.92 CR
SEP866	800	54.24		221.68 CR
SEPI3CH			6.00	227.68 CR
SEPI466	805	8.65		
SEPI466	802	37.60		
SEPI466	803	100.00		
SEPI466	804	22.30		
SEPI466	806	27.00		32.13 CR
SEPI666	801	27.00		5.13 CR
SEP30CH			26.00	31.13 CR
OCT766			12.00	43.13 CR
OCT11CH			61.50	104.63 CR
OCT12CH			84.00	188.63 CR
OCT13CH			58.39	247.02 CR
OCT17CH			30.00	
OCT1766	807	6.00		271.02 CR
OCT18FE		2.00		269.02 CR
OCT18CH			10.00	279.02 CR
OCT20CH			20.00	
OCT2066	808	100.00		199.02 CR
OCT24 CH			133.00	332.02 CR
NOV2CH			27.00	359.02 CR
NOV3CH			50.00	
NOV366	810	25.40		383.62 CR
NOV7CH			32.00	
NOV766	811	5.25		410.37 CR
NOV9CH			500.00	910.37 CR
NOV10CH			8.00	918.37 CR

CONTINUED OVERLEAF

CHEQUES, ETC., ALTHOUGH PASSED TO CREDIT, ARE ACCEPTED FOR COLLECTION ONLY, AND WILL NOT BE AVAILABLE UNTIL CLEARED

EXPLANATION OF ABBREVIATIONS USED			
AL(T)	means	Allotment.	
B/C	..	Bill collected for you.	CSH means Cash.
CB(K)	..	Cheque Book.	CT(I)
C/C	..	Cash and Cheque(s).	..
C/E	..	Child Endowment.	Interest on Commonwealth Treasury
CH(Q)	..	Cheque(s) included in Deposits	Bonds or Stock.
CR	..	Account in Credit.	D(DV)
			..
			Dividend.
			EX(C)
			..
			Exchange on Cheques paid in.
			FE(E)
			..
			Charge for keeping A/c.
			IN(T)
			..
			Interest on A/c.
			OD
			..
			Account in Debit.
			P/A
			..
			means Payment or Transfer Under Authority.
			P/N
			..
			Promissory Note.
			REP.
			..
			Unpaid Cheque re-presented.
			RET
			..
			Cheque returned unpaid and debited to your account.
			T/T
			..
			Telegraphic Transfer.

DATE	PARTICULARS	DEBIT	CREDIT	BALANCE
	BALANCE FORWARD			918.37 CR
NOV15CH	2		14.00	932.37 CR
NOV2366	8I2	108.75		823.62 CR
NOV24CH	2		23.00	846.62 CR
NOV30CH	I		10.00	
NOV3066	8I5	20.00		
NOV3066	8I4	50.00		786.62 CR
NOV3066				786.62 CR
DECI66	820	60.00		
DECI66	8I7	50.80		675.82 CR
DEC266	8I9	25.40		650.42 CR
DEC266	8I8	20.00		
DEC266	8I3	11.80		618.62 CR
DEC5CH		1.20		
DEC566	52I	30.00		587.42 CR

COPY

A

H. 61

STATEMENT OF ACCOUNT WITH
Commonwealth Trading Bank of Australia

KINGS CROSS
N.S.W.

HUMES INVESTIGATIONS

KINDLY NOTIFY ANY
CHANGE OF ADDRESS

PLEASE EXAMINE THIS STATE-
MENT PROMPTLY AND ADVISE
US OF ANY DISCREPANCY

DATE	PARTICULARS	DEBIT	CREDIT	BALANCE
DEC 5 66	BALANCE FORWARD			587.42 CR
DEC 6 66	523	20.00		567.42 CR
DEC 7 66	816	21.00		546.42 CR
DEC 8 66	CH I		6.75	532.17 CR
DEC 8 66	522	21.00		532.17 CR
DEC 9 66	CH I		8.00	540.17 CR
DEC 14 66	CH I		4.00	
DEC 14 66	525	6.00		
DEC 14 66	524	2.00		536.17 CR
DEC 15 66	526	21.00		515.17 CR
DEC 16 66	528	135.00		380.17 CR
DEC 19 66	CH I		20.00	400.17 CR
DEC 21 66	532	6.35		
DEC 21 66	527	8.00		385.82 CR
DEC 22 66	CH 3		25.75	411.57 CR
DEC 22 66	531	2.45		
DEC 22 66	530	24.00		385.12 CR
DEC 23 66	533	58.00		327.12 CR
DEC 30 66	529	40.00		287.12 CR
JAN 2 67	534	24.00		263.12 CR
JAN 4 67	535	20.00		243.12 CR
JAN 5 67	CH I		1094.30	1337.42 CR
JAN 6 67	CH I		30.00	1367.42 CR
JAN 9 67	536	24.00		1343.42 CR
JAN 10 67	FEE	3.80		1339.62 CR
JAN 10 67	537	76.00		1263.62 CR
JAN 12 67	538	180.00		1083.62 CR
JAN 13 67	539	24.00		1059.62 CR
JAN 16 67	540	6.15		1053.47 CR
JAN 17 67	541	127.00		926.47 CR
JAN 23 67	CH 2		43.00	
JAN 23 67	542	24.00		945.47 CR
JAN 25 67	543	24.00		921.47 CR
JAN 26 67	CH 7		73.50	994.97 CR
JAN 31 67			.23	
JAN 31 67	FEE	.90		
JAN 31 67	544	108.48		885.82 CR
FEB 1 67	545	885.82		NIL

This is the document marked "A" referred to in the affidavit of Kenneth Ernest Purden sworn before me the twenty fourth day of September, 1968

CONTINUED OVERLEAF

CHEQUES, ETC., ALTHOUGH PASSED TO CREDIT, ARE ACCEPTED FOR COLLECTION ONLY, AND WILL NOT BE AVAILABLE UNTIL CLEARED

EXPLANATION OF ABBREVIATIONS USED			
AL(T) means Allotment.	CSH means Cash.	P/A means Payment or Transfer Under Authority.	
B/C " Bill collected for you.	CT(I) " Interest on Commonwealth Treasury Bonds or Stock.	P/N " Promissory Note.	
CB(K) " Cheque Book.	D(I)V " Dividend.	REP. " Unpaid Cheque re-presented.	
C/C " Cash and Cheque(s).	EX(C) " Exchange on Cheques paid in.	RET " Cheque returned unpaid and debited to your account.	
C/E " Child Endowment.	FE(E) " Charge for keeping A/c.	T/T " Telegraphic Transfer.	
CH(Q) " Cheque(s) included in Deposits	IN(T) " Interest on A/c.		
CR " Account in Credit.	OD " Account in Debit.		

1966/67 - a/c - (17) MOT. RUN EX
Rushcutters Bay Service Station Pty. Ltd.

Specialists in Washing, Greasing, Polishing and Repairs
84 BAYSWATER ROAD

Phone: 35-3899 *J 29 7* 196*7*

RECEIVED from M. *CASH*

the sum of *One* Pounds

2 10 7 Shillings *Eight* Pence

being *ONE*

£ *1* : *10* : *7* per *ONE*

26 7 196*6* No. *80*

Received from *Mr. Flume*

Lane Cove N.S.W.

the sum of *Eight Dollars*

being for *deposit* *5*th week = 1966/67
a/c - No. 28 - TRAVEL EXP.

Fabulous Flamingo Motel

W. D. O'Gly HANLAN STREET,
SURFERS PARADISE

8-00 Flamingo

DUTY
STAMP

30 7 1966 No. *7*

Received from *Mr. Flume*

Lane Cove N.S.W.

the sum of *Twenty Two Dollars*

10 cents

being for *Surf a/c - (28) - TRAVEL EXPENSES*

W. D. O'Gly Fabulous Flamingo Motel

22-10 HANLAN STREET, DUTY
SURFERS PARADISE STAMP

5th week = 1966/67; 25 - 31.7.66

IN EQUITY
CORAM STREET 1.

Trustee v Beneficiary 1000
Defendant EXHIBIT 79

1/10/68 C. H. H. H.
ASSOCIATE.

5th week = 1966/67
Travel Expenses
e/c, No. (28)

No. 38

Ref. Mr. Marks
Bank of N.S.W.
341 George St.
Sydney (Ph. 20244)
(Extn 2507)

IN THE SUPREME COURT }
OF NEW SOUTH WALES }
IN EQUITY }

No. 23 of 1968

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith. 10

To THE MANAGER, BANK OF NEW SOUTH WALES
(HEAD OFFICE) 341 GEORGE STREET, SYDNEY.

GREETING:

We command you, that laying all other matters and business aside, and notwithstanding any excuse, you be and appear in your own proper person before our Supreme Court of New South Wales, in its Equitable Jurisdiction, at No. 10 Court/Mena House/Macquarie Street, on Tuesday the Fourteenth day of May 1968 at the hour of ten of the clock in the forenoon, and thence from day to day, at the same hour of each day, until the suit hereinafter mentioned shall be heard, to testify all and singular those things which you know in a certain suit now pending in our said Court between ALEXANDER BARTON Plaintiff and ALEXANDER EWAN ARMSTRONG & OTHERS. Defendant, on the part of the Plaintiff and on that day to be heard. And that you diligently search and enquire for and procure and bring with you and produce at the time and place aforesaid, all deeds, instruments, books, papers, maps, plans, specifications, writings, letters, vouchers, receipts, documents, and memoranda, and all drafts and copies thereof in your possession or power relating to or in anywise concerning, or which can or may afford any evidence or information respecting the matters in question in the said suit, and particularly 20 30 40

TO PRODUCE:

Cheque dated on or about the 9th November, 1966 in the sum of \$500.00 drawn on the account of PACIFIC PANORAMA PTY. LIMITED and payable to Hume Investigations.

And this you and any of you shall by no means omit, under a penalty upon you and each of you of One Hundred Pounds.

WITNESS - The Honourable CHARLES McLELLAND, the Chief Judge in Equity of our said Court at Sydney the 9th day of May in the ~~fourteenth~~ 17th year of our Reign and A.D. 1968. 50

D. HALLIGAN (L.S.)
for Chief Clerk in Equity.

Solicitor for the Plaintiff
SYDNEY. P. JAY

O | N

18155

CHEVRON PARADISE
HOTEL

Signature *A [Signature]*

Address *187 EDINBURGH RD*

City—State *CASTLE CRAG
N.C.*

Room No. *258/0*

Rate *\$21.00.*

Time of arrival.....

9:30

Clerk.....

A SAFE DEPOSIT BOX is provided in the front office
for your valuables, otherwise management will not be
responsible for any losses.

NAME	BARTON, MR. A.	26/7
	DATE OF ARRIVAL 21st July 1966	TIME OF ARRIVAL
REQUEST		
SUITE - POOLSIDE NORTH		
MODE OF REQUEST Telephone	DATE OF REQUEST 19/7/1966	
DETAILS OF OUR CONFIRMATION	REQUESTED	
	DEPOSIT <input type="checkbox"/>	
	CONFIRMATION <input type="checkbox"/>	
<i>Deposit</i> <i>Commission</i> <i>Cheque Rec.</i> <i>Date</i> <i>Receipt No.</i> <i>Discount</i> <i>Special Tariff</i> <i>Authority</i>	<i>Spec. Instructions</i> 258/0 /	
DEPARTING		

CHEVRON PARADISE HOTEL

SIGNATURE _____ ROOM NO: 258 CHARGE: \$21.00

NAME - ADDRESS
 Mr. A. Barton
 187 Edinburgh Rd.;
 Castlecrag, NSW.

DATE	REF.	CHARGES	CREDITS	BALANCE
				* 86.10S
UL 24/8	5062	A* .70		
UL 24/8	510	A* .70		
UL 24/8	505	A* .70		* 87.16
UL 24/8	ROOM 258	C* 21.00		* 108.16
UL 24/8	C/M 88500	C* .50		
UL 24/8	C/M 88511	C* 1.55		
UL 24/8	C/M 88510	C* .50		
UL 24/8	C/DR 5159	C* 1.55		
UL 24/8	C/DR 5155	C* .65		
UL 24/8	C/DR 5162	C* 1.65		* 111.95
UL 24/8	TFL 258	A* .24		* 115.20
UL 24/8	8500	A* .70		
UL 24/8	C/M 88500	A* .55		* 116.05

4-6

of Hamilton Corporation

109 Pitt St

Sydney

4-8 1966

001934

A CHEVRON QUEENSLAND LTD. HOTEL, one of the BIG 3 Hotels of Surfers Paradise, incorporating Chevron PARADISE HOTEL, SEABREEZE Holiday Hotel and SURFERS PARADISE Hotel

P.O. Box 147, Surfers Paradise Phone 9 3011 Telegraphic Address: "Chevron", Surfers Paradise

- | | | |
|--------------------|------------------|-----------------------|
| ROOM - ACCOM. | MISC. D - Fridge | MISC. J - Papers |
| REST. - MEALS | E - T.V. & Radio | K - Service Stat. |
| DR. - DRINKS | F - Flowers | L - Telegrams & Cabl. |
| S - LAUNDRY & D.C. | G - S.P. Charges | M - Conf. Room |
| | H - Heater | |

CHEVRON PARADISE HOTEL

SIGNATURE _____ ROOM NO 258/0 CHARGE: \$21.00

A. Barton

NAME - ADDRESS Mr. A. BARTON
187 EDINBURGH RD.,
CASTLECRAG N.S.W.

DATE	REF.	CHARGES	CREDITS	BALANCE
JL 21 st	ROOM 258	A* 21.00		* 21.00
JL 21 st	TEL. 258	A* .08		* 21.08
JL 21 st	C/M/S 0051	A* .50		* 21.68
JL 21 st	REPAID 0051	A* .70		* 21.88
JL 21 st	TEL. 4002	A* .70		
JL 21 st	TEL. 4015	A* 1.70		* 23.38
JL 21 st	TEL. 4015	B* 1.70		* 24.68
JL 21 st	TEL. 258	B* .08		* 24.76
JL 21 st	TEL. 4024	B* 1.60		* 26.36
JL 22 nd	ROOM 258	C* 21.00		* 47.36
JL 22 nd	REPAID 0229	B* .70		* 47.66
JL 22 nd	C/M/S 0229	B* .55		* 48.21
JL 22 nd	TEL. 4071	B* 2.60		
JL 22 nd	TEL. 4076	B* 2.60		* 53.41
JL 23 rd	REPAID 5043	A* 1.00		* 54.41
JL 23 rd	ROOM 258	C* 21.00		* 75.41
JL 23 rd	C/M/S 0543	A* 5.00		* 80.41
JL 23 rd	REPAID 0428	B* .70		* 80.71
JL 23 rd	TEL. 4115	B* 4.90		* 85.61
JL 23 rd	C/M/S 0428	B* .55		* 86.16

A CHEVRON QUEENSLAND LTD. HOTEL, one of the BIG 3 Hotels of Surfers Paradise, incorporating
Chevron PARADISE HOTEL, SEABREEZE Holiday Hotel and SURFERS PARADISE Hotel
P.O. Box 147, Surfers Paradise Phone 9 3011
KEY TO SYMBOLS No. *2017934*
Telegraphic Address: "Chevron", Surfers Paradise

ROOM— ACCOM. MISC. D— Fridge MISC. J— Papers
REST.— MEALS E— T.V & Radio K— Service Stat.
DR. — DRINKS F— Flowers L— Telegrams & Cobl.
S — LAUNDRY & D.C. G— S.P Charges M— Conf. Room
H— Heater

W. S. Armstrong
Child

O N

W. S. Armstrong

CHEVRON PARADISE
HOTEL

Signature _____ Corporation

Address *Lanagrave Corporation*

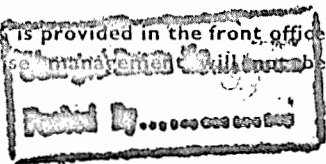
City-State *Pitt SR - Ark*


258 / - Room No. *258* - *347*
\$21 - - Rate *\$39* - *50*

Time of arrival _____

Clerk *h K.*

A SAFE DEPOSIT BOX is provided in the front office
for your valuables, otherwise the hotel is not
responsible for any losses.



NAME	Armstrong	27/7	31/7
	DATE OF ARRIVAL	27/7	TIME OF ARRIVAL
REQUEST			
MODE OF REQUEST		DATE OF REQUEST	
DETAILS OF OUR CONFIRMATION		REQUESTED DEPOSIT <input type="checkbox"/> CONFIRMATION <input type="checkbox"/>	
Deposit Commission Cheque Rec. Date Receipt No. Discount Special Tariff Authority		Spec. Instructions 	
DEPARTING			

CHEVRON PARADISE HOTEL

SIGNATURE ROOM NO: 252 / CHARGE: ~~135.50~~

H.E. Armstrong

NAME ADDRESS MR/S. ARMSTRONG & CHILD,
LANDGRAVE CORPORATION,
PITT STREET, SYDNEY. N.S.W.

DATE	REF.	CHARGES	CREDITS	BALANCE
27	ROOM 258	A* 30.50		* 30.50
27	ROOM 258	A* 1.00		* 39.70
27	C/DR 3150	A* 2.05		* 41.75
27	TEL 258	A* .90		* 42.71
27	C/DR 2373	A* .50		* 43.21
27	TEL 4297	B* 4.00		* 47.81
27	TEL 4309	B* 2.60		* 50.41
27	TEL 4312	B* 3.30		* 53.71
27	C/DR 20067	B* .80		* 54.51
27	TEL 4321	B* 23.80		* 78.31
27	TEL 258	B* .24		* 78.55
27	TEL 258	B* .16		* 78.71
27	C/DR 20075	B* .15		* 78.86
28	ROOM 258	B* 30.50		* 117.36
28	C/DR 20125	A* 2.45		* 119.81
28	TEL 4346	A* .60		* 121.13
28	TEL 4346	A* .72		* 121.33
28	C/DR 2336	A* .20		* 121.33
28	C/DR 20104	A* .70		* 123.03
28	C/DR 3190	A* 1.80		* 124.83
28	C/DR 20227	A* 1.15		* 124.98

7/25 1966

A CHEVRON QUEENSLAND LTD. HOTEL, one of the BIG 3 Hotels of Queensland, incorporating
Chevron PARADISE HOTEL, SEABREEZE Holiday Hotel and SURFERS PARADISE Hotel
P.O. Box 147, Surfers Paradise Phone 9 3011
KEY TO SYMBOLS
Telegraphic Address: "Chevron", Surfers Paradise

ROOM— ACCOM. MISC. D— Fridge MISC. J— Papers
REST.— MEALS E — T.V. & Radio K— Service Stat.
DR. — DRINKS F — Flowers L — Telegrams & Cabl.
S — LAUNDRY & D.C. G— S.P. Charges M— Conf. Room
H— Heater

CHEVRON PARADISE HOTEL

SIGNATURE _____ ROOM NO: 258 CHARGE: \$ 38.50
21.00

NAME - ADDRESS 104
 Mr. & Mrs. Armstrong
 Landgrave Corporation,
 Pitt Street, Sydney.

DATE	REF.	CHARGES	CREDITS	BALANCE
				124.90
20/8	TEL 4700	A* 2.00		
20/8	TEL 4700	A* 2.00		
20/8	TEL 4700	A* .00		129.00
20/8	C/MLS3920	A* 2.75		132.01
20/8	ROOM 258	A* 21.00		153.01
20/8	C/MLS3920	A* 3.55		
20/8	C/DR 7220	A* 0.10		
20/8	C/DR 7220	A* 1.25		166.21
20/8	C/DR 7211	A* .75		166.46
20/8	TEL 4414	A* 1.10		
20/8	TEL 4414	A* .48		167.34
20/8	TEL 4430	A* 1.60		168.94
20/8	C/MLS3964	B* .30		169.24
20/8	TEL 4482	B* 2.00		
20/8	TEL 4482	B* .08		171.92
T.V.E.				
		£		

Mr. & Mrs. Armstrong
L. C. L.
R. C.

A CHEVRON QUEENSLAND LTD. HOTEL, one of the BIG 3 Hotels of Surfers Paradise, incorporating
 Chevron PARADISE HOTEL, SEABREEZE Holiday Hotel and SURFERS PARADISE Hotel

P.O. Box 147, Surfers Paradise Phone 9 3011 KEY TO SYMBOLS 11-8 1960
 Telegraphic Address: "Chevron", Surfers Paradise

ROOM - ACCOM.	MISC. D - Fridge	MISC. OF CHARGES
REST. - MEALS	E - GY & Radio	K - Service Stat.
DR. - DRINKS	F - Flowers	L - Telegrams & Cobl.
S - LAUNDRY & D.C.	G - S.P. Charges	M - Conf. Room
	H - Heater	

IN THE SUPREME COURT
OF NEW SOUTH WALES
IN EQUITY

No. 23 of 1968

BETWEEN: ALEXANDER BARTON

Plaintiff

AND: ALEXANDER EWAN ARMSTRONG
& ORS.

Defendants

QUESTIONS TO BE PUT TO FRANK CLIFFORD BAYLEY

As to the 14th May 1968:

10

1. Did you go to a window in an office which is outside the gaol walls.
2. Was Vojinovic inside the gaol.
3. Were there bars between you and Vojinovic.
4. Did you have the document annexure "A" to your affidavit then in your hand open at the first page.
5. Did you say to Vojinovic "Is your name Alexander Vojinovic".
6. And did he reply "Yes".
7. Did you ask Vojinovic "Do you remember making a statement at the C.I.B. in Sydney which is made by Detective Wild".
8. And did he reply "Yes I remember".
9. Did you say "Is there anything that you want to change in the statement".
10. And did he say "No."
11. Did you say "You mentioned in the statement a fellow named Momo".
12. And did he say "yes that is right".
13. Did you say "Do you know Momo".
14. And did he say "Yes".
15. Did you then say "Are you sure that such a fellow exists".

20

30

Exhibit 85 - Questions
and answers F.C. Bayley
relating to his
Affidavit

Exhibit 85 - Questions
and answers F.C. Bayley
relating to his
Affidavit

16. And did he say "Of course I am sure. It is the same fellow which is under the name of Michael Novak and which I done six months gaol over in Melbourne before I came up to Queensland".
17. Did you then say "You don't want to make any charges in the statement". 10
- 2-
18. And did he say "No."
19. Is it true that Vojinovic never had the document annexure "A" or a copy of such document in his hand to look at or read.

Letter F.C. Bayly to Dare, Reed, Martin & Grant
being sent 2nd October, 1968.

Dear Sirs,

I acknowledge receipt of your letter of the
30th September last enclosing questions which I have
numbered consecutively 1 to 19. My answers are as
follows:-

1. I went to a window in an office in the Admini-
stration Section of the Brisbane jail. I be-
lieve this office to be outside the jail walls. 10
2. Yes.
3. Yes.
4. Yes.
5. Yes.
6. Yes.
- 7/8. During my conversation with V.....
I said "Do you remember being interviewed at
the C.I.B. on January 8th 1967"
He said "Yes".
I then said "Do you remember Det. Sgt. Wilde 20
was present?".
He said "Yes".
I then said "Do you remember giving a state-
ment?" He said "Yes".
9. Later referring to the annexure "A" I said
"Do you wish to change it in any way?"
10. Yes.
11. I do not remember saying this but I could
have.
12. I do not remember him saying this but he 30
could have.
13. Yes. Words to that effect.
14. Yes.
15. I do not remember then saying "Are you sure
that such a fellow exists?"
16. I do not remember his saying "Of course
Queensland".
17. No.
18. No.
19. Yes. 40

Yours faithfully,

3090. Exhibit 85 - Questions
and answers F.C. Bayley
relating to his
Affidavit

To Mr. H.R. Marks Date: 15th November, 1966
From: A. Barton Subject:

Until further notice you are instructed not to make available to any director, any Minutes, Minute Books, Financial or other information, at any time other than at Board Meeting, or with the express instruction of the Board.

Books of account of the Company may be inspected by Directors in your presence and by Directors alone, not any representative. 10

All requests for information by Directors must be made through me and your reply is also to be made through me.

A. BARTON

Managing Director.

AB/sg.

LORTON, DUKE & CO.
Solicitors.
Tel. 28 1092
Ref. AWMD.GH

Record Chambers,
77 Castlereagh Street,
Sydney.
6th November, 1962.

Messrs. Adrian Twigg & Co.,
Solicitors,
160 Castlereagh Street,
Sydney.

No. (1) Clear air -
does she expect
fringe benefits to
continue.

Dear Sirs:

WITHOUT PREJUDICE
Re; ARMSTRONG V ARMSTRONG

10

We have instructions from our client to apply for a Certificate of Means and thereafter to set this case down for hearing. Before doing so, however, we write to inform you that our client would be prepared to settle the outstanding matters sought as additional Orders in the Petition as follows:

1. OK. That the Respondent purchase in the name of the Petitioner Home Unit No.10 "Clivedon" Wolseley Road, Point Piper as her absolute property. 20
Settle on wife for life or until re-marriage - reminder to either must or children Option to wife to buy at cost.
2. OK. That the Petitioner be at liberty to take such furniture and furnishings from the premises, 9 Coolong Road, Vaucluse as are necessary to adequately furnish the said Home Unit. but must want some personal furniture. 30
3. OK. That the Respondent covenant to pay all rent maintenance and other charges payable by the Petitioner as owner of the said home unit.
for life or until remarriage.
4. That the Respondent do pay by way of permanent alimony to the Petitioner the sum of £75.0.0 per week. Max £60 until remarriage thereafter £40 for life.
5. OK. That custody of the children of the marriage be given to the Petitioner and that the Respondent be at liberty to have reasonable access to the children. Yes. 40
6. OK. That during such time as the Petitioner has the children residing with her that she receive from the Respondent for the maintenance of the children the sum of £10.0.0. for each child. Yes.
7. OK. That the Petitioner will vacate the present residence of 9 Coolong Road, Vaucluse as soon as vacant possession of the said Home Unit becomes available. Yes. 50

Exhibit 87 - Letter
from Lorton Duke &
Co. to Adrian Twigg
& Co.

Exhibit 87 - Letter
from Lorton Duke &
Co. to Adrian Twigg
& Co.

8. That the above terms be set out in the form
of a Deed and submitted to the Court for its
OK. approval.

Yes.

-2-

9. If agreement is reached in relation to the 10
above matters our client to proceed with her
petition unopposed and your client to pay all
costs fees expenses stamp duty and other
disbursements of and incidental to the suit
and the preparation and implementation of the
OK Deed.

Yes - decree for dissolution -
D.M. to assess. No - will pay reasonable costs.

Yours truly,
LORTON DUKE & CO.

20

OK Mothers jewilly 10 ct di ring 3000
Debt £10,000
Form of settlement - must max. (?)
? new trust.

Not discussed

OK subject to ~~security~~
wife being adequately
secured if coy's invest.

23/1/63. Att Duke at his office conferring - 30
Agreement reached as above subject to wife's
views on £60 p.w. Tax not mentioned - settle-
ment mentioned & impliedly £60 taxable in
wifes hands. Debt of £10,000 not discussed.
Impliedly also alimony payments cease on
remarriage. Probably further negotiation
required here.

Exhibit 87 - Letter
from Lorton Duke &
Co. to Adrian Twigg
& Co.

IN THE SUPREME COURT
OF NEW SOUTH WALES
IN EQUITY

No. 23 of 1968

BETWEEN:

ALEXANDER BARTON

Plaintiff

AND: ALEXANDER EVAN ARMSTRONG First Defendant

AND: GEORGE ARMSTRONG & SON PTY. LIMITED Second Defendant

AND: FINLAYSIDE PTY. LIMITED Third Defendant 10

AND: SOUTHERN TABLELANDS FINANCE CO. PTY. LIMITED Fourth Defendant

AND: GOULBURN ACCEPTANCE PTY. LIMITED Fifth Defendant

AND: A.E. ARMSTRONG PTY. LIMITED Sixth Defendant

AND: LANDMARK (QUEENSLAND) PTY. LIMITED (In Liquidation) Seventh Defendant

AND: PARADISE WATERS (SALES) PTY. LIMITED Eighth Defendant 20

AND: PARADISE WATERS LIMITED Ninth Defendant

AND: GOONDOO PTY. LIMITED Tenth Defendant

AND: LANDMARK HOME UNITS PTY. LIMITED Eleventh Defendant

AND: LANDMARK FINANCE PTY. LIMITED Twelfth Defendant

AND: LANDMARK HOUSING & DEVELOPMENT PTY. LIMITED (In Liquidation) Thirteenth Defendant

AND: LANDMARK CORPORATION LIMITED Fourteenth Defendant 30

AND: CLARE BARTON Fifteenth Defendant

AND: TERRENCE BARTON Sixteenth Defendant

AND: AGOSTON GONCEE Seventeenth Defendant

AND: JOHN OSBORNE BOVILL Eighteenth Defendant

AND: HOME HOLDINGS PTY. LIMITED Nineteenth Defendant

AND: ALLEBART PTY. LIMITED Twentieth Defendant

AND: ALLEBART INVESTMENTS PTY. LIMITED Twentyfirst Defendant

Notice of Motion

Pursuant to leave granted the 20th June, 1968.

TAKE NOTICE that this Honourable Court will be moved before the Honourable Laurence Whistler Street a Judge in the Supreme Court sitting in Equity at No. 10 Equity Court 225 Macquarie Street Sydney on Friday the 21st day of June, 1968, at the hour of ten o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the first, second, third, fourth, fifth and sixth named defendants (the applicants herein) for an order that the applicants be released from the undertaking given by them in respect of the fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth and twenty-first named defendants (the respondents herein) and that the applicants and each of them be at liberty to take action against the respondents and each of them pursuant to any of the deeds mentioned in paragraph 15 of the Statement of Defence filed on behalf of the first named defendant Alexander Ewan Armstrong arising from non-payment of moneys payable pursuant to any of the said deeds AND that the respondents may be ordered to pay the applicants' costs of this application AND for such further order as to this Honourable Court may seem fit.

10

20

DATED this 20th day of June, 1968.

R. I. Grant
.....
Solicitor for the applicants.

30

NOTE: It is intended to serve this Notice of Motion on the respondents named herein:

CLARE BARTON

TERRENCE BARTON

Notice of Motion

AGOSTON GONCZE

JOHN OSBORNE BOVILL

HOME HOLDINGS PTY. LIMITED

ALLEBART PTY. LIMITED

ALLEBART INVESTMENTS PTY. LIMITED

This Notice of Motion is filed by ROBERT IAN GRANT of Messrs. Dare, Reed, Martin & Grant, Solicitors, of 187 Macquarie Street, Sydney the solicitor for the applicants herein:

10

ALEXANDER EWAN ARMSTRONG

GEORGE ARMSTRONG & SON PTY. LIMITED

FINLAYSIDE PTY. LIMITED

SOUTHERN TABLELANDS FINANCE CO. PTY. LIMITED

GOULBURN ACCEPTANCE PTY. LIMITED

A.E. ARMSTRONG PTY. LIMITED

IN THE SUPREME COURT
OF NEW SOUTH WALES
IN EQUITY.

No. 23 of 1968.

CORAM: STREET, J.

Thursday, 19th December, 1968.

BARTON v. ARMSTRONG & ORS.

JUDGMENT

HIS HONOUR:

A. BEGINNING

This suit has its origin in a fight between 10
two men for the control of a public company. The
plaintiff, Alexander Barton was the managing direc-
tor of that company, Landmark Corporation Limited,
and the first defendant, Alexander Ewan Armstrong,
was the chairman of directors. They had been assoc-
iated on the Board in these respective capacities
since the end of 1964. Their relationship was at
first friendly. But by the latter part of 1966 they
had reached a state of open conflict. From that
conflict there emerged the hatred between the two 20
men that has given rise ultimately to this suit.

The shares held by Mr. Armstrong and his
family companies were the largest group in the is-
sued capital of Landmark. The shares held by Mr.
Barton and his family and his family companies
were the next largest group. The two men battled
for the control of the company, the battle com-
mencing at Board level, being ultimately carried
through to a proxy fight, and culminating at the
annual general meeting on 2nd December, 1966. Mr. 30
Barton won that battle: he and his supporters
carried the day at that annual general meeting

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just as he and his supporters had carried the day some two weeks earlier when, on 17th November, the directors removed Mr. Armstrong from his position as chairman of directors.

In the period that followed the annual general meeting there were negotiations between Mr. Barton and representatives of Mr. Armstrong, as well 10 as between solicitors for the two men. These negotiations led to an agreement the terms of which were incorporated in a deed dated 17th January, 1967: the settlement was formally completed on 18th January, 1967 when the ancillary agreements necessary to carry the settlement into effect were executed and exchanged. The parties to the deed of 17th January were Mr. Barton, Mr. Armstrong, a group of five companies in which Mr. Armstrong either held or controlled the majority of the shares (I shall refer 20 to these companies as the Armstrong companies), Landmark Corporation Limited (which I shall hereafter call Landmark), and a group of seven other companies owned or controlled by Landmark Corporation Limited (I shall refer to these companies as the Landmark companies). It is the deed of 17th January that is challenged in this suit, and I shall return later to refer in some detail to the course of the negotiations preceding it.

The Landmark companies in the latter part of 30 1966 had three major assets, namely a mortgage management business, a city building in Brisbane and some land at Surfers Paradise in the course of being developed to provide residential sites; this

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development project at Surfers Paradise was known as the Paradise Waters project. The Armstrong companies were interested in the affairs of Landmark and the Landmark companies in three ways. In the first place, one of the Armstrong companies owned 300,000 shares in the capital of Landmark. In the second place, another of the Armstrong companies had 10 lent at interest \$400,000 to one of the Landmark companies engaged in the Paradise Waters project. And in the third place, another of the Armstrong companies held 40 per cent of the share capital of the Landmark company engaged in the Paradise Waters project; the remaining 60 per cent of the capital in that company was held by Landmark.

The object of the negotiations between Mr. Barton and Mr. Armstrong was to bring about a termination of the interest of Mr. Armstrong and the Armstrong companies in Landmark and in the Landmark companies. This was achieved by the sale by Mr. Armstrong to Mr. Barton and seven other persons or companies nominated by Mr. Barton of the 300,000 shares in Landmark held by one of the Armstrong companies at a price of 60 cents per share; the \$400,000 loan was repaid and a fresh secured loan of \$300,000 made by another of the Armstrong Companies to the Landmark company engaged on the Paradise Waters project; the 40 per cent share capital interest held by one of the Armstrong companies in the Paradise Waters project was sold to Landmark for \$100,000, in association with which sale Mr.

Armstrong was granted an option to purchase at half

list price 35 of the residential lots being developed in the Paradise Waters project; and Mr. Armstrong resigned as a director of Landmark and the Landmark companies.

There had been some earlier negotiations between representatives of Mr. Armstrong and Mr. Barton with a view to resolving the conflict by one buying the other out. But the course of negotiations which led ultimately to the deed of 17th January, 1967, commenced on 13th December, 1966. Mr. Armstrong had been in consultation with Mr. B.H. Smith (his accountant and financial adviser) and with his solicitor and counsel in the period between 8th and 13th December concerning the affairs of Landmark. On 13th December Mr. Armstrong instructed Mr. Smith to invite Mr. Barton to make a firm offer to purchase the 300,000 shares in Landmark to repay the \$400,000 debt and to purchase the 40 per cent interest in Paradise Waters (Sales) Pty. Limited. Mr. Smith saw Mr. Barton on 14th December, and from then through to the execution of the deed of 17th January, 1967 there were relatively frequent discussions and negotiations between the persons concerned.

Mr. Barton claims that he was pessimistic about the prospect of Landmark Corporation Limited surviving the financial crisis that had developed as the result of the dispute between himself and Mr. Armstrong and that his execution of the deed of 17th January was not voluntary; he claims that

he executed it against his will and because he was in fear for his life and safety and for the life and safety of his family. This fear, he alleges, resulted from threats and actions by Mr. Armstrong. The threats and actions are summarised in Mr. Barton's statement of claim as being continual threats to have Mr. Barton murdered if he did not enter in- 10 to the agreement sought by Mr. Armstrong, and the bringing of other unlawful pressure upon Mr. Barton. It is specifically alleged that Mr. Armstrong engaged certain criminals to kill or otherwise injure Mr. Barton. The statement of claim seeks a declaration that the deed of 17th January and the supplementary documents of 18th January were executed under duress, and that they are void.

The principle of law upon which Mr. Barton relies is conveniently stated in the Encyclopedia 20 of the Laws of England 2nd Ed. Vol. 7; p.421:

"Where any contract ... has been entered into under the influence of coercion, duress, menaces or intimidation it may be repudiated and avoided, and any money paid or property parted with under it may be recovered. But the contract is voidable only, and not void, and the right to avoid it may be waived. The duress or intimidation must consist in threats of violence calculated to cause fear of loss of life or of bodily harm or actual violence or unlawful imprisonment or threat thereof to one party or his or her husband or wife or child by the other party to the contract, or by someone acting with his knowledge and for his advantage."

Mr. Barton's case is that throughout the 30 period whilst the agreement was being negotiated there were two levels of communication between Mr. Armstrong and himself. In the opening address for the plaintiff it was propounded that

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"during the weeks preceding 17th January, whilst on the surface there were proceeding between the solicitors and others commercial negotiations for an agreement, behind the scenes Mr. Barton was being subjected to threats of death."

In determining whether this case has been made out two main questions arise: first, did Mr. Armstrong threaten Mr. Barton; and, second, was Mr. Barton intimidated by Mr. Armstrong's threats into signing the deed of 17th January. Mr. Barton asserts that both these questions should be answered in the affirmative; and Mr. Armstrong, for his part, denies them both. 10

The hearing of the suit has occupied a considerable period of time. A great many witnesses have been called and exhibits tendered. The issues contested by the parties have ranged widely, and there has been, in the case of some witnesses, close and detailed examination and cross-examination. 20

Success or failure for the parties in the suit turns essentially upon the two main questions I have propounded. So far as possible I shall restrict my findings to matters bearing upon the answers to those questions. To some extent reference must be made to matters travelling beyond them. But in general it is both unnecessary and inexpedient that I deal with issues not bearing directly upon success or failure for one party or the other in the suit. This approach will result in my not dealing in detail with some of the issues that have been litigated and in my not dealing at all with other issues, notwithstanding the length and the heat of the contest upon 30

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those issues. This is a suit between parties to be decided in accordance with a well-settled approach; it is not an inquiry into all the allegations or charges made in the course of the hearing.

Mr. Barton is the plaintiff in the suit, and he bears the burden of proving his case. Insofar as he relies upon the happening of certain events, he bears the burden of proving those events. In some respects the evidence in the case enables me to make specific affirmative or negative findings. But, in relation to some of the matters put forward on Mr. Barton's behalf, the state of the evidence leaves me unable to make specific findings. On such matters Mr. Barton's allegations will fail, not because they are disproved, but because the evidence is insufficient to weigh down the scales in favour of an affirmative finding.

Upon the first question namely did Mr. Armstrong threaten Mr. Barton, there is directly opposing evidence from Mr. Armstrong and from Mr. Barton. In resolving this conflict of evidence primary importance attaches to the credit of Mr. Armstrong and to the credit of Mr. Barton. There is also considerable assistance to be derived from the evidence of other witnesses corroborative of either one or the other of these two principal parties.

On the second question, namely was Mr. Barton intimidated into signing the agreement, the decision depends upon the significance and weight

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to be given to Mr. Barton's own evidence, assessing that evidence in the light of the credit of Mr. Barton and the circumstances prior to contemporaneous with and subsequent to the signing of the deed of 17th January, 1967.

All of these matters necessitate a detailed statement of the events late in 1966 and early in 1967. The narrative of these events will be directly affected by the weight to be given to the evidence of Mr. Armstrong and Mr. Barton. I shall deal, then, at the outset with the views that I have formed upon the credit of these two principal parties. 10

A strong and sustained attack was made upon Mr. Armstrong's credit. Topics upon which he was challenged were many and varied. Some of the attacks did not succeed. But, after hearing Mr. Armstrong cross-examined over a period of some days, and observing him in the witness-box, I cannot treat his evidence as reliable. In some respects, perhaps in many respects, what he has sworn to in the witness-box can be seen, by reference to other evidence or on the probabilities, to be true. But I think so little of Mr. Armstrong's credit that I am satisfied that on any point of importance he would not hesitate, if he thought it necessary for his own protection or advantage so to do, to give false evidence. This is a conclusion not to be lightly reached or stated, and I should make reference to some of the matters that have led me to it. 20 30

Counsel for the plaintiff had available to him in cross-examining Mr. Armstrong a quantity

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of notes and memoranda written by Mr. Armstrong over recent years. It was these that provided a great deal of the material relied upon in the attack on Mr. Armstrong's credit. They were not shown to Mr. Armstrong at the commencement of his cross-examination. Indeed, he had no fore-knowledge that any such documents were in the plaintiff's possession, nor was he at any stage of his cross-examination aware of the extent of the documents in the plaintiff's possession. I have the strong impression that on a number of topics such answers as he gave that were true, and such admissions as he made at times, were due to his anxiety lest he be confronted with some inconsistent document in his own handwriting. It was concern at the prospect of such confrontation rather than recognition of his obligation under oath to tell the truth that induced him to give true answers on some matters upon which he would have preferred to dissemble. This finding tends to support the acceptance of Mr. Armstrong's evidence because, for whatever reason, he feared to tell anything other than the truth. This is a justifiable claim and I have given it due weight in determining whether to accept Mr. Armstrong's evidence on particular topics.

Whilst there are many matters of detail to which reference might be made, I shall mention the more significant topics which demonstrate Mr. Armstrong's unworthiness to be regarded as a reliable witness. He was cross-examined at some length

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upon the part that he played in the obtaining of evidence in a pending divorce suit. When the whole story was unfolded as his cross-examination proceeded he is exposed as a man having little regard for the need to preserve the integrity of Court proceedings and for the obligation of a party to Court proceedings to present a true as distinct from 10 a manufactured case. It seems that an associate of Mr. Armstrong's was the respondent in proceedings brought by his wife in the Matrimonial Causes jurisdiction seeking dissolution of marriage. He was anxious that his wife should obtain a divorce, and he approached Mr. Armstrong to help him to provide his wife with evidence of adultery. It is to my mind clear that his request to Mr. Armstrong was directed to obtaining false evidence in the form of a false confession. I have no doubt that it was 20 in this sense that he made the request and Mr. Armstrong acceded to it. Mr. Armstrong in fact complied with this request of his associate, but, providentially, the plan went astray and Dovey, J., before whom the matrimonial cause was heard, was disturbed at some aspects of the evidence, and expressed some criticism of them.

Mr. Armstrong prevaricated when first asked about the part he played in connection with this divorce. His prevarication is perhaps understand- 30 able having regard to the very real basis for his entertaining same concern by reason of his own complicity in what had taken place. The factual

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account is, however, sufficiently set forth in some contemporary notes dated 30th June, 1962, prepared by Mr. Armstrong, some five days after the hearing before Dovey, J. on 25th June, 1962. The narrative appears in the following extract:

"(1) In January 1962 Eskell asked A. to ask Mrs. C. if she knew anyone who would admit to adultery with him to hasten his divorce case. 10

(2) After discussion C. agreed to sign a confession of adultery and did so at Twigg's office in February 1962.

(3) Mrs. C. told Eskell her sole motive was to help me by assisting him to clear up his divorce & work well with me as she thought he & I would make a good team in business.

... ..

(5) At a meeting in February Eskell told Cleary that he & his wife had agreed to an amicable divorce, but his wife did not need to know who the co-re was or anything about her. He also expressed concern over Cleary's future security & suggested A. should provide for it." 20

The notes record other facts and contain other comments, but I have quoted sufficient to demonstrate that Mr. Armstrong, by his own document, is implicated in what, according to this document and to his evidence, can only be regarded as an arrangement to procure evidence for the Divorce Court. And the arrangement was one which, in Mr. Armstrong's belief, was to procure false evidence. There is evidence to which I need not refer which renders it, to my mind, improbable in the extreme that Mr. Armstrong believed that the woman concerned would commit or had in fact committed with his associate the adultery that she confessed to in her signed confession in February 1962. 30 40

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I am not concerned in this case to pronounce judgment upon the morality or the criminality of the part played by Mr. Armstrong in the events leading up to this divorce. In fairness to his associate and to the woman concerned I should record that their version of the events has not been heard. Mr. Armstrong being, as I have said, a man of little credit, I should point out that his oral evidence and his notes of 25th June, 1962 do not necessarily establish the truth as against these other two persons. I am concerned, however, to evaluate the degree of reliability that can be placed upon Mr. Armstrong's evidence in this Court. And the part played by him in this whole shabby affair exposes him as a man upon whose evidence little weight can be placed. 10

Another matter pointing strongly to the discredit of Mr. Armstrong is his evidence regarding the events subsequent to the divorce. There was some publicity given to Dovey, J.'s criticism of the evidence before him. It seems that the learned Judge was suspicious of the veracity of the evidence of adultery, and in particular of the reliability of the signed confession. Mr. Armstrong was concerned at the possible consequences of the Judge's criticism and, in particular, about their effect upon him. He sought advice as to the course that he should adopt with a view to minimising the possible harmful effect upon himself. It was for the purpose of seeking this advice that he prepared 20 30

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the notes dated 30th June, 1962, from which I have already quoted some extracts. The notes contain a series of questions about which he sought advice, and some references to possible courses of action.

These questions include the following:

- "(1) What was reason for Dovey making a fuss
the case. 10
-
- (6) Remember case can be re-opened up to
September 25.
- (7) Keep very quiet for a time & let matter
drop.
- (8) If Eskell pushed too far may put A.E.A.
in as well.
- (9) What do we want to achieve
(a) Save Alex (b) Punish Eskell
-
- (11) Would like to know why Dovey so rough
on case. 20
-
- (13) Can we attack or bribe Dovey."

Mr. Armstrong was strongly attacked in cross-examination upon (13), namely, "Can we attack or bribe Dovey". The strength of the attack was that he is a man with so little regard for integrity and honesty that he would contemplate stooping to bribery to achieve a desired result.

This a valid and well-founded criticism. He is, by his own contemporaneous note, shown to have given at least a passing thought to the prospect 30 not merely of bribery, but of bribery of a member of the Bench, an institution upon the absolute integrity of which, as Mr. Armstrong must have been well aware, the preservation of the rule of law in

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this community is so essentially dependent. Mr. Armstrong in his evidence sought to disclaim that he had seriously had in mind any such attempt as is recorded in his note. He was, however, asked some questions about the matter. I quote the following extract from his evidence:

"Q. Did you ever consider bribing a Judge? 10
A. Never.

Q. If you thought that it would serve your ends would you consider bribing a Judge?
A. Well, I suppose - I don't know what documents are down there. I suppose I'd better say it may incriminate me if I answer that. I don't know what I thought.

HIS HONOUR: I won't uphold privilege on that.

WITNESS: I don't know what I thought about it. 20

MR. GRUZMAN: Q. If you thought it would serve your ends would you consider bribing a Judge? A. If I thought and would I consider? These are terribly hypothetical propositions - what goes through one's mind at some particular time. It is what you do, I think that counts, isn't it?

HIS HONOUR: I think the question is able to be answered, Mr. Armstrong.

WITNESS: What is the question again? 30

MR. GRUZMAN: Q. If you thought it would serve your ends would you consider bribing a Judge? A. Do you mean would I think about it?

Q. Yes. A. I suppose I might think about it. There are many things one might think about and doesn't do.

Q. So that if a Judge stood in your way or annoyed you one of the matters you would consider would be whether you could bribe him? A. I don't like the word 'consider'. I said it could be possible I would think about it. 40

Q. Bribing him? A. I could think about it. I am not saying that my mind is so pure that I would not think about it.

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Q. And, having thought about it, the main question would be whether it was possible to bribe the Judge? A. I don't know what you mean by that."

At a later part of his evidence Mr. Armstrong was asked some further questions about his views on bribery, and I quote again from his evidence:

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"Q. And I suggest to you it does not matter whether it is bribing a policeman for a speeding fine - that does not affront you, does it? A. I do not think it is a very serious matter to do - for a speeding fine. I do not recollect that I have ever done it.

HIS HONOUR: Q. I did not hear that. A. I do not think that to offer a policeman anything for a speeding fine is a very serious matter. I do not recollect ever having done it myself. I have heard of it occurring.

20

MR. GRUZMAN: Q. Are you prepared to swear that you have never offered a policeman something for a speeding offence? A. I do not think I have ever offered him - anyone anything for a speeding offence.

Q. Are you prepared to swear positively that you have never offered a policeman anything in respect of a speeding offence? A. Well, I do not think I should swear anything that I cannot absolutely recall having never done. No, I would not be prepared, but I do not think I have.

30

Q. It is a possibility? A. I do not think I have on my own behalf.

Q. On whose behalf have you? A. I cannot recall that. Might have been someone that I wanted to help or something like that. I do not think I have ever done it on my own behalf.

40

Q. You think you may have bribed a policeman in respect of a speeding offence for someone else? A. I do not know. I cannot recall. I do not think I have.

Q. You may have? A. Possibly. I do not think so. I would not go on my oath that I have not.

Q. It is certainly not the sort of proceeding which would affront you? A. I do not know what you mean by 'affront'. I would not think it was a terribly serious offence. It is a thing better not done.

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Q. But it is the sort of thing that men do? A. I think it does occur. I do not know.

Q. You see no real harm in it? A. I do not think it is a good practice.

Q. But you see no real harm in it? A. When I was younger I may have taken it less seriously than I do now." 10

I reiterate that I am not concerned with questions of morality. I have simply to evaluate whether, in the light of this confessed attitude towards bribery, Mr. Armstrong is a man who would shrink from distorting his evidence on oath to suit his own purposes if he thought he could safely do so. The result of this evaluation I have already stated.

There are many other unsatisfactory features in Mr. Armstrong's evidence indicating that reliance cannot safely be placed upon his word. This view of Mr. Armstrong's credit does not, however, necessarily result in his failing in the suit. To a substantial extent success or failure for Mr. Barton depends upon the view which I hold of Mr. Barton's credit. He has deposed to a series of events, to actions taken by him, and, in particular, to the reasons which led him to sign the agreement under challenge. Insofar as the evidence given by Mr. Barton implicates Mr. Armstrong in acts of intimidation Mr. Armstrong's evidence is confined for the greater part to simple and direct denials. My conclusion that Mr. Armstrong is a witness of little credit does not of itself result in my rejecting Mr. Armstrong's denials simply because I am not disposed to believe them. Mr. Barton's evidence

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itself must be carefully analysed and evaluated to see whether or not it should be accepted. If I had regarded Mr. Armstrong as a witness of credit then his denials could well have been significant in my deciding whether or not Mr. Barton's evidence is to be accepted; the denials would have to be weighed as a factor against accepting Mr. Barton's evidence. 10
As it is, however, Mr. Armstrong's denials are of little, if any, weight; but it still remains for me to evaluate the evidence given by Mr. Barton. This necessitates an examination of his credit.

Mr. Barton's evidence includes accounts of events, and it includes claims of the effect of events and the causal relationship between them and his own state of mind. It is quite apparent that Mr. Barton entertains a deep hatred of Mr. Armstrong. And this hatred is tinged with some degree of fear. 20
This has coloured Mr. Barton's evidence and, whether deliberately or subconsciously I know not, it has led to some distortion and exaggeration on his part of the details and the significance of the events of late 1966 and early 1967.

In some important respects Mr. Barton's evidence is at variance with proved facts, an example being his denial of having negotiated with Mr. B. H. Smith in the month of December 1966; it is quite clear that he was engaged in negotiations with Mr. Smith 30
on Mr. Armstrong's behalf in December, rather than, as he claims, not before 4th January, 1967. It is urged by counsel for Mr. Armstrong that Mr. Barton has deliberately selected the later date so as to

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be able to attach greater significance to the effect of the Vojinovic incident (7th-8th January) upon the course of negotiations. I am not satisfied that Mr. Barton has done this deliberately. There is perhaps some significance in this regard in affidavits sworn by him in March and April 1967, in which he places the negotiation between himself and representatives of Armstrong as being early in January 1967. 10

Again, Mr. Barton's credit is attacked in connection with a sale of shares made by him to a prospective employee of Landmark. The sale was made at a marked excess over current market price, and in circumstances which certainly suggest the possibility that Mr. Barton abused his position of authority as managing director of the prospective employer to dispose of a substantial parcel of shares at above the ruling market price. Mr. Barton strongly denies 20 any impropriety in the transaction, and he asserts that Mr. Armstrong had sought to use it to harm and embarrass him with the other directors of Landmark Corporation towards the end of 1966. Mr. Barton claims that, rather than imposing upon a prospective employee, he was doing him a favour by selling him such a large parcel of shares. It is not easy to determine where the truth lies, but I have strong doubts regarding the propriety of a man in Mr. Barton's position selling to a prospective employee 30 of his company so large a parcel of shares at a price so far in excess of market value. I have some misgiving about the transaction, but I am not

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disposed to regard it as destructive of Mr. Barton's credit as a witness.

I observed Mr. Barton closely throughout the whole of the course of his evidence. There are substantial inaccuracies in his firmly expressed account of the negotiations; these may be due to deliberate misstatement or they may be due to distorted reconstruction. The inaccuracies may, indeed, be due partly to one cause and partly to the other. But whatever their origin, the inaccuracies are such as to indicate that great care must be taken in accepting and acting upon Mr. Barton's uncorroborated testimony. I have grave doubts about the reliability of his evidence on that part of the case which concerns Detective Sergeant Wild and Detective Constable Follington. He is at variance in some details with a witness whom I accept as truthful and honest, namely Detective Inspector Lendrum. And, as will appear later, I do not accept his evidence regarding his state of mind in December 1966 or January 1967 with reference to the future of Landmark and with reference to the causal link between Mr. Armstrong's threats and the making of the agreement of 17th January. There are many other points in the mass of evidence casting doubt upon the reliability of Mr. Barton's testimony. I am satisfied that most of Mr. Barton's inaccuracies are due either to faulty recollection or to some bona fide distorted reconstruction. I regard his credit as superior to that of Mr.

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Armstrong. He believes in the truth and justice of his case. But that belief is self-induced rather than being based on fact. His evidence must accordingly be regarded as suspect.

In association with these conclusions upon Mr. Barton's credit I have also formed some general conclusions upon the whole of the case presented by him. It will be convenient to state these now, before proceeding to an analysis of the course of negotiations and to other aspects of the suit. 10

I have the general impression that the account given by Mr. Barton in his evidence is founded upon fact, but that he has, in going over and over in his mind the events of December 1966-January 1967, reconstructed an unreal relationship between the events of that time. I accept that he was being subjected to threats and intimidation by Mr. Armstrong. I accept that these were current during the course of the negotiations. I accept that he was in fear for the safety of himself and his family both before and certainly after his first contact with Vojinovic over the telephone on 7th January, 1967. I accept that on 17th and 18th January, 1967, documents were executed whereby the interest of Mr. Armstrong and his companies in the Landmark undertakings was purchased by Mr. Barton and his nominees and by Landmark. I do not accept, however, that Mr. Armstrong's threats and intimidation were intended to coerce Mr. Barton into making the agreement, nor that Mr. Armstrong's threats and 20 30

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intimidation had the effect of coercing Mr. Barton to make the agreement. Nor do I accept that Mr. Barton's concern and fear engendered by his interview with Vojinovic were factors of any significance in the execution of the documents of the 17th and 18th January. The negotiations between Mr. Barton and Mr. Smith had ended before Vojinovic came on the scene. Moreover, Mr. Barton's course of conduct, both in what he said and what he did, between December, 1966, and the time shortly prior to the commencement of this suit not only contain no inkling of his having been intimidated by Mr. Armstrong into making the agreement, but they are in some significant respects inconsistent with his having been intimidated. 10

I have the impression that Mr. Barton, in retrospect, has mulled over the events of December 1966-January 1967. He was confronted, in January, 1968, with a personal financial disaster consequent upon the failure of Landmark, a company in which he and his family and his companies held a substantial volume of shares, and in which he had purchased or guaranteed the purchase of all Mr. Armstrong's shares. In this situation he attributed to the events of December, 1966, and January, 1967, a significance that they did not have for him at the time when they occurred. It is quite possible that he is sincere in his belief and his claim that he was coerced by Mr. Armstrong into purchasing the shares. But I am not satisfied on the evidence 20 30

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that he was in truth coerced. He has a recollection of specific events. He has reconstructed this recollection into a cohesive pattern in which some assume a significance that they did not bear at the relevant time. His dismay over the financial disaster now facing him, his hatred and resentment of Mr. Armstrong, and the understandable lasting fear engendered in him by the Vojinovic incident have led to his distorting and exaggerating, perhaps unconsciously, some of the events and conversations. 10

B. BACKGROUND - EVENTS PRECEDING NEGOTIATIONS -
OCTOBER 1966 - 13/12/1966

I come, now, to an account of the events leading up to the agreement under challenge. Mr. Armstrong had been away from Australia from the beginning of September until about the middle of October 1966. Prior to his leaving there had been some friction on the Board of Landmark resulting from disagreements between Mr. Barton and Mr. Armstrong on business matters. The merits of these disagreements are of little relevance but it seems that Mr. Barton, as the managing director, was becoming increasingly resentful of the intervention of Mr. Armstrong, as the chairman of directors, in the affairs of Landmark. Mr. Barton was critical not only of the part Mr. Armstrong sought to play in the day-to-day business activities of Landmark, but also in the use that he claimed Mr. Armstrong made of the facilities of Landmark's office for the purpose of attending to 20 30

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Mr. Armstrong's personal affairs.

Both parties agree that they had a discussion soon after Mr. Armstrong's return. Mr. Barton's account of this conversation is:

"I went to him, and said 'I am not prepared to work with you in any circumstances. I see only one alternative, that you resign and get out of Landmark Corporation Limited. I can't resign myself, as much as I would like to, because of my responsibility to shareholders, United Dominions Corporation Limited and other persons and parties connected with the projects which are under consideration'. Mr. Armstrong replied that he was not prepared to resign, and he said that the city is not as safe as I may think between office and home and I will see what he can do against me and I will regret the day when I decided not to work with him." 10

Mr. Barton did not ascribe any particular circumstances as giving rise to this conversation. As I understand his evidence, his statement to Mr. Armstrong was merely a culmination of a series of past events. Mr. Armstrong, on the other hand, whilst admitting a conversation in heated terms with Mr. Barton, denied that he spoke in threatening terms to Mr. Barton. Mr. Armstrong's version of the conversation is to the effect that on his return home from overseas he became aware of the Hoggett share transaction, and he taxed Mr. Barton with it. Whatever may have been the circumstances leading to this conversation, I am satisfied that the two men did have an argument immediately upon Mr. Armstrong's return and, without necessarily accepting the precise terms to which he deposed, I prefer Mr. Barton's version of what passed between them. 20 30

On 18th October there was a Board meeting

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of Landmark at which were present Mr. Armstrong and Mr. Barton as well as the other two directors, Mr. Bovill and Mr. Cotter. At that meeting there was some discussion about the method of presentation of the Landmark accounts for the year ended 30th June, 1966. A disagreement arose between Mr. Armstrong on one side and the other three directors, Mr. Barton, Mr. Bovill and Mr. Cotter, together with the company secretary, on the other side. 10

It seems that between the Board meeting of 18th October and the next Board meeting on 24th October Mr. Barton decided that steps should be taken to carry through his wish to prevent Mr. Armstrong from interfering further in the affairs of the company. There is in evidence a draft resolution prepared by Mr. Barton dated 18th October, 1966, affirming the Board's confidence in Mr. Barton, 20 requiring Mr. Armstrong to vacate the rooms occupied by him in the company's premises, and denying to any director other than the managing director authority to engage in negotiations or discussions concerning the affairs of Landmark. This draft resolution commences with the preamble:

"The Board of Directors of Landmark Corporation Limited having taken note of certain actions and pronouncements and practices by its Chairman (Mr. A. E. Armstrong), and believing that these have been and are detrimental to the smooth and successful running of the company.....". 30

The draft resolution was accompanied by a typewritten statement prepared by Mr. Barton for presentation to the Board. This statement was

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critical of Mr. Armstrong's interference both in the internal affairs of the company and in connection with the company's business transactions with other parties. It contained the statement that:

"In view of the fact that Mr. Armstrong has broken all his past repeated promises to stop interfering and in view of his latest attempt to run my own reputation down in the eyes of a co-director on this Board (Mr. Bovill), I cannot tolerate the situation any longer." 10

The preparation of this statement and draft resolution followed the argument between Mr. Barton and Mr. Armstrong on 16th and 17th October. It probably followed the Board meeting of 18th October also. I am satisfied that it was engendered by Mr. Barton's resentment of Mr. Armstrong's criticism of the Hoggett transaction; but I am also satisfied that the real reason underlying it went deeper than merely that one head of dispute; it stemmed from a very real resentment on Mr. Barton's part of what he regarded as undue interference by Mr. Armstrong in the company's affairs. It follows logically as the next step in the deterioration of the relationship between the two men after the heated conversation that had taken place between them immediately after Mr. Armstrong's return. 20

The statement and draft resolution were presented to the Board of Landmark at its next meeting on 24th October, 1966. It had apparently been foreseen that the meeting might become unruly, and in addition to the four directors (Messrs. Armstrong, Barton, Bovill and Cotter) there were present the secretary, one of the auditors, and the company's 30

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solicitor. A resolution was passed that a tape recording of proceedings be taken and preserved at the offices of the company's solicitors. A request by Mr. Armstrong that his solicitor be invited to attend was rejected. There was further inconclusive discussion on the accounts of the company. Mr. Barton's statement was tabled and four resolutions 10 were passed, it being noted that Mr. Armstrong refrained from voting. These four resolutions were similar in tenor to the draft resolution prepared by Mr. Barton on 18th October. The Board, with Mr. Armstrong refraining, re-affirmed its confidence in the managing director; by the terms of the resolutions the authority of the managing director in connection with company affairs was expressly recognised, and it was resolved that:

"No director other than the managing director 20 shall be entitled to any office or secretarial or clerical assistance and use of car at the expense of the company, and any office being used by any director other than the managing director is to be vacated by that director on or before 15th November, 1966."

This resolution was aimed specifically at Mr. Armstrong.

The adjourned discussion of the accounts continued at a Board meeting on 28th October. Mr. 30 Armstrong was not present at this meeting, and the views of the other three directors were accordingly adopted. It was by this time clear that, in the dispute between Mr. Barton and Mr. Armstrong, Mr. Bovill's sympathies and support lay with Mr. Barton, and the position regarding Mr. Cotter appears to be

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the same. Whilst the principal disputants were Mr. Barton and Mr. Armstrong, Mr. Barton appears to have been able to rely throughout the weeks that followed upon the support of Mr. Bovill and Mr. Cotter. The ill-feeling between Mr. Barton and Mr. Armstrong was probably due in no small degree to a clash of personalities. But the other two directors appear 10 to have shared Mr. Barton's disapproval of Mr. Armstrong's interference in the day-to-day affairs of the company, and this seems to have been a real factor uniting them against Mr. Armstrong. The dispute concerning the accounts was nothing more than a genuine difference of business opinion. From the end of October onwards, however, there is discernible a clear pattern in which Mr. Barton and Mr. Bovill were opposed to Mr. Armstrong both on 20 matters turning solely on business considerations as well as on matters of personal approach such as Mr. Armstrong's attitude towards the company and the shareholders. Although there is no direct evidence of his attitude, Mr. Cotter apparently took the same view as Mr. Barton and Mr. Bovill.

On 4th November, 1966, Mr. Armstrong's solicitors wrote to Mr. Barton's solicitors offering to purchase from one of Mr. Barton's family companies 170,000 shares in Landmark for a price of 70 cents each. The offer contained a condition requiring 30 Mr. Barton to remain on the Board for at least three and up to six months if required, and to support Mr. Armstrong on the Board; in particular, there was a condition requiring him to support Mr.

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Armstrong's appointment as joint managing director or to such other executive office as might be agreed. This letter was not answered until 9th November.

The subject of the disputed accounts was raised again at a Board meeting attended by all four directors on 8th November. Yet another head of dispute regarding the accounts was resolved against Mr. Armstrong. It was decided at this meeting that the Annual General Meeting should be summoned for 2nd December, 1966. Although heated, I am satisfied that the arguments concerning the annual accounts, including the question of the declaration of a dividend, were bona fide business disputes. Feelings may well have been aggravated by the wider personal dispute which had come to a head in October, but there seems no reason to doubt that the argument concerning the accounts reflected a genuine difference of business opinion. 10 20

On the same 8th November there was a meeting of directors of Paradise Waters Limited, the Landmark company engaged in the Paradise Waters project. That meeting was attended by Mr. Armstrong, Mr. Barton and Mr. Bovill. The minutes record that Mr. Armstrong was removed from the chair and Mr. Barton was appointed in his place. Similar business was transacted at a meeting on the same day of Paradise Waters (Sales) Pty. Limited, another Landmark company and the wholly owning parent of Paradise Waters Limited; this meeting was attended by the same three persons as directors. 30

A further indication of the ill-feeling developing between the two men is to be seen in the

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letter of 9th November written by Mr. Barton's solicitors to Mr. Armstrong's solicitors rejecting the offer to buy the 170,000 shares from Mr. Barton's family company. The letter rejecting the offer describes the conditions as improper, and states that it would be equally improper for Mr. Barton to accept the conditions.

10

The removal of Mr. Armstrong from the chairmanship of the two Paradise Waters companies led to solicitors' correspondence, followed on 15th November by the institution of two suits in this Court. The terms under which finance had been provided by one of the Armstrong companies for the Paradise Waters project included provisions to ensure that Mr. Armstrong remained in control of the two Paradise Waters companies whilst the money was outstanding. The two suits were aimed at enforcing this right of control. The institution of these suits was preceded by solicitors' correspondence commencing on 10th November. I shall not refer to the complex and detailed nature of the suits, but the fact that they were brought, their effect upon the developing situation in the affairs of Landmark Corporation, and the terms of the interlocutory relief granted in one of them have some bearing upon the negotiations leading up to the deed of 17th January.

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On 15th November, Mr. Armstrong moved out from the Landmark offices pursuant to the decision made at the meeting of 24th October. It was on that same 15th November that the two suits were commenced in this Court. Also on that day Mr.

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Barton directed the secretary of Landmark that none of the company's records be made available to any director other than at a Board meeting or upon the express instructions of the Board.

On 17th November there was a Board meeting of Landmark. At this meeting Mr. Bovill was appointed chairman of directors, thereby displacing Mr. Armstrong from that office. This was a far-reaching step not merely in its significance in the displacement of Mr. Armstrong from the chair, but also in its effect upon the loan of \$400,000 which had been made by one of the Armstrong companies to Paradise Waters Limited. The terms of the loan were such that, upon Mr. Armstrong ceasing to occupy the chair, the principal and interest would instantly fall due and payable. And in fact later on 17th November, 1966, the solicitors for Mr. Armstrong and his companies wrote to the then solicitors for Landmark informing them that the loan was required to be repaid forthwith, and stating that an appropriate notice of demand would be given to Paradise Waters Limited as mortgagor. This notice was in fact given on 21st November, 1966.

The making of this demand, coupled with the pending litigation concerning control of the Paradise Waters companies, placed Mr. Armstrong and his companies in a strong position in the manoeuvre then going on for the control of Landmark. The demand for repayment was accepted on behalf of Landmark and the Paradise Waters companies by their

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solicitors, and correspondence ensued on the basis that arrangements were being made to pay out the amount of the demand. On 23rd November, 1966, Mr. Barton obtained from United Dominions Corporation a formal letter confirming a resolution of the Board of United Dominions Corporation agreeing to make available to Landmark the sum of \$450,000 plus interest due to pay off its debts to the Armstrong companies in the event of those companies not withdrawing their demands by 25th November, 1966. 10

Whilst this was going on the parties were commencing the proxy fight in anticipation of the annual general meeting summoned for 2nd December. On 22nd November Mr. Barton sent out to the shareholders of Landmark a circular referring to recent newspaper publicity and to the conflict which had developed between Mr. Armstrong and the remainder of the directors. After criticising Mr. Armstrong, this circular informed the shareholders that arrangements had been made with United Dominions Corporation to provide \$450,000 to pay off its debts to Mr. Armstrong's companies. It sought the support of the shareholders to the re-election of Mr. Cotter as a director and the rejection of three persons nominated by Mr. Armstrong for election to the Board. Mr. Armstrong on his part sent out a circular presenting to shareholders his contentions in the dispute. He sought the support of shareholders for the election of his nominated candidates to the Board. His circular stated that if his 20 30

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nominees were elected as directors, he would immediately cancel the demand for the repayment of the \$400,000.

The proxy fight continued, presumably through the columns of the Press and by other approaches to shareholders. One aspect of it came before this Court when a suit was commenced by Mr. Armstrong in 10 which he sought to enforce a demand he made, as a director, to inspect the proxies lodged with the company for use at the meeting. This suit was brought on at short notice: the originating summons was filed, the matter was argued and a decision was given, all on 30th November. The form of relief granted to Mr. Armstrong was decided on 1st December (Armstrong v. Landmark Corporation Limited, 85 W.N. Pt.I 238).

At the annual general meeting on 2nd December, 20 1966, Mr. Armstrong did not obtain from the shareholders the support that he needed to have his nominees elected to the Board. His candidates were rejected and Mr. Cotter was re-elected, this being in accordance with the result for which Mr. Barton had been pressing.

From the time of Mr. Armstrong's removal as chairman on 17th November through to the date of the annual general meeting on 2nd December the hostility between the two men was exemplified in a number of 30 ways. They had disagreed violently on matters of business in connection with the affairs of Landmark. Mr. Armstrong, through his companies, had retaliated

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by calling up the \$450,000 owing to them. The suits commenced on 15th November, whereby one or other of the Armstrong companies was propounding the right to control the Paradise Waters companies, came before the Court for the first time on 18th November, and the suits were again before the Court on 30th November and on 1st December. Mr. Armstrong's own 10 personal suit against Landmark regarding proxies was commenced and disposed of on 30th November and 1st December. The proxy fight had led to publicity being given in the circulars to the criticism made by Mr. Barton of Mr. Armstrong.

It can fairly be said that the field throughout which their contest ranged in this period was wide and varied. It is claimed by Mr. Barton that the field included the making by Mr. Armstrong or on his behalf of menaces and threats to Mr. Barton. Mr. 20 Barton has given evidence that I accept to the effect that he began to receive telephone calls during the night in the period November to December 1966; these calls started just after Mr. Armstrong's removal as chairman. Mr. Barton said that on most occasions nobody spoke, and that he only heard heavy breathing into the telephone. On some occasions a voice said to him "You will be killed". The voice was distorted and Mr. Barton does not claim to have recognised the speaker. He did, however, recognise 30 the voice in one such conversation in January 1967, when the caller said "You will get killed"; Mr. Barton recognised the voice as that of Mr. Armstrong.

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These telephone calls were usually between four and five o'clock in the morning, and according to Mr. Barton he received them for four or five days in a row and then there would be a few days' break, followed by calls on another three or four consecutive days, followed by yet another break, and so on. The telephone calls were very frequent in the 10 week or so prior to the annual general meeting. Mr. Barton apparently complained to the Postmaster-General's Department about these calls. He wrote on 9th December to the Postmaster-General's Department, but the only document in evidence is the reply from the Postmaster General's Department acknowledging Mr. Barton's letter of 9th December "regarding the receipt of annoying telephone calls."

As well as receiving these telephone calls, Mr. Barton has given evidence, which I accept also, 20 to the effect that he noticed that his house was being watched and that he was being followed. On one occasion he recognised the person watching his house as Frederick Hume, and on another occasion he saw Mr. Hume standing opposite the Landmark office in Pitt Street, Sydney, watching that office. He was followed both on foot and on occasions by a car or by a red truck.

Apart from his recognition of Mr. Armstrong's voice on the telephone early in January there is no 30 direct evidence available to Mr. Barton identifying Mr. Armstrong with either the telephone calls or with the watching and following. I am satisfied

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that these things happened much along the lines that Mr. Barton has sworn to. There is evidence that I accept to the effect that Mr. Armstrong was during this period threatening Mr. Barton in conversations. The identification of Mr. Armstrong's voice in January, the fact that that telephone call conformed with the pattern of calls commencing immediately 10 after Mr. Armstrong's removal from the Board, the fact that Mr. Armstrong threatened Mr. Barton to his face, and the hostility then existing between the two men is sufficient to persuade me that Mr. Armstrong was responsible for the telephone calls.

So far as the watching and following is concerned, the suggestion comes at once to mind that Mr. Armstrong was responsible in this regard also. All the surrounding circumstances would appear to support this suggestion. But there is not, in 20 my view, sufficient evidence to enable me to make a finding to this effect. I accordingly conclude that Mr. Armstrong is not proved to have been responsible for having Mr. Barton watched and followed during the period following Mr. Armstrong's removal as chairman. Mr. Armstrong has denied any complicity in the telephone calls and the watching and following. I attach little weight to his denials. But the position remains that, although I make an affirmative finding that Mr. Armstrong was respons- 30 ible for the telephone calls, there is insufficient evidence to enable me to make an affirmative finding that he was responsible for the watching and following.

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The conduct of Mr. Armstrong and its effect on Mr. Barton during this period is of some importance. On one occasion, not precisely identified in point of date but apparently about late in November, Mr. Armstrong, according to Mr. Barton, said to him:

"I am of German origin and Germans fight to the death. I will show you what I can do against you, and you had better watch out. You can get killed." 10

Mr. Armstrong denies this conversation, and there is evidence denying the fact that he is of German origin. Whether or not Mr. Barton is correct in the earlier part of this statement, I accept his evidence that Mr. Armstrong did speak to him round about the end of November in threatening terms, advising him to take care and warning him of the risk of being killed. I reject Mr. Armstrong's denial of a conversation along such lines. 20

Mr. Bovill gave evidence that some days before 30th November Mr. Barton told Mr. Bovill: "I have hired a bodyguard because he is threatening to kill me". He told Mr. Bovill, that he had been threatened over the telephone and had had numerous calls in the middle of the night. He also told Mr. Bovill that Mr. Armstrong had said to him:

"You may not get to the annual meeting. If you keep on this fight you are likely to be killed or likely not to get to the annual meeting." 30

Mr. Barton had in fact on 24th November, 1966, employed the Australian Watching Company (N.S.W.) Pty. Limited to provide him with a bodyguard. The

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instructions to that company are in evidence, and they are in the following terms:

"Service Instructions. The guard to be with and receive instructions from Mr. Barton, managing director, Landmark Corp. Limited. Guard to be responsible for Mr. Barton's safety 24 hours per day until 2nd December, 1966." 10

Mr. Barton was guarded until 2nd December.

On 30th November there was at the Landmark offices an incident which has cast further light upon Mr. Barton's claim that he was being threatened by Mr. Armstrong; the incident also has relevance to the credit of Mr. Armstrong. There was a Board meeting on this day attended, inter alia, by Mr. Barton, Mr. Armstrong and Mr. Bovill. Immediately prior to that meeting had been an incident apparently 20 provoked by Mr. Armstrong's resentment of the presence of an unidentified man in the Landmark offices; this unidentified man was Mr. Barton's boydguard. Mr. Bovill gave evidence regarding the events of 30th November. I accept Mr. Bovill's evidence both in general and in particular in relation to this incident. He is an honest and a truthful witness; but I add the qualification that in some respects his recollection, particularly as to dates, is faulty, and in recounting conversations the inevitable attempt to reconstruct has led in some instances to inaccuracies in the actual terms used. Subject to this qualification I am satisfied that the matters to which Mr. Bovill deposed did in fact take place much along the lines stated in his evidence. Mr. Bovill's corroboration of Mr. Barton on

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some matters, matched against Mr. Armstrong's denials, has significance in the general finding that I have made to the effect that Mr. Armstrong's evidence is not to be trusted.

According to Mr. Bovill he heard Mr. Armstrong's voice outside the Board room on 30th November. Mr. Armstrong entered the Board room and shouted at Mr. 10 Barton: "You stink; you stink. I will fix you." Mr. Armstrong then left the Board room and was followed by Mr. Barton. At the conclusion of the Board meeting on that day Mr. Bovill had a conversation with Mr. Armstrong in the Board room; there was no other person present. Mr. Bovill made a conciliatory approach to Mr. Armstrong. This was rejected by Mr. Armstrong, who then made a series of wild and extravagant statements. In summary these were to the effect that by virtue of his office as 20 a Member of the Legislative Council and with enough money he could procure a member of the Police Force to do his bidding; he made mention of organised crime moving into Sydney, and said that for \$2,000 "you can have someone killed". He made other references to gang war, the risk of being caught in a hail of bullets at Kings Cross, and to drugs. Mr. Bovill, understandably, regarded Mr. Armstrong's conduct as extremely irrational". Mr. Armstrong's statements were accompanied by gestures, and the 30 whole incident apparently made a deep impression on Mr. Bovill's mind.

When the conversation ended Mr. Bovill

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walked straight down to Mr. Barton's office and repeated the conversation to Mr. Barton. Mr. Barton asked Mr. Bovill more than once whether Mr. Bovill thought Mr. Armstrong could get gangsters to have him shot for \$2,000. Although Mr. Bovill's account of this conversation may, as I have said, have gained something from reconstruction, I am satisfied that 10 such a conversation did take place, and I reject the evidence given by Mr. Armstrong, broadly speaking in denial, and in some respects in proffered explanation of the conversation.

I am satisfied that Mr. Barton was during the period following Mr. Armstrong's removal as chairman up to the annual general meeting in genuine fear for his personal safety. His question to Mr. Bovill on 30th November: "Do you think Mr. Armstrong could get gangsters to have me shot for \$2,000?" 20 was no idle inquiry. In the course of his cross-examination Mr. Bovill was asked about the conversation he had with Mr. Barton in which he recounted to Mr. Barton the statement made on that day by Mr. Armstrong; Mr. Bovill was asked: "Mr. Barton appeared on the 30th November to you to be concerned and worried about this?", to which he answered "When I told him about Reilly and the £1,000 he seemed to be very worried"; Reilly was mentioned by Mr. Armstrong as a man who could be employed to kill 30 a person. Mr. Bovill's cross-examination continued:

"Q. Prior to the 30th November when he

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told you these things he seemed to be worried?

A. Worried sufficiently to employ a body-guard.

Q. He told you he took them seriously?

A. Yes.

Q. He regarded them as threats to his life? A. Yes. He regarded them as threats to his life and to the security of the company." 10

Mr. Barton said in his evidence:

"Mr. Bovill told me that Mr. Armstrong have said to him that he can hire Reilly or McMillan from Melbourne to kill somebody for \$2,000, and Bovill told me that 'I am worried about your safety. Mr. Armstrong might hire one of these men to rub you out'".

The acts and statements made by Mr. Barton during the period prior to the annual general meeting provide evidence that satisfies me that he was at that stage in genuine fear for his personal safety. There is compelling evidence in this regard to be found in his employment of a bodyguard. So serious was the concern lest there be physical violence directed against him that three bodyguards were employed to attend the annual general meeting on 2nd December, two of them standing behind a curtain on the stage near where Mr. Barton was sitting. 20 30

Whilst the events leading up to and associated with the annual general meeting are of importance in the history of the dispute between Mr. Barton and Mr. Armstrong, they do not necessarily assist Mr. Barton in the claim that he makes in this suit. They establish to my satisfaction that Mr. Armstrong, both in person and by telephone calls, had induced in Mr. Barton a real fear for

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his own safety. But these threats on Mr. Armstrong's part and the resultant fear caused to Mr. Barton cannot be seen to be associated with the negotiation of any business transaction between the two men. There is no suggestion at that point of time that Mr. Armstrong wanted to force Mr. Barton to buy out his shares in Landmark. It may well be that the threats were intended to cause Mr. Barton to weaken in his opposition to Mr. Armstrong in connection with the affairs of Landmark; or possibly they stemmed from sheer malevolence on Mr. Armstrong's part towards Mr. Barton. Whatever may have been the reason for this conduct on Mr. Armstrong's part, it was well before, and therefore not associated in any way with, the negotiations leading up to the agreement which Mr. Barton challenges in this suit. The events are of assistance to Mr. Barton in that they establish that his frame of mind was, by reason of Mr. Armstrong's threats, one susceptible of being intimidated. But they are harmful to his case in that the continuity of this threatening course of conduct on Mr. Armstrong's part from late November may tend against a finding that this threatening conduct was intended by Mr. Armstrong or believed by Mr. Barton to be causally related to negotiations which were not current or contemplated when that course of conduct commenced.

In the days that followed the general meeting the telephone calls continued. Mr. Barton gave evidence of a threat which he said Mr.

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Armstrong made to him on 7th December after a Board meeting of Paradise Waters (Sales) Pty. Limited. According to Mr. Barton, Mr. Armstrong said "You can employ as many bodyguards as you want. I will still fix you." Mr. Barton asserts this was said in the presence of a number of people, some of whose sympathies might be thought to lie with Mr. Barton and 10 others whose sympathies might be thought to lie with Mr. Armstrong. There is no other evidence forthcoming to corroborate or deny Mr. Barton's assertion. Mr. Armstrong denies having threatened Mr. Barton on the 7th December, and in this instance I am not satisfied that I should accept Mr. Barton's claim in the absence of corroborative evidence from some one or more other persons then present. These persons included Mr. Bovill, who was called as a witness in Mr. Barton's case, and it could be expect that if he 20 had heard Mr. Armstrong then threaten Mr. Barton he would have been asked about it. I accordingly decline to find that Mr. Armstrong threatened Mr. Barton with physical violence on 7th December.

At this point in the narrative I shall digress to discuss the financial position of Landmark in December 1966. This has a direct bearing upon the actions of Mr. Barton in the period under consideration and it gives meaning to the actual events of that time. 30

I have already referred to the assurance given to Landmark by United Dominions Corporation that finance would be forthcoming to enable the debt of

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\$450,000 to the Armstrong companies to be paid out. The necessary arrangements to effect repayment of this debt were, in the early part of December, being made between the solicitors for Landmark and the solicitors for the Armstrong companies. United Dominions Corporation was relied upon as the source of the necessary funds, and \$50,000 was advanced by 10 it. On 10th December, however, the managing director of United Dominions Corporation told Mr. Barton that his company had decided not to advance the remaining \$400,000 necessary to pay out the loan from the Armstrong companies, and that his company would make no further loans in connection with the Paradise Waters project. That project involved the expenditure of substantial sums of money. The primary source from which this money had been obtained, and from which it was expected to be forthcoming in 20 the future, was United Dominions Corporation. Apparently the arrangement under which advances were made by United Dominions Corporation was that from time to time, on the presentation of engineers' progress certificates concerning the development work, additional moneys would be lent by United Dominions Corporation. The loans being made from that company were all covered by mortgages from the Landmark companies. As at December 1966, although a great deal of work had already been done, there 30 still remained a great deal of further work to be done. Landmark itself had insufficient liquid assets to proceed with the project. Its successful

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completion was completely dependent upon Landmark being able to borrow moneys to carry it through, such borrowings to be repaid in due course out of proceeds of sale of the lots of land in a developed state. The project was one which had necessarily to be kept moving forward, as the finance already obtained by Landmark was at substantial interest rates. Hold-up in the work, whether through interruption of finance or otherwise, presented the threat of crippling or even destroying Landmark by reason of the continuing aggregation of these heavy interest charges arising from any delay in the ultimate completion date. 10

In this delicately-balanced financial position, Landmark was unable to meet the \$400,000 debt due to one of the Armstrong companies otherwise than from the proceeds of a fresh borrowing. In addition to needing to borrow from United Dominions Corporation the \$400,000 to repay this loan, Landmark still required a continuity of lending from that company in the ensuing months whilst development work proceeded. In such a situation, the statement by United Dominions Corporation on 10th December that it had decided not to make the \$400,000 available and that it had decided not to make further progress payments presented a threat to the very existence of Landmark. 20 30

Mr. Barton claimed in his evidence that as soon as he was told that no money would be forthcoming from United Dominions Corporation he

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realised that Landmark's prospect were hopeless.
It is put as part of his case that, as soon as
United Dominions Corporation took this attitude, he
knew that nothing could save Landmark, and that financial
disaster was inevitable. Notwithstanding
his claim to have held that belief, he proceeded in
the days and weeks that followed with strenuous 10
attempts to obtain the necessary finance. He asserts
that he did this out of a sense of obligation to
his fellow directors, to Landmark and to its shareholders.
But he claims to have been pessimistic
from this point of time onwards. The significance
of this claim to a pessimistic outlook is that it
would render it less probable that Mr. Barton would
freely have agreed to buy Mr. Armstrong's shares in
Landmark for 60 cents each.

On 13th December Mr. Barton wrote to United 20
Dominions Corporation demanding that that company
honour its undertaking to make an advance of \$450,000.
Mr. Bovill discussed with Mr. Barton the wisdom of
sending such a letter and, according to Mr. Bovill,
Mr. Barton said to him:

"The money has not come through. I don't
think it will come through. I would like
to resign. . . . I don't think we can get
the money any other way. I think that it
is finished."

I accept Mr. Bovill's evidence that Mr.
Barton said this to him. I also accept that Mr. 30
Barton was at that point of time despondent about
the future of Landmark. I do not believe, however,

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that this despondency was as deep-seated and long-standing as Mr. Barton suggests in his evidence.

Mr. Barton is a man of considerable business competence, hard-working and tenacious in the pursuit of business matters. In the weeks that followed 10th December he brought these qualities to bear in his attempts to obtain finance for Landmark from some other source. The enthusiasm and diligence with which he sought finance from other sources and the statements and assurances he is proved to have made in connection with these attempts are inconsistent with his holding the view that Landmark was to all intents and purposes worthless on and after 10th December, 1966. 10

Having digressed to deal with Landmark's financial position and to foreshadow the view that I hold concerning Mr. Barton's outlook on the future, I return to the narrative and take it up at the point where the negotiations leading up to the deed of 17th January, 1967 commenced. 20

C. BARTON'S NEGOTIATIONS WITH SMITH - 13.12.1966 to 6.1.1967.

On 13th December Mr. Armstrong saw Mr. Smith (his financial adviser), and gave him instructions to enter into negotiations with Mr. Barton. The terms of these instructions, in particular the degree of similarity between these instructions and the agreement ultimately reached, are of such importance that I quote in full the note made by Mr. Smith during his conversation with Mr. Armstrong on 13th December: 30

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"Suggest that Barton makes a firm offer in writing which is subject to acceptance within 48 hours.

- (a) pay out 2nd mortgage debt at \$400,000 plus interest
- (b) purchase 40% equity in Paradise Waters (Sales) Pty. Limited for \$175,000 10
- (c) purchase approximately 300,000 shares in Landmark Corporation Ltd. for 60 cents per share \$180,000.

Upon completion thereof A. E. Armstrong and his hominees will resign from the various Boards."

Mr. Smith telephoned Mr. Barton either on the 13th or 14th December, and he saw him on the 14th. This was the commencing day of the negotiations leading up to the agreement recorded in the deed of 17th January, 1967. There is a direct conflict between the evidence of Mr. Smith regarding the period over which these negotiations extended and the evidence of Mr. Barton on the same topic. Mr. Smith's evidence is supported by contemporaneous notes made by him and I am satisfied, having regard to his demeanour in the witness-box, the care and precision with which he gave his evidence, and the extent to which he was able to refresh his recollection from contemporaneous notes, to accept the entirety of his evidence without qualification. As his evidence deals in detail with the actual negotiation of the agreement later recorded in the deed of 17th January, I must trace that course of negotiation with some particularity. 20 30

At the first interview between Mr. Barton and Mr. Smith on 14th December Mr. Barton agreed

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that by 10 a.m. on Friday, 16th December, he would
endeavour to reach a firm agreement on a basis which

I summarise as follows:

- (1) Pay out the mortgage debt of \$400,000 plus interest.
- (2) Purchase the 40% interest of the Armstrong companies in the Paradise Waters project for 10
 - (a) cash \$100,000
 - (b) an option to purchase 30 blocks in the completed development for list price less 40%; this option could be worth \$120,000.
- (3) Purchase 300,000 shares in Landmark at 60 cents each payable over a three-year term; Mr. Armstrong to be entitled to the current dividend. 20
- (4) Mr. Armstrong to resign as a director of all companies.
- (5) Mutual undertakings not to make damaging statements.

There was not at this conversation nor, indeed, at any time, any query regarding the proposed price of 60 cents per share for the 300,000 shares.

Mr. Barton saw Mr. Smith again on 16th December at 9.30 a.m. He told Mr. Smith he was not 30 able to commit himself to a firm arrangement in terms of the discussions held on the 14th. The substance of the discussion on the 16th apparently turned upon Mr. Barton's desire for some extended terms to meet the payments discussed at the previous meeting on 14th December. There was no change in the basic framework of the repayment of the loan, the purchase of the 40 per cent interest in the Paradise Waters project and the purchase of the

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300,000 shares at 60 cents payable over three years, with Mr. Armstrong resigning from all the Boards. Mr. Barton suggested that a penthouse be sold to Mr. Armstrong by one of the Landmark companies at a discount of \$20,000, this presumably being by way of additional consideration to attract Mr. Armstrong to Mr. Barton's request for a deferment in payment 10 of the existing loan of \$400,000 and the \$100,000 cash portion of the purchase price of the 40 per cent interest in the Paradise Waters project.

Mr. Barton saw Mr. Smith again on Monday, 19th December. There was some discussion concerning Mr. Armstrong's rejection of figures produced by Mr. Barton on Friday 16th, in support of his counter-proposal for an extended date to pay the \$400,000 plus \$100,000 amounts. Mr. Smith told Mr. Barton that Mr. Armstrong was not satisfied that 20 Mr. Barton's proposal of the 16th would be capable of being performed, in that there would be insufficient cash coming in to make the payments on the due dates. There was further discussion on the 19th December on matters of detail, but broadly speaking the same general terms were being examined by Mr. Smith and Mr. Barton.

It was apparent that the prospect of Mr. Barton's suggestions of 16th December being acceptable to Mr. Armstrong depended upon the attitude 30 of United Dominions Corporation. Mr. Smith accordingly obtained Mr. Barton's assent to his

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seeing an officer of United Dominions Corporation,
and in fact Mr. Smith saw the managing director of
United Dominions Corporation later on 19th December.

The next meeting between Mr. Barton and Mr.
Smith was on 21st December. At this meeting again
there was further discussion on matters of detail.
Two of the principal points, namely, repayment of 10
the loan and the purchase of the 300,000 shares for
60 cents, appear to have been accepted by both sides
as ingredients in any settlement arrived at. Mr.
Barton suggested on this occasion that Landmark
would sell its 60 per cent interest in the Paradise
Waters project to Mr. Armstrong for \$150,000. This
offer on Mr. Barton's part was made in the context
of a threat then current by United Dominions Corp-
oration to appoint a receiver of the Paradise Waters
assets. Mr. Barton suggested to Mr. Smith that if 20
Landmark sold its interest in the Paradise Waters
project to Mr. Armstrong then the threat of receiv-
ership would be averted. Mr. Barton's counter-
proposal in this regard appears to have been left
up in the air at the discussion with Mr. Smith on
21st December.

Whilst these discussion with Mr. Smith had
been going on, Mr. Barton had been pursuing his
attempts to obtain finance for Landmark. About the
middle of December Mr. Barton told Mr. Bovill and 30
Mr. Cotter that in his opinion the company was in
trouble. He claims to have formed the view round
about 14th December that the shares were worthless,

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and to have informed the other members of the Board that this was his view.

It was, of course, quite true, as Mr. Barton pointed out in his evidence, that by the 14th December the company's prospects had been placed in jeopardy. It had no available source out of which to pay back the \$400,000 due to one of the Armstrong 10 companies; United Dominions Corporation had indicated that no further finance would be forthcoming from it for the Paradise Waters project; and Landmark had no assured prospect of obtaining from any other source the money that it needed.

The position simply was that if finance were available then the company had sound prospects, not differing materially from those which had led Mr. Barton a short time earlier to form the view that the shares were worth more than a dollar; if no 20 finance could be obtained then disaster was inevitable; and, of course, the shares would in truth be worthless. The value of the shares was bound up essentially with the prospect of obtaining finance.

I do not believe that Mr. Barton accepted defeat so readily when United Dominions Corporation withdrew its support in the first half of December. Clearly he recognised the seriousness from Landmark's point of view of the loss of United Dominions Corporation's support. But he set about obtaining 30 finance, and pursued his attempts with considerable tenacity in the months that followed. I have made allowance for his not unnatural attempt to put on

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a brave front in the face of a serious financial crisis. But his activities in the attempts to obtain finance, and the statements made by him in the course of seeking to preserve Landmark as a going concern, are inconsistent with his having, as he claims, formed a final conclusion by the middle of December that the shares were worthless. It is not 10 without significance that, although other details were discussed, and in some respects changes made in respect thereof in the course of negotiations with Mr. Smith, the price of 60 cents was never queried by Mr. Barton. Neither did Mr. Barton ever suggest to Mr. Smith any concern about the price of 60 cents for each share.

On 16th December Mr. Barton wrote to United Dominions Corporation, in effect withdrawing the demand made by the letter of 13th December for that 20 company to honour its undertaking to provide \$450,000, and stating

"I now wish to inform you that other arrangements are being made for the \$400,000 which is still outstanding, and the above arrangement is no longer required."

Mr. Barton was questioned regarding the "other arrangements" mentioned in this letter. He said that this was a reference to the visit that he had made to the Bank of New South Wales. In fact no other arrangements had been made with the Bank. 30 Mr. Barton's approach had resulted merely in the Bank asking him to make a formal application, but Mr. Barton did not anticipate that the Bank would

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accede to the formal application when made. His anticipation was correct: the Bank did refuse the formal application. Mr. Bovill, when asked about the letter, said that it was written following upon discussions he had had with officers of the United Dominions Corporation, from which discussions he had gained the impression that if Landmark withdrew the 10 peremptory demand made in its letter of 13th December then United Dominions Corporation would reconsider the provision of finance. Mr. Barton said that the purpose of the letter was to stop United Dominions Corporation appointing a receiver of the assets comprising the Paradise Waters project. Whatever the reason underlying the letter of 16th December, it is consistent with activity directed to keeping Landmark on foot. It does not on its face corroborate Mr. Barton's claim that he then regarded the 20 future as hopeless.

Mr. Smith's evidence establishes that on 19th December United Dominions Corporation had not finally resolved to withdraw its support from Landmark Corporation. Its attitude towards further advances and presumably the existing indebtedness, would be tempered by the resolving of the differences existing on the Landmark Board and Mr. Armstrong agreeing not to insist upon repayment of his \$400,000.

On 22nd December Mr. Grant, Mr. Armstrong's 30 solicitor, had a discussion with the solicitor for United Dominions Corporation. Later on that same day there was a Board meeting of Landmark at its

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office at which all four directors were present, and Mr. Grant, together with the company's solicitors, was in attendance. Mr. Grant reported that United Dominions Corporation had executed documents for the appointment of a receiver of the Paradise Waters project, but had agreed to defer carrying this into effect until 2.30 p.m. on 22nd December to allow 10 some agreement to be reached. The agreement sought by United Dominions Corporation was apparently an immediate reduction of its indebtedness by \$60,000 and the making by Mr. Armstrong of a further advance of \$300,000 on the project. Mr. Armstrong offered at the Board meeting to advance the \$60,000 provided that he took over control of the company from Mr. Barton and, in addition, had a nominee appointed to the Board. This proposal was rejected by the other three directors. 20

No doubt the rejection by the other directors of Mr. Grant's proposal was due partly to their antipathy towards Mr. Armstrong and partly to their belief that Mr. Barton's efforts to obtain finance would succeed, and thereby the company's future prospects would be assured. Referring to 22nd December, 1966, Mr. Bovill was asked: "And on that date you were quite confident that Mr. Barton would be able to find the money necessary to get the company out of its then current difficulties?", to 30 which he answered "Subject to Mr. Armstrong resigning from the Board."

Mr. Barton saw United Dominions Corporation

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on 23rd December, and on that date executed certain further securities in return for which United Dominions Corporation undertook not to appoint a receiver for seven days. Having attended to this, Mr. Barton left Sydney for Surfers Paradise, where he stayed until his return to Sydney on about 2nd January, 1967.

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It is, perhaps, appropriate to pause at this stage and correlate Mr. Armstrong's threats with the currency of the December negotiations between Mr. Barton and Mr. Smith. These negotiations had commenced on 14th December and they continued until 21st December. Subsequently to the annual general meeting on 2nd December Mr. Barton continued to receive telephone calls such as I have described earlier. I have rejected Mr. Barton's claim that Mr. Armstrong threatened him after the Board meeting of Paradise Waters (Sales) Pty. Limited on 7th December. Mr. Barton has also deposed to a conversation with Mr. Armstrong on 14th December. On that day there were Board meeting of the two Paradise Waters companies, one at 9.30 a.m. and the other at 10.30 a.m. During one or other of the meetings Mr. Barton says that Mr. Armstrong asked him to come outside because he had something very important to say. Mr. Barton says that he went, with some reluctance, and when outside Mr. Armstrong said to him: "Unless Landmark buys my interest in Paradise Waters (Sales) Pty. Limited for \$100,000 and the company repays \$400,000 owing to me, and you buy

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my shares for 60 cents each I will have you fixed."

Mr. Barton said that he understood this to mean that he would get killed; he was frightened, and extremely worried about the safety of himself and his family.

Mr. Barton says that after that conversation he called his solicitor (Mr. Peter Bowen), Mr. Bovill and Mr. Cotter to the Landmark office, and told 10
them that:

"The results of Mr. Armstrong's threats against my life and safety on the one hand, and on the other hand United Domions Corporation did not gave me the money - gave the company the money that was promised to pay out Mr. Armstrong, I see no other alternative just for myself to resign, because the company now has been publicly damaged possibly through my own and Mr. Armstrong's activities."

Mr. Gruzman places considerable reliance upon Mr. Barton's evidence regarding Mr. Armstrong's statement on 14th December, and he has presented 20
a number of arguments in support of my accepting Mr. Barton on this point. Equally, Mr. Staff has strongly pressed upon me Mr. Armstrong's denial. I have already found that Mr. Barton did offer to Mr. Bovill to resign. This was at the conversation between Mr. Barton and Mr. Bovill on 13th December. There was no evidence led from Mr. Bovill of his having been called in by Mr. Barton on 14th December, or of any conversation with Mr. Barton along the lines of that deposed to in the passage of Mr. 30
Barton's evidence I have quoted. Mr. Bovill gave evidence that Mr. Barton's officer to resign was made on 13th December; but, more importantly, the

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offer was not expressed by Mr. Barton to result in any way from Mr. Armstrong's threats against the life and safety of Mr. Barton. Neither Mr. Bowen nor Mr. Cotter was called on behalf of the plaintiff to give evidence relative to Mr. Barton's state of mind by recounting some such conversation on or about 14th December as Mr. Barton has said that he had with them. Mr. Barton's claim to have told his solicitor and Mr. Bovill and Mr. Cotter of the making of this threat requiring him to enter into an agreement is not corroborated by any one of these three. 10

There is no evidence of acts or statements by Mr. Barton at or about this time consistent with his present claim that Mr. Armstrong told him that unless he would agree he would be killed. Mr. Armstrong may well have threatened Mr. Barton on 14th December. But there is nothing to support Mr. Barton's claim that such threat was directly and expressly related to a requirement that he enter into an agreement with Mr. Armstrong. I am not satisfied that Mr. Armstrong did threaten Mr. Barton on 14th December, 1966, in the terms deposed to by Mr. Barton, and I do not accept Mr. Barton's evidence that this conversation took place. 20

Apart from the telephone calls which continued throughout this period in the manner that I have already mentioned, and Mr. Barton's claims to have been threatened on 7th and 14th December, neither of which claims I have accepted, the only other menaces in 1966 propounded by Mr. Barton 30

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subsequently to the annual general meeting were of having been watched and followed. Whatever suspicions might exist in connection with the identity of the person authorising the watching and following of Mr. Barton in the period prior to the annual general meeting there is not, as I have already held, sufficient evidence to identify Mr. Armstrong 10 with those actions. The watching and following, according to Mr. Barton, continued virtually unchanged until 8th January. Mr. Barton was away for about ten days during this period, and I have some doubt as to whether he was watched and followed quite as consistently after the general meeting as prior thereto. There is the same deficiency of evidence to associate Mr. Armstrong with responsibility for this watching and following during the period after the annual general meeting. The only possible link 20 with Mr. Armstrong would be through Mr. Frederick Hume. I shall return to this topic later; at this stage it is sufficient to state that the evidence does not establish responsibility on Mr. Armstrong's part for the watching and following of Mr. Barton at any time subsequently to the annual general meeting.

As the seven-day respite obtained by Mr. Barton on 23rd December from United Dominions Corporation began to draw to a close it became necessary 30 to obtain some further extension of time from United Dominions Corporation. On 28th December Mr. Bovill and Mr. Cotter, with the telephone assent of Mr.

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Barton, sent to United Dominions Corporation a letter prepared by Landmark's solicitor asking that no further steps be taken until there had been a full discussion after Mr. Barton's return to Sydney from Surfers Paradise. United Dominions Corporation apparently acquiesced in this request.

Mr. Barton returned to Sydney on 2nd January, 10
1967, and on 3rd January, in response to a telephone call from Mr. Smith of that date, he had an interview with Mr. Smith. This interview commenced at about 2.30 p.m. The interview lasted upwards of an hour, and the substance of it was recorded by Mr. Smith on the same day. I shall not go through the terms of the discussion on 3rd January. The discussion was detailed, and it was directed to alternative proposals put forward by Mr. Barton as ways of achieving the basic agreement that had been under 20
consideration since 14th December; this basic agreement involved the repayment of the loan of \$400,000, the purchase of the 40 per cent interest in the Paradise Waters project and the purchase of the 300,000 shares at 60 cents each.

The principal difficulty when under examination was the source from which moneys might be found to make the necessary payments to Mr. Armstrong and his companies and the times to be allowed in any settlement for the making of such payments. 30
Mr. Smith commenced the conversation by urging Mr. Barton not to take upon himself too difficult a task in fixing the time for payment. One element

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of the arrangement being discussed was that Mr. Smith would be appointed as a director of Landmark. This was apparently a requirement of Mr. Armstrong's, enabling him, through a representative on the Board, to be reassured about the safety of the assets of the Landmark companies, in respect of which moneys were to be payable to him under the settlement. 10
This was acceptable to Mr. Barton, but Mr. Smith told him on 3rd January that he, Mr. Smith, had not yet made up his own mind, and that he would need to carry out some investigation of the books and records of Landmark, before he accepted a seat on the Board.

Mr. Smith subsequently read over to Mr. Barton on the telephone the notes that he had prepared of their discussion on that day, and Mr. Barton confirmed their accuracy. 20

Later on the same 3rd January Mr. Smith saw Mr. Armstrong, and discussed with him the proposals that had been examined between Mr. Barton and Mr. Smith earlier on that day. Mr. Armstrong gave some instructions to Mr. Smith on 3rd January. Mr. Smith saw Mr. Armstrong again on 4th January, and in his presence Mr. Smith prepared some notes entitled "Basis of Agreement". There were some minor differences between the document prepared by Mr. Smith on 4th January and the matters discussed between 30
Mr. Barton and Mr. Smith on 3rd January.

Mr. Smith obtained Mr. Armstrong's initials on the notes entitled "Basis of Agreement" prepared

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on 4th January recording Mr. Armstrong's instructions to him. Mr. Smith's evidence then proceeded:

"Q. Having got these instructions from Mr. Armstrong and the signature to it, what did you do about it? A. I telephoned Mr. Barton.

Q. Yes. A. And I said that I had had a discussion with Mr. Armstrong, and as a result of the discussion I had made out notes of my understanding of how the negotiations were to be settled. I then read the notes out to him. 10

Q. This is the document, Exhibit 43, I take it? A. That is the document of the 4th January. I said to him, 'You understand that Mr. Armstrong has withdrawn his insistence that I become a director of the company? However we will still proceed with the investigations, and let you know in due course.' I said, 'I have also obtained Mr. Armstrong's signature to the notes I have, and these notes will be sent to our solicitors.' 20

Q. Yes. A. Mr. Barton said, 'Yes, I agree with the arrangement between the parties, but you understand it is subject to the solicitors.' 30

Q. Yes. Well now, was there anything more said in this conversation? A. I don't recall.

Q. When you read the document, Exhibit 43, to Mr. Barton, did he make any comment about it? A. No.

Q. Did you have any further discussions with Mr. Barton then on 4th January? A. No."

Mr. Smith commenced on 4th January his investigation of the books and records of Landmark: 40

The document prepared by Mr. Smith on 4th January was sent by him to Mr. Armstrong's solicitors, and it formed the basic instructions upon which Mr. Armstrong's solicitor commenced the preparation of the documents signed on 17th and

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18th January. It is headed "Basis of Agreement",
and contains five numbered paragraphs which I shall
quote or summarise:

1. Mortgage over Paradise Waters P/L
\$400,000 plus interest to date to be
discharged and shares in Paradise
Waters P/L to be sold for \$100,000. 10

2. Payments to be made as follows:-

Penthouse
(furnished as is) 60,000
Cash promptly
(within 7 days) 140,000 + interest

\$200,000

The balance of \$300,000 to be paid in
one year at 12 per cent interest.
Security to be a second charge over
Paradise Waters Pty. Limited or Land- 20
mark House plus guarantee from Land-
mark Corporation Limited.

3. Mr. Armstrong to have an option to
buy any 35 blocks of Paradise Waters
Estate for 50 per cent of list prices
on the basis of ten per cent deposit
on exercise of option and the balance
on transfer of title, such option to
be exercised by 15th March, 1967.

4. "Ratification of end finance Rozelle 30
as per Grant agreement 1965."

5. Sale of 300,000 shares in Landmark
for \$180,000 being 60 cents each with
a mortgageback; purchase price payable
over three years at annual rest free
of interest. Total price to be guar-
anteed by Mr. Barton but total to be
split with nine other parties each of
whom will guarantee the price of his
individual parcel; each of such nine 40
persons to be acceptable to Mr. Smith
as arbitrator; Mr. Armstrong to be
entitled to current dividend but no
other dividends.

As Mr. Smith had told Mr. Barton, the doc-
ument prepared on 4th January was sent to Mr. Grant,
Mr. Armstrong's solicitor. From that point onwards

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the negotiations for the greater part were carried on between Mr. Grant and the solicitors for Mr. Barton and for Landmark. The negotiations between the solicitors were directed to recording in due legal form the basic arrangement concluded between Mr. Barton and Mr. Smith on 4th January. Many matters of detail had to be worked out and a number of documents were necessary in view of the multiplicity of parties and the commercial complexity of the transaction. The basis was, however, clear, and it did not change in any respect that I regard as significant from the 4th January up to the final signing of the deed on 17th January. This is a point of major importance in the suit and I shall develop it by referring in detail to the deed. 10

The parties to the deed were Mr. Barton, Mr. Armstrong, five Armstrong companies, Landmark, and the seven Landmark companies. The deed recited the relationship between the companies and the connection of Mr. Barton and Mr. Armstrong with the companies; it recited also the two suits brought by one or other of the Armstrong companies against Landmark in December 1966 and Mr. Armstrong's own suit against Landmark concerning inspection of the proxies; it recorded the negotiations for settlement and the agreement to enter into the deed. 20

Clauses (1) to (5) inclusive provide for a loan of \$300,000 to be made by one of the Armstrong companies to one of the Landmark companies secured at the option of the Armstrong company over certain 30

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assets of Paradise Waters (Sales) Pty. Limited or over Landmark House; the security documents mentioned in the deed provide that the loan be repaid at the expiration of one year and bear interest at the rate of 12 per cent per annum.

Clause (6) grants to Mr. Armstrong or his nominee the option to purchase 35 lots in the Paradise Waters project at half list price; the option is to be exercisable on or before 15th March, 1967; if exercised, the contract for purchase will require the payment of ten per cent of the purchase price on the exercise of the option, and the balance on completion. 10

Clause (7) contains covenants by the two Paradise Waters companies not to alter their memoranda or articles or to sell any of the unsold shares referable to development lots prior to 15th March, 1967. 20

Clause (8) contains the agreement by one of the Armstrong companies to sell to Mr. Barton and seven other person or companies nominated by Mr. Barton and approved by Mr. Smith not more than 300,000 shares in Landmark at 60 cents per share; the dividend is to remain payable to the Armstrong company and, if not paid on or before 18th January, 1968, then, in lieu thereof, an equivalent amount is to be paid by the purchaser to Mr. Armstrong as part of the purchase price. The purchase price is to be paid by three equal annual instalments on 18th January, 1968, 18th January, 1969 and 18th January, 30

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1970; no interest is expressed to be payable on the instalments of the purchase price. The price is to be secured by a mortgage back over the shares and a personal guarantee by Mr. Barton of each purchase contract.

Clause (9) contains the covenant by Mr. Barton that he will procure seven other persons who, with 10 himself will agree to purchase the shares from the Armstrong company.

Clause (10) deals with the provision of finance by the Landmark companies for a project that has been described as the Vista Court project at Rozelle. This is the subject matter of para. (4) of the document of 4th January.

Clause (11) contains the covenant by one of the Armstrong companies to sell its 40 per cent interest in the Paradise Waters project for \$100,000. 20

Clause (12) contains the agreement by one of the Landmark companies to sell to one of the Armstrong companies the furnished penthouse for \$60,000.

Clause (13) contains the covenant by the Landmark companies to apply the \$300,000 loan mentioned in clauses (1) to (5) in reduction of the \$400,000 debt due by one of the Paradise Waters companies to one of the Armstrong companies.

Clause (14) provides for settlement of certain conveyancing transactions to take place on or 30 before 18th January, 1967.

Clause (15) provides for discharge of the deed in the event of United Dominions Corporation appointing a receiver prior to settlement.

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Clause (16) provides that in the event of settlement not being effected by 18th January due to default of Mr. Barton or the Landmark group then Mr. Barton will step down from control of Landmark in favour of Mr. Armstrong.

Clause (17) provides that upon settlement Mr. Smith will become Chairman of Directors of Land- 10
mark, whereupon Mr. Armstrong will resign from the Boards of all the Landmark companies; it also provides for the appointment of another nominee of Mr. Armstrong to the Boards of the Landmark companies.

Clause (18) provides for the summoning of the necessary meetings and passing of resolutions to give effect to the transactions.

Clause (19) provides for the withdrawal of the three equity suits.

Clause (20) deals with stamp duty, legal 20
expenses and other similar incidental matters.

Clause (21) provides that the proper law of the agreement is the law of New South Wales.

Clause (22) provides that Mr. Barton and his family companies will support Mr. Smith and Mr. Hawley, the other proposed new director, at the 1967 annual general meeting of Landmark.

It will be seen that in point of substance the deed of 17th January gives effect to the agree- 30
ment recorded in the document of 4th January. But, insofar as there are departures, there is an even greater degree of similarity between the deed of 17th January and the draft document that came into

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existence as a result of Mr. Grant's consideration of the practical problem prior to Friday, 6th January.

Mr. Grant, Mr. Armstrong's solicitor, was telephoned by Mr. Armstrong on 4th January, and was asked to go down to Mr. Smith's office that afternoon. He was then given a copy of the document prepared on that date by Mr. Smith. He was given instructions to prepare the necessary documents as quickly as possible and to forward them to the solicitors for Mr. Barton and for Landmark. He promptly set about preparing the necessary documents. He has given evidence concerning the part that he played in negotiating the details of the transaction with the other solicitors. I accept Mr. Grant's evidence concerning the course of negotiations upon which he was engaged.

On 6th January Mr. Grant prepared a first draft of the deed on 17th January. He sent a copy of this draft to each of the other firms of solicitors under cover of a "without prejudice" letter. The draft is in evidence and an analysis of it in comparison with the deed of 17th January shows little divergence between the two documents. There are, admittedly, some matters in respect of which the draft differs from the document finally approved and executed. I do not intend to canvass the painstaking and detailed negotiations between solicitors resulting in such differences as do appear between the draft of 6th January and the deed in its final

form. Leaving aside mere matters of drafting, the greater part of such difference as there is between the two documents is represented by changes sought on behalf of Mr. Barton or Landmark, and conceded by Mr. Armstrong, in each instance through the medium of the solicitors.

There is nothing in the course of negotiat- 10
ion after 6th January to indicate that Mr. Arm-
strong was increasing his requirements concerning
the payments and the terms required by him for the
settlement of his dispute with Mr. Barton and the
Landmark companies; nor does a comparison of the
draft deed of 6th January with the final deed of
17th January support an inference that Mr. Armstrong's
terms had hardened in any material respect after
6th January. In short, the substance of the neg-
otiations had concluded on 4th January. Mr. Grant, 20
as Mr. Armstrong's solicitor, prepared and submitted
on 6th January a document containing such clauses
as he conceived to be necessary or desirable to
give effect to the basic agreement reached on 4th
January. And there was little material variation
between 6th January and 17th January, in the terms
of the agreement as ultimately signed. The period
between 6th January and 17th January was taken up
with negotiation on matters of detail to which I
attach little significance. 30

D. VOJINOVIC INCIDENT.

On Saturday, 7th January, an event of a most
extraordinary and alarming character occurred.

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Mr. Barton was telephoned by a man later identified as Alexander Vojinovic. I accept Mr. Barton's evidence concerning the Vojinovic transaction. Vojinovic told Mr. Barton that he wanted to see him urgently, and made an appointment to meet at the Castlecrag Post Office. Mr. Barton went there, but Vojinovic did not keep the appointment. He tele- 10
phoned Mr. Barton again that evening and said that Mr. Barton did not come alone to the Post Office; he said the matter was very urgent, and Mr. Barton was "in big trouble". He arranged to meet Mr. Barton that night at the Rex Hotel.

Mr. Barton arranged for two of his friends to go to the Rex Hotel separately so as to be able to recognise the man, and he also arranged with the Australian Watching Company to provide him with a bodyguard. Mr. Barton then drove to the Rex Hotel. 20
He was met outside the hotel by a man who took him in, introduced him to "Alec" and then left. Mr. Barton's account of the conversation, which I accept, was as follows:

"He took me into a corner of that bar and then he said to me 'Mr. Barton, you are in a big trouble. My team has been hired to kill you. We have been paid, offered to be paid £2000 and the man Frederick Hume is the middleman who has been hired by a big man 30
Armstrong,' and he said that if I prepared to pay him the £2000 he rather don't do it, and then I told him that I didn't want to be mixed up in these sort of matters and I going straight to the police. He then said that I should not rush into things because I am in real danger and he has a long criminal record and his team is very anxious to get the money and I have told him, as I did before, that I go straight to the police. He 40
said he has a long criminal record, he has been

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arrested many times and he spent a lot of time in gaol, and he has a detective who he is prepared to bring to me and put the matter in front of the police through the detective.

Q. Please continue. A. Then I told him that if this will be done through the police and if his principals who hired him will get arrested and dealt with I prepared to pay him the money through the police and he said that is quite all right and if I can give him £500 in advance. I told him I do nothing without the police. Then he said it would be all right, he will get in contact with me tomorrow morning and he will contact the detective in the meantime and I will be able to meet him with the detective together and place the matter in the police hands. 10
20

... ..

Your Honour, I missed out one point in the conversation with the man when he said that he has been offered £2,000 to kill me and he have to rob my wife diamond ring and he get paid £5,000 for the ring separate."

Next morning, Sunday, 8th January, at about seven o'clock Mr. Barton rang Mr. Millar, the solicitor for Landmark, and later that morning he went to the Criminal Investigation Branch of the Police Department. There is no doubt that Mr. Barton was seriously alarmed by this whole Vojinovic incident, and that he was in genuine fear for the safety of himself and his family. I have equally no doubt that Mr. Barton believed Vojinovic, and thought that Mr. Armstrong had hired criminals to kill him. It is critical in the present suit, however, to consider not so much whether or not Mr. Armstrong was in truth responsible for the Vojinovic incident, but, more importantly, whether Mr. Barton was intimidated, by his fear of Mr. Armstrong and Mr. Armstrong's actions, into signing the agreement. It 30
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is accordingly of importance to examine the evidence touching upon what Mr. Barton said and did after the Vojinovic incident. This will cast light on whether or not the fear which the incident understandably induced in him was a factor of significance in that it induced him to make the agreement.

When Mr. Barton telephoned Mr. Millar at 10 seven a.m. on the morning of Sunday, 8th January, he said to Mr. Millar, "That madman Armstrong now hire criminals to kill me." He asked Mr. Millar to come with him to a senior officer in the Police Department, so that he could get police protection. Mr. Millar made an appointment to see Detective Inspector Lendrum later that morning, and he also arranged for senior counsel to be present. The interview with Inspector Lendrum took place at the Criminal Investigation Branch. Mr. Barton was 20 present, as were Mr. Millar and the senior counsel he had retained. Inspector Lendrum brought in Detective Sergeant Wild and Detective Constable Follington.

Mr. Barton's evidence concerning the conversation at that interview differs in some respects from the evidence of the three police officer. Both Inspector Lendrum and Sergeant Wild made notes of the conversation and, where their evidence concerning this interview diverges from that of Mr. Barton, 30 I prefer their version to his. As well as giving evidence concerning this interview, Inspector Lendrum has given evidence on other matters. He was careful

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and precise in the answers that he gave in the witness-box; and I am satisfied that he is a truthful and reliable witness.

Inspector Lendrum's notes of the interview on Sunday, 8th, record a history given to him by Mr. Millar. The history deals briefly with Landmark and the connection of Mr. Barton and Mr. Armstrong 10 with that company. Inspector Lendrum was told that the shareholders supported Mr. Barton in his contest with Mr. Armstrong for control of the company. Inspector Lendrum's notes of what Mr. Millar said in Mr. Barton's presence proceed:

"Armstrong had a conversation with a Mr. Bovill, another Director of Landmark, saying that people could be hired in Sydney to 'bump off' other people. Armstrong is said to have told Bovill that Barton had better look out. 20

Millar arrived back from overseas on 23/12/66 by plane and a meeting of Directors held 12 noon that day - of Directors - and it appeared Landmark would fall but since then Barton had managed to save the company and there have been some conferences with representatives for Armstrong, with Barton, in connection with a compromise.

On Wednesday last 4/1/67 representatives of Armstrong (B. A. Smith, Chartered Accountant) and Mr. Barton personally reached what appeared to be an agreement subject to documentation to be prepared by Armstrong's Lawyers and submitted to Miller's firm and they were in fact submitted to the firm 5.0 p.m. Friday. 30

At 3.0 p.m. on 7/1/67 Mr. Barton received a telephone call from a gentleman at his home who wanted to meet Barton to discuss with him a message. Barton refused to see him." 40

The notes record the telephone calls from Vojinovic on Saturday, 7th January, and Mr. Barton's interview with him at the Rex Hotel on the night of that

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Saturday. Mr. Millar told Inspector Lendrum that Barton believed Hume to be "under a retainer from Armstrong since July to keep a tag on him."

Mr. Millar was purporting to speak on Mr. Barton's behalf. Mr. Barton was present and himself took part in the conversation where appropriate. He does not suggest in his evidence that the extract 10 I have quoted from Inspector Lendrum's notes is inaccurate; nor does he claim to have corrected any of these statements made by Mr. Millar. It is reasonable to assume that Mr. Barton tacitly assented to the reliability of what Mr. Millar told Inspector Lendrum.

I pause to draw attention to three things in the conversation between Mr. Millar and Inspector Lendrum: first and foremost Inspector Lendrum was told that on 4th January, 1967, Mr. Smith and Mr. 20 Barton "reached what appeared to be an agreement subject to documentation" - this is consistent with Mr. Smith's evidence and it is inconsistent with the Vojinovic incident having any operative effect upon Mr. Barton's decision to make an agreement with Mr. Armstrong in the terms arranged on 4th January and reduced to draft legal form on Friday, 6th January; second, Mr. Barton was said to have believed that Mr. Armstrong had retained Hume as early as July 1966 "to keep a tag on him" - at the other end 30 of the time scale this tends rather towards Mr. Barton believing that Mr. Armstrong's threats and actions against him were dissociated from the

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negotiations that did not in fact commence until
14th December; and third, Inspector Lendrum was told
that on 23rd December, 1966 "it appeared Landmark
would fall but since then Barton has managed to
save the Company" - this is inconsistent with Mr.
Barton's claim in evidence that at all times since
the middle of December 1966, and certainly in 10
January 1967, he believed that finance was unob-
tainable and that, in consequence, Landmark was
doomed to failure.

I attach importance to the conversation
with Inspector Lendrum. This was no mere chance
conversation or passing comment such as took place
from time to time between Mr. Barton and Mr. Bovill.
Mr. Barton, in an understandable and justifiable
state of real concern for his personal safety
following upon his interview with Vojinovic at the 20
Rex Hotel on the night of Saturday, 7th January,
had gone to the police in company with his solic-
itor, and senior counsel retained on his instruct-
ions, to seek police protection. Everything sug-
gests that Mr. Barton would have been anxious to
put before Inspector Lendrum every circumstance
relevant to his belief that Armstrong was plan-
ning to harm him as Vojinovic had disclosed. If,
as Mr. Barton seeks to maintain in this suit, Mr.
Armstrong was seeking to intimidate him into buy- 30
ing Mr. Armstrong's shares in a company either
worthless or at least of doubtful worth, it is
difficult to see why Mr. Barton did not tell

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this to Inspector Lendrum. So far from any suggestion that Mr. Armstrong was seeking to intimidate him into buying out Mr. Armstrong's shares and paying off the amounts owing to his company, Mr. Barton acquiesced in Mr. Millar telling Inspector Lendrum that he, Mr. Barton, had managed to save the company, and that an agreement subject to documentation had been reached on Wednesday, 4th, with the documents in fact having been submitted on Friday, 6th. 10

The discussion with Inspector Lendrum is consistent rather with the conclusion that I have reached, namely that Mr. Barton was in genuine fear of Mr. Armstrong, but that he ascribed Mr. Armstrong's threats against his life and safety to sheer malice on Mr. Armstrong's part. He knew that he had earned Mr. Armstrong's hatred when he defeated Mr. Armstrong in the battle for control of Landmark. 20 He regarded Mr. Armstrong as an evil man whose threats, both to his face and, as he believed, through the agency of Hume, and hence Vojinovic, could not safely be brushed aside. He feared retaliation at Mr. Armstrong's hands.

But, although all of this might well have tended to create in Mr. Barton a frame of mind in which he would be susceptible to Mr. Armstrong coercing him into entering into an agreement regardless of Mr. Barton's own free will, I am not satisfied that Mr. Barton was in truth coerced into the agreement. Whilst Mr. Barton was personally in fear of Mr. Armstrong, he regarded him 30

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also with a mixture of hatred and contempt. It is quite apparent from the evidence that Mr. Barton and Mr. Bovill both regarded Mr. Armstrong's presence on the Board and amongst the shareholders of Landmark as a major handicap to the future well-being of that company. The discord between Mr. Armstrong and the other directors was regarded by 10 Mr. Barton and Mr. Bovill as not only an encumbrance to the internal workings of the company but, more importantly, it presented a grave prejudice to obtaining the finance essential to the further prosecution of the Paradise Waters project. Mr. Barton and Mr. Bovill regarded it as a sheer commercial necessity to rid Landmark of the presence of Mr. Armstrong as a director and of Mr. Armstrong, through his companies, as a shareholder. It was the recognition of what they regarded as sheer 20 commercial necessity that was the real, and quite possibly the sole, motivating factor underlying the agreement recorded in the deed of 17th January, 1968.

I am not satisfied that Mr. Barton's personal fears for his own safety played any significant part in his entering into the agreement with Mr. Armstrong. The course of the negotiations between the parties and the whole of the evidence leaves me with the distinct impression that neither the fact that Mr. Barton entered into this agreement with Mr. Armstrong, 30 nor any of the terms of that agreement, would have been in any way changed if there were a complete absence of any threats or intimidation on Mr.

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Armstrong's part. Mr. Barton wanted to be rid of Mr. Armstrong in the interests of Landmark, and, indirectly, in his own interests as a substantial shareholder and managing director of Landmark.

Inspector Lendrum assigned Sergeant Wild and Constable Follington to Barton's case. There is a mass of evidence concerning the subsequent conduct of these two police officers, and I do not intend to go through it all or to make specific findings upon all of the points of contest. Constable Follington went to Mr. Barton's home on Sunday, 8th January, so as to be present if Vojinovic telephoned Mr. Barton again. The expected telephone call came. Mr. Barton arranged to meet Vojinovic on the Sunday night. The meeting duly took place. Vojinovic was apprehended by Sergeant Wild and Constable Follington and went with them to the Criminal Investigation Branch. He was interviewed, and there was taken down by typewriter a record of that interview, which Vojinovic read through and signed. Mr. Barton was shown this record of interview early the following week.

The record of interview is in the form of questions and answers, and runs into six foolscap pages. Vojinovic says in it that he was approached about two weeks previously by a man later identified as Michael Novak and told that Novak had been offered £2000 to engage somebody to commit a murder. Part of the conversation he had with Novak was described by Vojinovic in the following terms:

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"Yes, well, he said 'This fellow must have been in trouble with the other fellow - they are both rich and one wants to kill the other.' And then he said 'One of the fellows is a German in the company and the other fellow did something to him and got him put off and he got the job.' He said 'You must know this fellow because he was in the paper and that he is a big fellow in a good position his name is Armstrong, and the fellow to be killed is Mr. Barton.' 10

According to the statement, Novak gave Vojinovic a piece of paper with the name Armstrong and a telephone number on it, and on the bottom the name Barton and another telephone number. Novak said that a man named "Fred Hume was the man in between and that he is the man paying the £2000 to get Mr. Barton killed"; he also said "that Hume works for Mr. Armstrong private investigating and doing all the things he needed I suppose." Vojinovic said he had never met Frederick Hume, but he had seen Novak go and speak to him on one occasion. 20

It seems from the statement that nothing happened for some days until Saturday, 7th January. Vojinovic had been fairly constantly in Novak's company, driving around in a car being used by Novak; later evidence shows that this car was being acquired under a hire-purchase agreement by Mr. Hume. On Saturday, 7th, Vojinovic saw again the piece of paper with the names and the telephone numbers on it. He then decided to ring up Mr. Barton, which he later did, and made the appointment to meet him at a Post Office. He said he was unable to find the Post Office, and later rang Mr. Barton again and arranged to meet him at the Rex Hotel. The 30

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statement then proceeds to recount the interview with Mr. Barton at the Rex Hotel, in which Vojinovic told Mr. Barton that Mr. Armstrong wanted to kill him and was paying £2000 to Frederick Hume to procure somebody to do this. Mr. Barton had said that he would pay Vojinovic an equivalent amount if Vojinovic "could bring Armstrong and Hume to the justice." Vojinovic said that he had asked Mr. Barton for £500 as a payment for his help. The statement then deals with Vojinovic's telephone call to Mr. Barton on the Sunday in which he had told Mr. Barton that he needed money straightaway and that £200 "would keep me till the thing is finished". Later on Sunday he had rung Mr. Barton and made the appointment to meet him that evening, this being the meeting at which the police had apprehended Vojinovic.

Vojinovic was allowed to leave the Criminal Investigation Branch after he had signed the record of interview. The record of interview itself contains a number of very serious allegations, and one would have thought that these demanded prompt and thorough investigation. For some reason, however, Sergeant Wild and Constable Follington appear to have taken no prompt or effective steps to investigate these serious allegations. Their apparent inactivity has been the centre of a heated contest in the suit. There is evidence from Inspector Lendrum that Sergeant Wild is a highly regarded and competent investigator. Sergeant Wild claims to have formed the view that Vojinovic was merely

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attempting to obtain money from Mr. Barton, and that there was no substance in the allegations contained in the record of interview. This conclusion may or may not have been correct. But I find it extraordinary that a competent investigator, as Sergeant Wild undoubtedly is, would, in all the circumstances of this matter, have been as inactive 10 and dilatory in the conduct of the investigations as Sergeant Wild appears to have been.

Mr. Barton had come to the Criminal Investigation Branch on the Sunday morning and had interviewed the senior officer on duty, Inspector Lendrum, in the presence of a solicitor and senior counsel. The matters disclosed on that Sunday morning could not be regarded as other than serious. Arrangements were promptly made with a view to Vojinovic being apprehended, and, within 12 hours of the interview 20 with Inspector Lendrum, Sergeant Wild had obtained from Vojinovic a signed statement corroborating the substance of Mr. Barton's complaint of the Sunday morning. It was no doubt apparent to Sergeant Wild from Vojinovic's demeanour (he was called as a witness in the suit) that he is a man of limited intelligence; indeed the language of the record of interview confirms this. In the record of interview Vojinovic names three persons, viz., Mr. Armstrong, Mr. Hume and Novak. (albeit the latter 30 is referred to only by a pseudonym). All three persons referred to by Vojinovic are said to have played a part in what can fairly be described as a

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conspiracy to murder. There is some circumstantial material in the statement, such as the reference to the dispute between Mr. Barton and Mr. Armstrong, suggesting at least the possibility that Vojinovic might be telling the truth.

And yet in this context the evidence of Sergeant Wild is to the effect that he never at any point of time interviewed or even sought to interview Mr. Armstrong; he did not attempt to interview Mr. Hume until 18th January, some ten days after Vojinovic had been allowed to go free; no statement or record of interview was taken from Mr. Hume, nor was any note whatever made of the terms of Sergeant Wild's discussion with him on 18th January; he made little real attempt to find Novak, and did not in fact interview him until 19th January, this interview having been arranged at Sergeant Wild's request by Mr. Hume, and no statement was taken from him. 10 20

This is the pattern in Sergeant Wild's own evidence. It is contended, on the other hand, on behalf of the plaintiff that Sergeant Wild's evidence is false. Mr. Barton has sworn that on the morning of Wednesday, 11th January, he and his son called at the Criminal Investigation Branch and Detective Follington showed him a statement that had been obtained from Mr. Hume. The statement that Mr. Barton claims to have seen on 11th January contained admissions by Mr. Hume that he had been engaged by Mr. Armstrong to assault Mr. Barton, and it contained a number of other 30

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statements damaging to both Mr. Hume and Mr. Armstrong. The existence of this statement is strongly denied by both Sergeant Wild and Constable Follington, both of whom also deny that Mr. Hume was even interviewed until 18th January. They both assert that never at any point of time did they obtain any statement from Mr. Hume.

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The question of the existence of the Hume statement has led to a strong challenge being made to the credit of Sergeant Wild and Constable Follington, Mr. Barton claims to have seen it, and he asserts that it placed him in even greater fear for his own personal safety; the statement is also said to have significance as directly implicating Mr. Hume with Vojinovic and, so it is claimed on behalf of the plaintiff, as providing some circumstantial evidence implicating Mr. Armstrong.

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The challenge made to Sergeant Wild's credit is that, being a competent investigator, all the probabilities point to his having interviewed Mr. Hume long before 18th January. It is charged that Sergeant Wild did in truth interview Mr. Hume prior to Wednesday, 11th January and obtain from him the statement that Mr. Barton claims to have seen. It is further contended on behalf of the plaintiff that Mr. Armstrong brought pressure to bear on Sergeant Wild and Constable Follington, either directly or indirectly, to induce them to destroy the statement by Mr. Hume and to deny that such a statement ever existed.

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Not only is there a great volume of evidence directed to the credit of Sergeant Wild, Constable Follington and Mr. Hume in connection with the existence or otherwise of this statement, but in addition the significance of this evidence has been carefully and thoroughly analysed by both counsel in their addresses. The matter ultimately comes 10
down to a simple question of fact to be determined in the light of the views I have formed regarding the credit of the various witnesses concerned. It is Mr. Barton who asserts that he saw the Hume statement, and who seeks to have me find that there was such a statement. He accordingly bears the onus of proof. The evidence is in such a state that I am not able to conclude in Mr. Barton's favour that there was such a statement. The evidence upon which Mr. Barton relies comprises principally his own 20
affirmative assertion that he saw the statement, coupled with the strong probability that a competent investigator such as Sergeant Wild would by Wednesday, 11th January, have interviewed Mr. Hume and obtained a statement from him. Against this are to be weighed the denials of Sergeant Wild, Constable Follington and Mr. Hume.

So far as Mr. Hume is concerned, I do not feel confident that much weight can be placed on his denial. His evidence is unsatisfactory in a 30
number of aspects and, on points where his evidence is uncorroborated, reliance cannot safely be placed upon it.

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Both Sergeant Wild and Constable Follington, however, are supported in their denials by their official diaries, neither of which contains any reference to Hume having been interviewed prior to 18th January. It would not have been an easy task for them to falsify their diaries, nor would it have been easy for them to destroy the statement. Ser- 10
geant Wild, as well as bearing the character of a competent police officer, impressed me in the witness-box. I have great difficulty in accepting his claim to have been as dilatory and offhand in his conduct of this investigation as his evidence suggests, and this inevitably casts a shadow over his credit in general. It is difficult to avoid the impression that he must have done more than his evidence suggests, but this of itself will not justify an affirmative finding that he obtained a 20
statement from Mr. Hume; nor will it justify a finding that he yielded to pressure from Mr. Armstrong.

Mr. Barton claims that the statement was produced by Constable Follington and shown to him in the presence of Mr. Barton, Jnr. The evidence is that Mr. Barton, Jnr. is a young man of about 20 years of age. There is nothing to suggest that he was not available to be called as a witness. Of the three persons said to be present when the statement was produced Mr. Barton, Snr. affirms 30
that it was produced, Constable Follington denies it, and Mr. Barton, Jnr. has not come forward to say that it was produced. If indeed, such a

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statement had been produced and read by Mr. Barton, Snr. in the presence of his son it would seem unlikely that Mr. Barton, Jnr. would have forgotten the incident. The alleged contents of the statement were such that Mr. Barton would almost certainly have discussed it with his son either at or soon after leaving the Criminal Investigation Branch. 10
This would have assisted to fix the incident in the mind of Mr. Barton, Jnr. even if he did not himself read the statement. In evaluating the whole body of evidence on this disputed topic I regard the absence of evidence from Mr. Barton, Jnr. as important and I decline to find in Mr. Barton's favour that such a statement existed.

Before passing from the parts played by Sergeant Wild and Constable Follington in events relevant to the suit, I should mention that in the 20
course of cross-examination each was attacked on a number of grounds. They, of course, are not on trial in this suit, although their credit is in issue. I do not regard it as necessary, or even desirable that I depart from a consideration of the matters decisive of success or failure in this suit in order to deal with the various charges made against Sergeant Wild and Constable Follington. On their own account their inactivity and comp- 30
lacency in connection with a complaint of a most serious nature is deserving of censure. Mr. Barton was entitled to have his complaint properly investigated: it was undoubtedly genuine so far as it

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concerned Vojinovic; and, as I shall mention later, the painstaking efforts of Mr. Barton's legal advisers in this case elicited sufficient evidence to establish that Mr. Hume was involved in the latter part of 1966 in some activity adverse to Mr. Barton.

I return to the narrative of the events, and take it up on Monday, 9th January, that is to say 10 the day after Vojinovic made his statement at the Criminal Investigation Branch. Mr. Barton saw Vojinovic's statement early on the morning of Monday the 9th. His actions in the next two or three days are ample corroboration of his evidence that he was in extreme and genuine fear for the personal safety of himself and his family. He arranged for his mother and his parents-in-law who normally live with him, to go to a guest-house in the Blue Mountains; he himself, together with his wife and son, 20 moved to the Wentworth Hotel, taking pains to ensure that he was not followed so that his place of residence should not be known. On the same day that he moved to the Wentworth Hotel, namely, Wednesday, 11th January, being unable to obtain a pistol license, he arranged to purchase a rifle for his self-protection.

About this time Mr. Barton said to Mr. Bovill "The threats are getting worse. He has now hired criminals to kill me." Mr. Bovill advised Mr. 30 Barton to go to the police, and Mr. Barton replied that he had already done so. On or shortly after 11th January Mr. Barton told Mr. Bovill that he and his family had moved to the Wentworth Hotel, and

that he had bought a rifle; he said "I want you to know where I am in case you have to get in touch with me in a hurry. I want you to be the only one who knows my whereabouts."

In the light of the Vojinovic incident and Mr. Armstrong's previous conduct towards him, I am satisfied that Mr. Barton's fear for his own life and safety was reasonable and justifiable. I am satisfied, in addition, that he firmly believed what he had read in the Vojinovic statement, namely, that Mr. Armstrong was plotting to have him murdered. In this state of very real mental torment it may, perhaps, at first sight appear unduly legalistic to investigate whether Mr. Barton's belief was that, unless he entered into the agreement Mr. Armstrong wanted, he would be killed. But this is the case that he comes to Court to make out. The evidence touching on his state of mind must be analysed to see whether in truth his willingness to enter into the agreement was brought about by his fear of physical violence or perhaps even death at the hands of Mr. Armstrong. A man of less fortitude than Mr. Barton might well, in the light of the threats made to him by Mr. Armstrong prior to the Vojinovic incident, and in the light of the Vojinovic incident itself, have abandoned altogether any attempt to continue negotiating for commercially acceptable terms and might well have been prepared to surrender absolutely. But Mr. Barton, although he took steps to preserve his personal safety so far as he was able,

has not satisfied me that he yielded his independent business judgment by reason of his fear of Mr. Armstrong. He had a hatred for Mr. Armstrong; he held him in contempt; and he feared what he believed to be Mr. Armstrong's capacity to cause him physical harm. But he did not in his own mind relate Mr. Armstrong's threats to a desire by Mr. Armstrong to force through the agreement; nor was it forced through, so far as Mr. Barton was concerned, by reason of his fear of Mr. Armstrong's power to harm him. The agreement went through for the primary and predominant reason that Mr. Barton, along with Mr. Bovill, was firmly convinced that it was indispensable for the future of Landmark to enter into some such arrangement as this with Mr. Armstrong. Their belief was that they had to get rid of Mr. Armstrong if Landmark was to survive.

E. FINAL NEGOTIATIONS - EXECUTION OF AGREEMENT -
10.1.1967 to 18.1.1967

The negotiations between the solicitors continued in the days that followed Sunday, 8th January. On 10th January Mr. Smith telephoned Mr. Barton and told him that, as Mr. Barton wished some of his family companies to be named as purchasers of parcels of the 300,000 shares, Mr. Armstrong required in return the appointment of Mr. Smith and Mr. Hawley (a partner of Mr. Smith) to the Boards of the Landmark companies. Mr. Barton agreed to bring the other two directors of Landmark (Mr. Bovill and Mr. Cotter) to Mr. Smith's office on the afternoon

of Friday, 13th, to discuss the investigations Mr. Smith was making into the affairs of Landmark prior to Mr. Smith deciding whether he would accept appointment to the Board.

At this same telephone conversation Mr. Smith told Mr. Barton that Mr. Armstrong wanted the agreement exchanged by Friday, 13th. On Mr. Barton's 10 saying that that was not possible, Mr. Armstrong, through Mr. Smith, suggested that \$4,000 be paid to Mr. Smith's trust account by Mr. Barton as, in effect, a guarantee of good faith by Mr. Barton; if the agreement were not concluded the \$4,000 would be retained by Mr. Armstrong and offset against his expenses to date. Although at this telephone conversation Mr. Barton said that it was not possible for the contracts to be exchanged by Friday, 13th, this does not seem to have been intended to 20 indicate a reluctance on Mr. Barton's part to proceed. Rather, the impossibility of exchanging by Friday appears to have been directed to the conveying complexities necessary to be attended to in preparing the documents. This certainly seems to be in the sense in which Mr. Smith understood Mr. Barton and, indeed, Mr. Smith appears to have accepted that it would not be possible to exchange by Friday, 13th.

The next occasion on which Mr. Armstrong 30 made a threat to Mr. Barton was said by Mr. Barton to be on Thursday, 12th January, when Mr. Armstrong rang him up at the Landmark office, and said, "You

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had better sign this agreement, or else," to which Mr. Barton replied, according to his evidence, "I told him I didn't let myself be blackmailed into any agreement." Mr. Armstrong denies this conversation, but I am inclined to the view that this telephone call did take place. Although this finding places Mr. Armstrong in a position of having made a direct threat on 12th January regarding the signing of the agreement, it does not necessarily assist Mr. Barton on the critical issue of whether he was intimidated by Mr. Armstrong's threats into signing the agreement. I accept Mr. Barton's evidence that he told Mr. Armstrong that he would not let himself be blackmailed into any agreement; I believe that in truth Mr. Barton was not coerced into this agreement by reason of any threat of physical violence. 10

On that same 12th January there were further discussions between Mr. Barton's solicitor and Mr. Armstrong's solicitor concerning the terms of the agreement. In the course of these certain stipulations were made by Mr. Barton's solicitor on his behalf. The solicitors' negotiations certainly do not suggest that Mr. Armstrong's solicitor was calling the tune, as one would have expected if Mr. Barton's will had been overborne by Mr. Armstrong's threats and Mr. Barton had instructed his solicitor accordingly. 20 30

The 13th January is a date of particular importance in the narrative. Mr. Barton claims that Mr. Smith telephoned him on Friday, 13th:

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"Next day, on 13th January 1967, Bruce Smith rung me and he said he get instructions from Mr. Armstrong that the documents which is now getting - got finalised - have to be signed and exchanged today - 'unless this is done the deal is off.' I told Mr. Smith 'I am not prepared to sign or exchange the document on behalf of myself, and also I am not prepared to advise my co-directors on behalf of Landmark Corporation to do so'." 10

The purport of Mr. Barton's evidence concerning this conversation was that he had then finally decided not to go ahead with the transaction. Indeed, Mr. Barton's case was presented upon the basis that the actual threat which induced the signing of the agreement was made on the morning of Monday, 16th January; it is to a telephone conversation between Mr. Barton and Mr. Armstrong on the morning of Monday, 16th January, that Mr. Barton's counsel points in identifying the last threat which effectively overbore Mr. Barton's will. I should quote the evidence of Mr. Barton on this point: 20

"Q. You tell us of this conversation on the 12th and 13th January and of the decision that you had made, that would not sign the document. Did something happen between then and the 17th January which had any effect on your decision? A. Yes, I have received a phone call at about 8.20 on the morning of the 16th January from Mr. Armstrong saying 'Unless you sign that document, you will be dead - you will be killed - you will get killed' - I am sorry." 30

Q. Did you believe that statement? A. Yes.

Q. As a result of that statement what did you decide to do? A. I decided to sign agreement on behalf of myself; and on the telephone John Bovill ask me to go to Landmark Corporation office. I tell him that the best thing we can do in the circumstances that Landmark agree to a settlement with Mr. Armstrong on the basis set out in the agreement." 40

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The pattern presented is that Mr. Barton decided on Friday, 13th January, not to proceed any further, but that his will was overborne by the threat on Monday, 16th January. For this reason it is important to look at the events of Friday, 13th January, to see whether they bear out Mr. Barton's claim that he decided on that day not to go on with the arrangement. 10

In support of Mr. Barton having made such a decision on Friday, 13th reliance is placed on Mr. Bovill's evidence. According to Mr. Bovill the conversation was:

"Mr. Barton said to me about the first set of agreements that were prepared - he said ... 'It is a bad business. It is risky. We should not execute these agreements.' I said to him I thought the price was high but I believed that the settlement with Mr. Armstrong was a prerequisite to financing the company. Mr. Barton said 'I don't believe the finance will necessarily be forthcoming. I don't think these agreements should be signed.' I therefore put them out my mind, and that was the end of them so far as I was concerned." 20

In point of sequence Mr. Bovill placed this conversation after his conversation with Mr. Barton when Mr. Barton told him he had moved to the Wentworth Hotel; this would place it on or after Wednesday, 11th January. Mr. Bovill's evidence is to the effect that this conversation took place on 13th January. This date, however, was suggested to him in counsel's questions, and his acceptance of that date accordingly has less weight than if he had stated it unassisted. The form of the whole series of questions leading up to Mr. Bovill's account of 30

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this conversation, with the repeated references in the questions themselves to the 13th January, precludes my fairly regarding Mr. Bovill as putting his oath to this conversation having taken place on the 13th. But in point of sequence, if it followed Mr. Barton's removal to the Wentworth Hotel, that would suggest that it took place round about the 13th. 10

I accept Mr. Bovill's evidence that such a conversation did take place with Mr. Barton. But I am satisfied that it was much earlier in the negotiations. Notwithstanding that the terms of the conversation as deposed to by Mr. Bovill refer to the first set of agreements, and the execution of "these agreements", Mr. Bovill had no clear recollection of having seen either a form of agreement or a draft on any occasion prior to 18th January, 1967. I think it more probable than not that the conversation occurred prior to Christmas 1966. But whether this be so or not, I do not accept that any such conversation as this took place at any time from or after 4th January, 1967. 20

There are a number of reasons that have led me to reject the assertions that these conversations took place on the 13th January and that on that day Mr. Barton decided not to proceed with the proposed agreement. 30

In the first place, Mr. Barton's acts and statements in January, 1967, up to and including 18th January, are inconsistent with a belief on his

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part that finance would not necessarily be forthcoming; on the contrary, Mr. Barton's belief throughout at least the first half of January was one of some optimism regarding the rearrangement of the affairs of Landmark.

And, in the second place, Mr. Smith has given evidence that at 4.15 p.m. on Friday, 13th January, Mr. Barton, Mr. Bovill and Mr. Cotter met him and Mr. Hawley at his (Mr. Smith's) office. I have already stated that Mr. Armstrong wanted Mr. Smith and Mr. Hawley appointed to the Landmark Board as part of the settlement, this, no doubt, being due to his being an unpaid vendor of a large parcel of shares. Mr. Smith and Mr. Hawley had said they wished to investigate the affairs of Landmark before agreeing to accept such appointments. It was on 10th January that the arrangement for the meeting for the afternoon of Friday, 13th had been made. Mr. Barton took no step to cancel the meeting, as one would have expected if he had as he claims, decided not to proceed any further, and told Mr. Bovill so. And such exiguous evidence as there is of the discussion at this meeting in Mr. Smith's office on the afternoon of Friday, 13th, is consistent only with the negotiations continuing to go forward.

I have already quoted Mr. Barton's evidence of the telephone conversation with Mr. Smith on Friday, 13th, and Mr. Bovill's account of the conversation said to have taken place between him and Mr. Barton on that day. Mr. Smith's evidence, which

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I accept, regarding the meeting at 4.15 on Friday
13th, was as follows:

"Q. Before you give us the conversation so far as you are aware had you met Mr. Bovill and Mr. Cotter prior to this? A. No, I do not think so. I stated to the gathering, to Mr. Barton and the others, that Mr. Hawley and I still had not made up our minds to be directors. There were two conditions which remained to be fulfilled. One was that the directors call an extraordinary general meeting of the company to cancel out the dividend. I said if the company were to go into liquidation and the dividend were paid it was my view that the directors could be personally liable. I recall having referred to the section of the Act, which I do not know offhand. 10 20

I stated the other condition not proved to me was that the United Dominions Corporation would advance the money to enable the continuancy of the development of Paradise Waters.

Q. Did any of those persons say anything? A. Yes, Mr. Barton stated that in his view the dividend should be paid. He also stated that he was quite confident that after Mr. Armstrong was out of the company he would have no trouble getting the money from the United Dominions Corporation. I replied, 'That still has to be proved to Mr. Hawley and myself.' 30

Q. Did Mr. Bovill and Mr. Cotter offer comment? A. They would have made statements which I do not recall (Objected to; allowed.)

Q. They had something to say? A. Yes.

Q. You cannot recollect what it was? A. I can reconstruct and say that they took a neutral course. The main conversation was between Mr. Barton and myself. 40

Q. Was anything more said at the discussion on Friday, 13th? A. I think my parting words to the gathering were that I felt that the negotiations would be successfully completed. Just as Mr. Barton was leaving the room I said, 'We are making progress with the investigations. Our staff are basing the sale price of Paradise Waters at \$10,000 a block and it is showing a good profitability.' Mr. Barton said 'We will get a lot more than that per block.' 50

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Another significant matter pointing against Mr. Barton having decided on Friday not to proceed further is that, according to Mr. Grant, whose evidence on this point I accept, he, Mr. Grant, conferred with the solicitor for Landmark (Mr. Solomon) by telephone between 2 p.m. and 4 p.m. on the afternoon of that day and the two solicitors conferred in person from 5.30 p.m. to 8 p.m. on that evening. This is confirmed by Mr. Grant's contemporaneous diary note. Mr. Grant said that as at the afternoon of Friday, 13th, the matters still outstanding were "pretty well reduced to the minor issues." These were principally matters of conveyancing and draftsmanship. He continued:

"When we completed our final discussions that evening we had reached agreement on all drafting.

Q. On everything? A. Yes."

Mr. Solomon told Mr. Grant

"that Mr. Barton was concerned that Armstrong would not go through with the deal, and that at the last minute, having induced Barton to sign this agreement, there would be some trick or demand as to a document that should be required on settlement so that it would force him not to settle, and the consequences of the default provisions in the deed would have to be applied against Barton, and thereby causing Barton to resign, and the other consequential things."

To guard against this Mr. Solomon asked for a list of the documents required by Mr. Grant on settlement. These being Mr. Solomon's current instructions from Mr. Barton on the afternoon of Friday, 13th, they are quite inconsistent with Mr. Barton having decided on that day not to proceed further.

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It is in the light of these events that I decline to accept Mr. Barton's evidence of his conversation with Mr. Smith, and I decline to accept Friday 13th as the date of a conversation such as Mr. Bovill recollects having with Mr. Barton. Mr. Smith gave a qualified denial of Mr. Barton's claim, in that he identifies the conversation to which Mr. Barton refers as being on Wednesday, 11th and Mr. Smith's recollection of what Mr. Barton then said to him was:

"I recall him saying that the document had to be studied by the solicitors. He had two sets of solicitors acting for him; one personally and one for the company. It had to be looked at by the directors. In principle it was O.K. but the contracts were very complicated."

I find that Mr. Barton's willingness to enter into the settlement with Mr. Armstrong continued uninterrupted from and after 4th January. Insofar as it may be relevant, I find that Mr. Bovill is mistaken in assenting to the suggestion put to him by counsel that Mr. Barton had this conversation with him on 13th January.

Nothing of any significance appears to have taken place over the weekend of 14th-15th January. The next relevant matter is Mr. Barton's evidence concerning the telephone call from Mr. Armstrong at about 8.20 a.m. on the morning of Monday, 16th January. It is this upon which final reliance is placed on Mr. Barton's behalf in seeking to substantiate that he was coerced into the making of the agreement. To a large extent much of the

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significance of this conversation goes by reason of my having found that Mr. Barton's willingness to enter into the agreement continued uninterrupted at all times after 4th January. No occasion existed on the morning of Monday, 16th, for him to be coerced into a change of mind. The conversation does, however, have some importance, and I should deal briefly with it. 10

According to Mr. Barton, on Monday, 16th he was telephoned by Mr. Armstrong at about 8.20 a.m. I have already quoted one account of this conversation given by Mr. Barton. He gave another, substantially similar, account:

"As soon as I walked into the office the telephone was ringing. Mr. Armstrong said to me that 'unless you sign this document I will get you killed.' I phoned Bovill and asked him to come to Landmark Corporation office and I have told him that I have direct threats of kill by Mr. Armstrong and I also have been threatened by another people what I can't disclose because that is under investigations by the C.I.B. I also told him that I purchased a rifle for self-defence, and he already knew that I am not living at home. I told him before that I am living at the Wentworth Hotel. Then I told Mr. Bovill that I am no longer prepared to refuse the demands of Armstrong because I just don't think it is my duty as a director to go that far that I should get killed; I just completely was willing to give in to any demand whatever Mr. Armstrong wanted - I just did not want to get killed. 20 30

Q. What did Mr. Bovill say to that? A. Mr. Bovill first started to analyse the possible effect of the agreement to Landmark, and I tried to influence his views with the direction that he should agree. 40

... ..

Q. You told us that you tried to persuade Mr. Bovill, and in the end did Mr. Bovill agree or disagree? A. In the end Mr. Bovill agreed."

Mr. Armstrong denies any such conversation. Mr. Bovill was asked his recollection of the telephone call from Mr. Barton. His evidence was that the day before the agreements were actually signed Mr. Barton telephoned him and said:

"I think we should do a deal with Armstrong, and I think that we should treat this as urgent, before he changes his mind ... I have been under continual threats. I cannot run the company properly. I have got to come to some arrangement to resolve this matter and I will now recommend that we sign the agreements." 10

Under cross-examination Mr Bovill said that Mr. Barton told him:

"This man is threatening me. He has hired criminals to kill me. I have to get him out of my hair and out of the company's hair ... I want you urgently to come in. I want to finalise this deal to get Armstrong out before he changes his mind. It is most urgent. Will you come in quickly?" 20

I accept Mr. Bovill's evidence that he was telephoned by Mr. Barton the day before the deed was signed and was asked to co-operate as a matter of urgency. I have the impression, however, that the tenor of the conversation suggested by Mr. Bovill's evidence has been coloured by Mr. Bovill's present firm belief that Mr. Armstrong did coerce Mr. Barton into signing the agreement. On a number of occasions well after the agreement was signed Mr. Barton has told Mr. Bovill expressly that he was coerced by Mr. Armstrong's threats into making the agreement. Mr. Bovill obviously shares Mr. Barton's dislike of Mr. Armstrong, and I am quite satisfied that Mr. Bovill believes in good faith and on reasonable grounds that Mr. Barton was 30 40

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coerced by Mr. Armstrong. He holds this belief firmly, and, inevitably, it has affected his recollection of the details of the events in question.

The portion of the evidence upon which I consider that reliance can safely be placed is that in which Mr. Barton asked Mr. Bovill to come in as a matter of urgency because he wanted "to finalise 10 this deal to get Armstrong out before he changes his mind." I accept also that there was some reference in this conversation to Mr. Barton's belief (shared, no doubt, by Mr. Bovill) that it was a commercial necessity to remove Mr. Armstrong as far as possible from further participation in the affairs of the company and from further contact with Mr. Barton. In general this amounts to a rejection of Mr. Barton's accounts and to an acceptance of the conversation as sworn to by Mr. Bovill. 20 But in my view the dominant theme of the conversation was the commercial necessity of getting Mr. Armstrong out of the company and the need for urgency lest Mr. Armstrong change his mind, rather than that Mr. Barton's will had been overborne by Mr. Armstrong's threats. Whatever words were used in this conversation, I am not satisfied that everything Mr. Barton said to Mr. Bovill on the morning of Monday, 16th January, indicated a mental state of having been intimidated or coerced through fear 30 for his personal safety into yielding to Mr. Armstrong's demands.

The evidence does not disclose what

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instructions Mr. Barton gave to either his solicitor or the Landmark solicitor on Monday, 16th January. Indeed, I attach some importance to the failure to call as a witness in Mr. Barton's case either of the solicitors who were currently receiving instructions from him. In particular, it is important that Mr. Barton's claims to have decided early on the morning of Friday, 13th to break off negotiations, and later to have been intimidated early on the morning of Monday 16th into resuming them are not corroborated by his having given any appropriate instructions to either his own or to the Landmark solicitor. The unexplained absence of evidence from these witnesses upon a point so vital in the proof of the plaintiff's case is a factor to be weighed against accepting Mr. Barton's claim regarding the changes in his state of mind on 13th and on 16th January. 10 20

Mr. Grant, Mr. Armstrong's solicitor, was occupied throughout the whole of the 17th on matters associated with the agreement. His diary notes for that day are in evidence, and they contain entries referring to a conversation between Mr. Grant and Mr. Armstrong on that day. By reference to those entries, and corroborated by them, Mr. Grant said in his evidence:

"There was another phone call from Armstrong in effect saying that he was giving Barton control of Landmark for \$200,000 which was virtually cash - \$140,000, plus the penthouse, which was cash coming into the group, and he thought Smith was craw-fishing, and he wanted to consider the situation." 30

It seems that what in fact led to Mr. Armstrong

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saying this to Mr. Grant was Mr. Smith's having told Mr. Armstrong that he was reluctant to go on the Landmark Board and to act as chairman.

I accept Mr. Grant's evidence of this conversation with Mr. Armstrong. It is, of course, entirely consistent with Mr. Barton's concern, as expressed by him to Mr. Bovill on Monday 16th, that 10 Mr. Armstrong might change his mind and not go ahead with the agreement. It indicates a situation in which Mr. Armstrong was a reluctant vendor whom Mr. Barton had to buy out if Landmark was to be saved; it does not indicate a situation in which Mr. Armstrong was driving Mr. Barton by threats of personal violence into making an agreement contrary to Mr. Barton's own free will.

In the light of the foregoing considerations I am not satisfied that Mr. Armstrong threatened Mr. 20 Barton in a telephone call on the morning of 16th January. I reject Mr. Barton's claim that this telephone call took place.

In due course the negotiations between solicitors were concluded, and final engrossments were approved. The deed of 17th January was duly executed and exchanged at 5 p.m. on that day in Mr. Grant's office. The exchange was agreed between the solicitors to be conditional upon the approval of the Boards of the various companies expressed to be 30 parties to the deed; it was also conditional upon Mr. Armstrong conceding some elasticity in the nomination by Mr. Barton of the individuals to buy the 300,000 shares.

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On 18th January further steps were taken to conclude the approval and execution of the various ancillary documents necessary to carry into effect the deed of 17th January. There was a meeting in the Landmark Board room that commenced at 4 p.m. on the 18th, and final settlement by execution and exchange of the ancillary documents then took place. 10
The mechanics of this final settlement occupied from about 4 p.m. until about 8.30 p.m. on Wednesday, 18th January. Mr. Grant attended with a power of attorney from Mr. Armstrong and the necessary proxies and appointments to enable him to act for Mr. Armstrong on settlement. Also present were Mr. Barton, Mr. Bovill, Mr. Cotter, the secretary of Landmark, three solicitors from the office of the Landmark solicitors, and Mr. Bowen (Mr. Barton's personal solicitor). The first two hours or so were 20 occupied in sorting of the documents, and the next two hours were occupied in execution and exchange.

As Mr. Grant was leaving the Landmark office at the conclusion of the proceedings on the 18th, he went in to Mr. Barton's office and according to Mr. Grant, whose evidence on this point I accept, Mr. Barton walked out with him and said:

"Now we have got rid of Armstrong nothing will stop us. Very glad you did not have him here. It would have saved - by not having him here it would have saved unpleasantness." 30

Mr. Barton also mentioned something about payment of the dividend, and of Mr. Grant's outstanding legal costs.

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To much the same effect was a statement Mr. Smith recalls Mr. Barton having made at about that time. Mr. Smith puts the occasion as 9.30 a.m. on 18th January, but it seems that the date must have been the 19th. According to Mr. Smith's evidence, Mr. Barton came to see him and the following conversation took place:

10

"I said to Mr. Barton 'Have you completed your settlement?' He said 'Yes.' I said 'We have decided not to go on the Board of Landmark and I advised Mr. Armstrong of this the previous Friday.' He said 'Don't worry about that. What I would like to do is congratulate you. I think the deal is a miracle.' I replied 'Well, Mr. Barton, I hope the company succeeds and it will become prosperous.'"

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For what relevance it may have, I note that the price of Landmark shares on the Stock Exchange between 14th December, 1966 (the day when negotiations opened) and 17th January, 1967 fluctuated between a high of 43 cents on 16th December and a low of 32 cents on 3rd January; the last sale in this period was at 33 cents on 17th January. The worth of the shares was, however, inextricably bound up with the prospect of finance being obtained, and no reliable conclusion can be founded upon a mere comparison of Stock Exchange prices with the price that Mr. Barton agreed to pay Mr. Armstrong.

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F. CONDUCT OF BARTON COMPARED WITH CLAIM OF COERCION.

The foregoing concludes the negotiations leading up to the execution of the main deed on 17th January and the protracted formal settlement on 18th January. The course of negotiations does not support Mr. Barton's claim that Mr. Armstrong coerced him

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into making the agreement and, indeed, it is inconsistent with that claim in a number of respects.

There are points in the evidence consistent with the conclusion that Mr. Barton was optimistic about the future of Landmark. This evidence includes:

- (i) On 16th December, 1966, Mr. Barton's family company lent to a wholly-owned subsidiary of Landmark the sum of \$6,000 at 7 per cent interest; this was repaid on 8th February, 1967. 10
- (ii) On 16th December the Stock Exchange wrote to Mr. Barton inquiring when the dividend would be paid. This dividend of 5 cents a share required a total of \$87,650. On 20th December Mr. Barton wrote back to the Stock Exchange, stating that the dividend would be paid on or before 23rd January, 1967. 20
- (iii) On 21st December, 1966, Mr. Barton's family company lent \$13,000 to a Landmark subsidiary.
- (iv) Late in December 1966 Mr. Barton's family company bought on the Stock Exchange a parcel of shares in Landmark. The size of the parcel is not stated in evidence.
- (v) On 3rd January, 1967, Mr. Barton told Mr. Smith that once Mr. Armstrong was out of the company he, Mr. Barton, was sure that United Dominions Corporation would give the company finance. 30

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- (vi) On 8th January, 1967, Mr. Barton acquiesced in Mr. Millar telling Inspector Lendrum that since 23rd December, 1966 "Mr. Barton has managed to save the Company."
- (vii) On 13th January, 1967, Mr. Barton told Mr. Smith that the dividend would be paid and that "he was quite confident that after Mr. Armstrong was out of the company he would have no trouble getting the money from United Dominions Corporation." 10
- (viii) On 18th January Mr. Barton told Mr. Grant "Now we have got rid of Armstrong nothing will stop us."
- (ix) On 19th January Mr. Barton congratulated Mr. Smith and told him he thought "the deal is a miracle."
- (x) On 24th January the Stock Exchange again wrote inquiring about the dividend. On 25th January Mr. Barton replied, stating that the Board had decided to postpone temporarily payment of the dividend "in view of the necessity to re-negotiate on existing arrangements for financing the development of the Paradise Waters estate." The letter stated that the necessity arose because of the internal dispute "which has now been resolved." The Stock Exchange was informed that "the re-negotiations will be concluded shortly, when a further announcement in respect of the payment of the dividend will be made." 20 30

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- (xi) On 24th January Mr. Barton's family company lent \$4,000 to Landmark (repaid 31st January, 1967 and 8th February, 1967).
- (xii) On 30th January, 1967, Mr. Barton's family company lent \$30,000 to a Landmark subsidiary (partially repaid 29th March, 1967). 10
- (xiii) On 10th February, 1967, the Board of Landmark resolved to pay the dividend.
- (xiv) On 13th February, 1967, the Stock Exchange again wrote to Landmark about the dividend. This inquiry was answered by letter dated 3rd March in which the Stock Exchange was informed that the dividend would be paid as soon as the re-financing of the Paradise Waters project was completed.
- (xv) On 3rd April Mr. Barton's family company 20
lent \$2,400 to Landmark.
- (xvi) On 28th April, 1967, Mr. Barton wrote to the Bank of New South Wales in connection with the application for bank finance. The letter is lengthy, but its narrative of the events in December 1966 and January 1967 is consistent with Mr. Barton having then been optimistic about finance becoming available from United Dominions Corporation. 30
- (xvii) In April, 1967 Mr. Barton's family company bought 8,800 shares in Landmark on the Stock Exchange at a price of 23 cents per share.

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Mr. Barton was making strenuous efforts in the early part of 1967 to make arrangements for finance; apart from United Dominions Corporation and the Bank two other finance houses were approached. Mr. Bovill's view of the situation during the second half of January 1967 was:

"We had other irons in the fire if I may put it that way. I think Mr. Barton was also approaching these other companies, and had hopes. That is the best of my recollection." 10

According to Mr. Bovill, Mr. Barton, in both his words and his appearance, was hopeful and confident that finance would be obtained. Mr. Bovill's belief that finance would be forthcoming from the United Dominions Corporation changed some time late in January or early in February 1967. This change in his belief was due to the events at a meeting between the Landmark directors and the directors of United Dominions Corporation. In February 1967 Landmark apparently encountered some difficulties in connection with its property, Landmark House, in Brisbane. Up until then Mr. Bovill had believed the asset backing of the shares to be one dollar or more. The difficulties over Landmark House were such as to induce in Mr. Bovill doubts as to the worth of the asset backing of Landmark shares. In about April 1967 "when finance looked like not coming through" Mr. Bovill ceased to hold this belief as to the worth of the asset backing. Although he was throughout more optimistic than Mr. Barton, Mr. Bovill's views upon the worth of the shares and thus the prospects of finance must have been to some 20 30

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extent at least coloured by Mr. Barton's opinions.
Mr. Bovill's views may, accordingly, be some very
slight guide to Mr. Barton's views.

Mr. Barton's conduct in the period after the
settlement on 18th January is also in some respects
inconsistent with his claim that Mr. Armstrong co-
erced him into signing the agreement. 10

In affidavits sworn by Mr. Barton on 31st
March and 11th April respectively in litigation ar-
ising between the parties early in 1967 Mr. Barton
made no reference to having been coerced by Mr.
Armstrong. I shall not digress to discuss the na-
ture of these two suits commenced early in 1967, nor
the terms of Mr. Barton's affidavits. It is suffic-
ient to state that it would have been open to Mr.
Barton in either of these two 1967 suits to make
the allegations of coercion and to challenge the 20
basic agreement such as he does in the present suit,
which was not commenced until 10th January, 1968.

By the middle of 1967 Landmark's financial
position had deteriorated. Notwithstanding Mr.
Barton's efforts, finance had not been obtained. Mr.
Barton spoke to Mr. Smith about the problems con-
fronting the company. Mr. Smith suggested the pos-
sibility of some form of scheme of arrangement. Mr.
Smith was proposed as the scheme trustee, and in
the course of investigating the practicability of a 30
scheme of arrangement Mr. Barton and Mr. Smith flew
to Brisbane in June 1967. Mr. Smith gave the follow-
ing evidence about a conversation with Mr. Barton in
the course of that flight:

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"Q. Do you remember Mr. Barton saying anything to you about Mr. Armstrong? A. Yes.

Q. What did he say? A. He said, 'Mr. Armstrong employs gangsters. In fact, I know that he employed somebody to kill me.'

Q. Have you ever heard that suggestion before? A. No. 10

Q. What else was said? A. He said that a man rang him up and he met him in a pub. He might have said in a hotel. The man said to him that he had been employed to kill him for a certain sum of money. However, if Mr. Barton paid this amount of money he would not kill him. 'I then persuaded the man to go to the police station and he made a signed confession.'

I was somewhat dumbfounded by the statement. I thought for a moment and I said, 'Well, Mr. Barton, as I have said right through I am the trustee elect of the company and I do not think it is my province to take sides on the issue between you and Mr. Armstrong.' 20

Q. Was anything more said in that discussion? A. No.

... ..

Q. Did he say why he purchased the shares? A. No. May I go back in my evidence? 30
At the time Mr. Barton made the statement regarding Armstrong employing gangsters before I said 'I will not take sides' I said to Mr. Barton 'When was this?'. He said, 'Whilst negotiations were going on.' That is all.

Q. Apart from that you say he did not say anything about why he purchased the shares?

A. No.

Mr. Barton, on the other hand, claims to have told 40

Mr. Smith at this conversation "all about Mr.

Armstrong's threats." He said that he told Mr. Smith

"... .. the reason why I purchased the shares. I told him the reason why I talked the company to enter into the agreement, and I told him in great detail that he should know what he is doing because I wanted to put the responsibility off my shoulders to Mr. Smith's shoulders of this matter, and then he said to

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me, 'Oh, Alex, you have no problem. You can claim duress.' I told him, 'Yes, I know that, but I don't dare.'"

In choosing between these two versions my preference is for the evidence of Mr. Smith. Not only is his credit in general significantly superior to that of Mr. Barton. But, in addition, I find it 10 difficult to believe that Mr. Barton's state of mind at this stage was that he could "claim duress", but that he did not dare to do so. My impression is that it is only in the ensuing months, as the extent of the Landmark disaster became more clearly apparent, that Mr. Barton in his own mind reconstructed the events of December 1966-January 1967 and formed the belief that Mr. Armstrong's threats had coerced him into signing the agreement. That he has by this time formed that belief and that he holds it in good 20 faith I am prepared to accept. But the evidence does not bear out his claim that he was in truth intimidated in January 1967 into signing the agreement.

Mr. Staff, Q.C., has specifically disclaimed relying upon any defence of acquiescence or delay. He relies, however, upon Mr. Barton's inactivity throughout 1967 as indicating that Mr. Barton was not intimidated in January 1967, and that Mr. Barton did not throughout 1967 hold the opinion that he had 30 been intimidated. The reason given by Mr. Barton for his inactivity is that he was being constantly reassured by Detective Constable Follington that Mr. Armstrong's arrest was imminent. According to

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Mr. Barton Constable Follington had told him that Mr. Armstrong had brought influence to bear upon the Police, and that Detective Sergeant Wild was not to be trusted. Constable Follington had said that he was himself pursuing his inquiries into the Armstrong affair and Mr. Barton, for his part, claims to have been content to rely on the activity of Constable Follington. I am uneasy about what did in truth take place between Constable Follington and Mr. Barton. But, as the resolution of the conflicting evidence of Mr. Barton and Constable Follington forms no necessary part of my decision in this suit, I do not intend to make any findings upon what, if anything, took place between these two men during 1967. 10

Mr. Barton was told by Constable Follington in November 1967 that evidence had been obtained justifying criminal proceedings being taken against Mr. Armstrong. Mr. Barton arranged for Constable Follington to see Mr. Bowen, Mr. Barton's personal solicitor and such interview in fact took place in the middle of November. According to Mr. Barton, Mr. Bowen told him after the interview "Now we can start to consider the action that you can take." Constable Follington agrees that he saw Mr. Bowen at Mr. Barton's request in November, but the evidence is by no means clear as to what then took place. There is no evidence that Mr. Barton then gave Mr. Bowen instructions to commence proceedings to have the agreement set aside on the ground of duress. 20 30

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I am of the view that it was at this period at the end of 1967, that is to say, when the due date for the first payment under the settlement was becoming imminent, (18th January, 1968) that Mr. Barton began to go back over the events of the previous December-January, and ultimately convinced himself that the agreement had been induced by Mr. Armstrong's threats and intimidation. The suit was in fact commenced on 10th January, 1968. It was not preceded by any correspondence, and the proximity of the date of commencement of the suit to the due date for the first substantial payment under the agreement is such as to lend support to Mr. Staff's argument that it was the imminence of the date for payment and not a factual state of intimidation that led to the suit being brought.

G. ALLEGATION OF LINK BETWEEN ARMSTRONG AND HUME. 20

A major part of Mr. Barton's case concerns the truth or falsity of the allegations in the Vojinovic statement. I have already stated my reasons for holding that the basic agreement between Mr. Armstrong and Mr. Barton was reached before Vojinovic came on the scene, and for holding that Mr. Barton was not intimidated by the Vojinovic incident into making the agreement. This whole matter was, however, to the forefront in the presentation of Mr. Barton's case and I shall deal with some aspects of it. 30

Vojinovic was called as a witness on Mr. Barton's behalf and he gave evidence substantially

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along the lines of the contents of the record of
interview. There are some departures between the
terms of the record of interview and the evidence
he gave, and his credit was strongly attacked. At
the time of giving evidence he was serving a gaol
term in Queensland. He has committed a number of
criminal offences in the past, and from his crimin- 10
al history as well as from my observation of him in
the witness-box I consider that it would be quite
unsafe to place any reliance on his evidence. But
it does not follow from this conclusion that he has
failed to tell the truth in the witness-box. The
position simply is that, in making findings upon
the matters sworn to by Vojinovic, minimal weight
is to be given to his assertions. The finding upon
the truth or falsity of those assertions will turn
primarily upon the existence and nature of other 20
evidence or of probabilities tending to corroborate
or to deny Vojinovic's assertions.

Mr. Barton has sought to establish a link
between Mr. Armstrong on the one hand and, on the
other hand, Mr. Hume and, through or in conjunction
with Mr. Hume, with Novak and Vojinovic. It is Mr.
Barton who seeks to establish the existence of this
link, and he accordingly bears the onus of proof.
The specific allegation in his statement of claim
is that Mr. Armstrong "engaged certain criminals 30
to kill or otherwise injure" Mr. Barton. There is
no direct evidence implicating Mr. Armstrong with a
conspiracy to kill or injure Mr. Barton, but Mr.

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Barton seeks to prove Mr. Armstrong's participation in such a conspiracy by circumstantial evidence. It is, of course, open to a plaintiff to attempt to prove his case in this respect purely by circumstantial evidence and, if that evidence is of sufficient cogency, even the most serious crimes can be proved thus. 10

In the present case, whilst there may be sufficient evidence to implicate Mr. Hume in some activity adverse to Mr. Barton, there is insufficient evidence to enable me to find as a proven fact that Mr. Armstrong either originated or was a participant in a specifically identifiable activity adverse to Mr. Barton on the part of Mr. Hume or on the part of Novak or Vojinovic. There are circumstances raising a suspicion that Mr. Armstrong was in some way implicated with Mr. Hume in some activity adverse to Mr. Barton. But mere suspicion cannot take the place of evidence. It is no light matter to find as a fact that Mr. Armstrong was a participant in some activity hostile to Mr. Barton planned to be carried out through the medium of Mr. Hume. 20

There is difficulty at the outset in determining what it was exactly in which Mr. Armstrong is said to have been implicated. Was it, as Vojinovic's evidence suggests, a plot to have Mr. Barton murdered: If so, startling though such a plot might be, it is not necessarily consistent with an intention on Mr. Armstrong's part to 30

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coerce Mr. Barton into entering an agreement which, by its terms, required acts of performance on Mr. Barton's part extending well into the future.

Or was it a plot, such as Mr. Barton alleges he read in a statement given by Mr. Hume to the police in January 1967, merely "to follow Mr. Barton and if the opportunity arose, just to do him over a bit; you know, to frighten him and tell him there was more to come"? Such a plot would be more consistent with a case of coercion and Mr. Armstrong's proved hostility towards Mr. Barton; but there is no evidence pointing to the plot being of this nature - Vojinovic's evidence, for what it is worth, is to the contrary. 10

Or, yet again, was it simply a plot to have Mr. Barton watched and followed from a time extending back prior to the annual general meeting of November 1966 so that Mr. Armstrong might be kept informed of Mr. Barton's activities? This is perhaps not unlikely, particularly as the watching apparently ceased about 8th January, that is to say when the negotiations were substantially concluded and Mr. Armstrong would no longer have been interested to be kept informed of Mr. Barton's movements; but such a plot does not necessarily establish coercion on Mr. Armstrong's part in the negotiations which commenced on 14th December. 20 30

Or was it a plot stemming from sheer malevolence on Mr. Armstrong's part involving Mr. Barton being disturbed and put in fear by being watched,

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followed and telephoned, and extending back to a point of time prior to the annual general meeting of November 1966? Such a plot would also be consistent with Mr. Armstrong's proved attitude towards Mr. Barton; but it also is not easily related to intimidation in negotiations which did not commence until 14th December.

10

There are other possibilities that might be suggested. For example, the very clumsiness of a conspiracy to murder such as Vojinovic swore to, with the identity of Mr. Armstrong as the originator being known right down through the chain - Hume-Novak-Vojinovic - might be suggested to be consistent with Vojinovic having been deliberately enticed into taking the very step which he did take, namely approaching Mr. Barton for money, so as to induce fear in Mr. Barton; Vojinovic's criminal tendencies and unreliability would have been well-known to any person contemplating employing him for such a plot as Vojinovic's evidence suggests, and one would have thought that great care would have been taken by the originator to conceal his identity from Vojinovic.

20

There is proved to have been a relationship between Mr. Armstrong and Mr. Hume both on a social plane and on a plane in which Mr. Armstrong availed himself to Mr. Hume's services as a private inquiry agent. I am satisfied that both Mr. Armstrong and Mr. Hume sought deliberately to mislead the Court by playing down the extent of their relationship, and the attempts they both made in this regard tend

30

towards their discredit. Mr. Pratten, a witness whose credit was wholly unimpeached, said that Mr. Armstrong told him on 10th November, 1966 "that Mr. Hume was working for him, and he would make Mr. Hume available to work in the Electorate on my behalf at his expense." A statement such as this and such evidence as there is of the work done by Mr. Hume on Mr. Armstrong's instructions are markedly inconsistent with the impression that both Mr. Armstrong and Mr. Hume sought to create as to the limited extent of their association. Their business relationship was a great deal closer than either of them was prepared to concede. Why they should have sought to mislead the Court in this connection is a matter of speculation. But to find that both Mr. Armstrong and Mr. Hume, in their attempts to minimise the extent of their relationship, are not being frank does not establish affirmatively the true nature and extent of their relationship.

The fact that Mr. Armstrong and Mr. Hume have a relationship of such an extent or such a character that they both sought to mislead the Court about it is consistent with an inference that it is not an honest or normal business relationship. This is an item of circumstantial evidence which can be taken into account to determining whether or not Mr. Armstrong was implicated through Mr. Hume in some plot adverse to Mr. Barton. There are other items of circumstantial evidence. These include the proved state of hostility between Mr. Barton and Mr.

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Armstrong, and the absence of any other reason for Mr. Hume interesting himself in Mr. Barton. Mr. Armstrong's threats that he himself made to Mr. Barton can also be weighed on this aspect of the case. But even after putting into the scale every scintilla of evidence tending to associate Mr. Armstrong with some activity adverse to Mr. Barton 10 through the agency of Mr. Hume I am left in a state where I am not satisfied that I should make a judicial finding to the effect that Mr. Armstrong was implicated through Mr. Hume either in a plot, as alleged in the pleadings, to have Mr. Barton killed or injured, or in some other identifiable plot adverse to Mr. Barton. The charge against Mr. Armstrong in this regard is of criminal conspiracy, and Mr. Barton bears a burden of proof commensurate with the seriousness of this charge. Mr. Barton 20 has failed to discharge that burden of proof on this part of his case.

Having stated my conclusion that it is not proved that Mr. Armstrong was responsible through Mr. Hume for some activity adverse to Mr. Barton it becomes unnecessary for me to discuss the whole of the evidence implicating Hume, Novak and Vojinovic in some activity adverse to Mr. Barton. The statements made by Vojinovic to Mr. Barton are proved and established in the evidence. Vojinovic's own evidence 30 can be relied upon as implicating Novak in some activity adverse to Mr. Barton. I have already accepted that Mr. Barton saw Hume on one occasion

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watching his home and on another occasion watching the Landmark office. There is, in my view, sufficient in this evidence and in the circumstantial evidence to establish that Mr. Hume was implicated in some way with Novak and Vojinovic in some activities adverse to Mr. Barton. The finding amongst Mr. Hume's records of a note of Mr. Barton's address and a brief 10 description of Mr. Barton's car written in Mr. Hume's own hand on the back of a garage cash sale docket dated 2nd October, 1966, is of sinister significance. So also is a similar docket dated 6th October, 1966, also found amongst Mr. Hume's records on the back of which in unidentified writing appears "Sunday 9th October 6.30 p.m.", together with the makes and registration numbers of Mr. Barton's two cars. This is striking evidence. But I interpolate that the question for the purposes of the present suit is 20 whether these notes have significance on a charge that Mr. Armstrong, in negotiations commencing on 14th December, coerced Mr. Barton. Mr. Armstrong was absent overseas from early September 1966 until about 15th October, 1966.

I am unable to conclude what it was precisely that Mr. Hume was engaged upon. I do not consider that I can safely accept Vojinovic's evidence that the activity was a murder plot.

A mass of evidence was given concerning the 30 only piece of evidence directly linking Vojinovic with Mr. Hume, namely, a telephone call which Vojinovic said he made to Mr. Hume on the night of

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Saturday, 7th January. Mr. Hume denied the telephone call, and said that he was a guest over that weekend at a water skiing house party on the Hawkesbury River to which he had been invited by Mr. Armstrong. The weight of evidence establishes that Mr. Hume was at the Hawkesbury River on that Saturday night, and I reject Vojinovic's evidence that he telephoned 10 Mr. Hume that evening.

Just as Mr. Hume sought to mislead the Court in his evidence concerning the activities of Novak and Vojinovic. A number of serious allegations were made against Mr. Hume in the course of his cross-examination, including an allegation that he and Novak about the middle of January 1967 conspired to have Vojinovic wrongly accused and convicted of stealing Novak's car in Melbourne. The suggestion made to Mr. Hume was that this was by way of retaliation 20 against Vojinovic for Vojinovic having gone to Mr. Barton earlier in the month of January and later having made a statement to the police incriminating Mr. Hume and Novak.

Mr. Hume is not a party to this suit, and he was accordingly not represented. There is no direct evidence supporting this charge, but there is a body of circumstantial evidence which fully justified it being made against him. For instance, the car Vojinovic was convicted of stealing had belonged 30 to Hume and, although its registration had been transferred to Novak on 29th December, 1966, Hume continued to regard himself as financially

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interested in it. Novak was required in Melbourne to give evidence on the charge against Vojinovic and his cheque for his witness's expenses was banked to the credit of Mr. Hume's account. Novak, himself a man with a criminal record, told his probation officer on 7th March, 1967 that in January "he had to go to Melbourne on business for Mr. Hume". These 10 incidental pieces of evidence tend to show that Mr. Hume knew more than he was prepared to admit about the circumstances of Vojinovic's conviction and sentence on the charge of stealing Novak's car.

It is not necessary for the purpose of my reaching conclusion on Mr. Hume's credit for me to make any finding upon this matter, and I think it preferable that I refrain from doing so. Neither is it necessary or desirable that I discuss the Hume-Novak-Vojinovic part of this case in any fur- 20 ther detail. In the light of my earlier finding, this part of the case is two stages removed from the determination of the contest between Mr. Barton and Mr. Armstrong. In the first place, I have found as a fact that Mr. Barton was not coerced by fear for his personal safety into the making of the agreement - it was commercial exigency and not personal fear that led him to make it. And in the second place I have declined to make a finding that Mr. Armstrong was implicated through Mr. Hume 30 in a plot to kill or injure Mr. Barton; whatever it was that Hume with Novak and Vojinovic were engaged on, there is insufficient evidence to link Mr.

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Armstrong with their activities so as to make their activities of probative significance against Mr. Armstrong.

B. ENDING.

I return to the two main questions that I propounded at the commencement of these reasons, namely, did Mr. Armstrong threaten Mr. Barton and, 10 second, was Mr. Barton intimidated by Mr. Armstrong into signing the agreement. I am satisfied that Mr. Armstrong did threaten Mr. Barton. But I am not satisfied that Mr. Barton was intimidated by Mr. Armstrong's threats into signing the agreement. The threats themselves were such as might well have intimidated the recipient into signing an agreement such as this, and I am satisfied that Mr. Barton was throughout the relevant period in real and just- 20 ifiable fear for the safety of himself and his family. This fear was induced to a significant extent by Mr. Armstrong's acts; it was enhanced by the Vojinovic incident, but this was not proved to my satisfaction to be an incident for which Mr. Armstrong was responsible. It was not Mr. Barton's fear that drove him into the agreement. I am satisfied that he now fervently believes that it was, but this is a belief founded upon reconstruction rather than upon recollection. It is, perhaps, 30 an understandable reconstruction, but the detailed evidence that has been given of the events leading up to the making of the agreement demonstrates that Mr. Barton was not in fact coerced into making the

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agreement. It follows that his claim in this suit fails, and that the suit must be dismissed.

Before I turn my attention to the form of decree to be made I shall append a brief note on the history of Landmark subsequently to 18th January, 1967. It did not at any point of time obtain the finance it needed. The scheme of arrangement between the company and its creditors suggested by Mr. Smith in June 1967 was duly formulated. An application was made to this Court under s.181 of the Companies Act to summon a meeting of creditors to consider the scheme. This meeting was held on 22nd November, 1967, and the requisite majority under the section was obtained. A petition under s.181 seeking the Court's approval was then presented. There was a contested hearing of the petition which occupied some eight hearing days between 2nd and 11th January, 1968. 20 For reasons which I stated at the conclusion of that hearing on 11th January (1968 1 N.S.W.R. 759) I refused on discretionary grounds to approve the scheme. The petition was dismissed, and on the same day an order was made that the company be wound up on the ground of insolvency. The shares in Landmark are now worthless, and there is little prospect of its unsecured creditors receiving any dividend in the winding-up.

Of the remaining Landmark companies two are 30 in the course of being wound up as insolvent companies and a receiver is in possession of the assets comprising the Paradise Waters project.

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In considering the form of decree to be made the principal question concerns costs. In addition to Mr. Armstrong there are 20 defendants to this suit, some of whom have played no part in the hearing and some of whom have participated to a limited extent. The suit will be dismissed as against all defendants. Mr. Staff appears for Mr. Armstrong and 10 for the five Armstrong companies named as defendants; the dismissal of the suit will entitle these six parties to an order that Mr. Barton pay their costs.

Landmark itself by its counsel and four of the Landmark companies by their counsel have also taken some part in the hearing. The concern of these parties in the outcome of the suit is understandable. They were necessary parties to the suit, and they could have been vitally affected by the outcome if the plaintiff had succeeded. From their individual 20 point of view it was reasonable for them to incur the costs of participating in this litigation so such extent as they did. But, in dismissing the suit, I do not consider I should make an order for costs which would hold Mr. Barton accountable for the costs incurred by these defendants. Such part as Landmark and the Landmark companies chose to play in the hearing must be at their own risk as to cost and they must bear the burden of those costs themselves. None of them opposed the grant to the plaintiff of the 30 relief sought by him, and in some material respects their interests might possibly have been advanced if the plaintiff had succeeded in the suit. As a matter

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of party and party costs I am of the view that the proper order is to allow all the other defendants apart from those for whom Mr. Staff appears merely their costs as submitting defendants.

There are two other matters outstanding on the question of costs. The first of these concerns the costs of the Attorney-General in appearing on an application to have set aside the subpoena requiring production of certain documents which had come into existence in the course of an investigation of Australian Factors Limited. An order was made that those costs be reserved, with liberty to apply, and that order will not be affected in any way by the decree about to be pronounced. 10

The other aspect concerns the costs of a motion taken out on behalf of Mr. Armstrong and the five Armstrong companies on 20th June, 1968, seeking relaxation of certain interlocutory undertakings. I shall not at this stage give reasons for the order I am about to make on that motion, but, if reasons are sought, I am prepared to state them. The order I make on that notice of motion is that it be dismissed, and that the applicants on the motion pay the costs of the respondents to that motion. 20

I make a decree in the suit in the following terms: I order that the suit be dismissed; I order the plaintiff to pay the costs of the first, second, third, fourth, fifth and sixth defendants, such costs to include all reserved costs; I order the plaintiff to pay the costs of those of the 30

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remaining defendants who appeared in the suit, such costs in each instance to be paid on the basis that each such defendant was a submitting defendant only. I note that all existing interlocutory undertakings expire by their own force upon the termination of the suit at first instance, that is to say, at this point of time. I order that the exhibits be retained 10 in Court for three months from this date and then returned to the custody of the party or person, producing them, with liberty to any party or person to apply informally for earlier release of particular exhibits. I reserve liberty to apply on any question of costs not covered by the terms of this decree.

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IN THE SUPREME COURT)
OF NEW SOUTH WALES)
IN EQUITY)

No. 23 of 1968

CORAM: STREET, J.

Friday, 31st October, 1969.

BARTON v. ARMSTRONG & ORS.

REASONS FOR JUDGMENT ON MOTION DATED 20th
JUNE, 1968

HIS HONOUR: The motion in respect of which this
appeal is brought was taken out on 20th June, 1968. 10
On 19th December, 1968, I published my reasons in
the suit itself. Immediately prior to pronouncing
a decree dismissing the suit I ordered that the
notice of motion of 20th June, 1968, be dismissed,
and ordered that the applicants on the motion
pay the costs of the respondent to that motion. I
stated on 19th December, 1968, that I would not at
that stage give reasons for the order on the motion,
but, if reasons should be sought, then I would be
prepared to state them. An appeal has now been 20
brought against the order for costs; there is
sought, in lieu, an order that there be no order
as to the costs of the said motion. Since the
filing of the notice of an appeal application was
made to me on motion generally to state the reasons
which led to the making of my order for costs on
19th December, 1968.

It will be necessary, in order to indicate
the significance of the matters sought to be raised
in the notice of motion, to make reference to the 30
nature of the issues raised in the suit, and to the
earlier course of proceedings in the suit.

In describing the nature of the suit I shall

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Street on Notice of
Motion

quote the commencing portion of my reasons published on 19th December, 1968:

"This suit has its origin in a fight between two men for the control of a public company. The plaintiff, Alexander Barton, was the managing director of that company, Landmark Corporation Limited, and the first defendant, Alexander Ewan Armstrong, was the chairman of directors. They had been associated on the Board in these respective capacities since the end of 1964. Their relationship was at first friendly. But by the latter part of 1966 they had reached a state of open conflict. From that conflict there emerged the hatred between the two men that has given rise ultimately to this suit. 10

The shares held by Mr. Armstrong and his family companies were the largest single group in the issued capital of Landmark. The shares held by Mr. Barton and his family and his family companies were the next largest group. The two men battled for the control of the company, the battle commencing at Board level, being ultimately carried through to a proxy fight, and culminating at the annual general meeting on 2nd December, 1966. Mr. Barton won that battle; he and his supporters carried the day at that annual general meeting just as he and his supporters had carried the day some two weeks earlier when, on 17th November the directors removed Mr. Armstrong from his position as chairman of directors. 20 30

In the period that followed the annual general meeting there were negotiations between Mr. Barton and representatives of Mr. Armstrong, as well as between solicitors for the two men. These negotiations led to an agreement the terms of which were incorporated in a deed dated 17th January, 1967; the settlement was formally completed on 18th January, 1967, when the ancillary agreements necessary to carry the settlement into effect were executed and exchanged. The parties to the deed of 17th January were Mr. Barton, Mr. Armstrong, a group of five companies in which Mr. Armstrong either held or controlled the majority of the shares (I shall refer to these companies as the Armstrong companies), Landmark Corporation Limited (which I shall hereafter call Landmark), and a group of seven other companies owned or controlled by Landmark Corporation Limited (I shall refer to these companies as the Landmark companies). It is the deed of 17th January that is challenged in this suit, and I shall return later to refer in some detail to the course of the negotiations preceding it. 40 50

The Landmark companies in the latter part of 1966 had three major assets, namely, a mortgage management business, a city building in Brisbane

and some land at Surfers Paradise in the course of being developed to provide residential sites; this development project at Surfers Paradise was known as the Paradise Waters project. The Armstrong companies were interested in the affairs of Landmark and the Landmark companies in three ways. In the first place, one of the Armstrong companies owned 300,000 shares in the capital of Landmark. In the second place, another of the Armstrong companies had lent at interest \$400,000 to one of the Landmark companies engaged in the Paradise Waters project. And in the third place, another of the Armstrong companies held 40 per cent of the share capital of the Landmark company engaged in the Paradise Waters project; the remaining 60 per cent of the capital in that company was held by Landmark. 10
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The object of the negotiations between Mr. Barton and Mr. Armstrong was to bring about a termination of the interest of Mr. Armstrong and the Armstrong companies in Landmark and in the Landmark companies. This was achieved by the sale by Mr. Armstrong to Mr. Barton and seven other persons or companies nominated by Mr. Barton of the 300,000 shares in Landmark held by one of the Armstrong companies at a price of 60 cents per share; the \$400,000 loan was repaid and a fresh secured loan of \$300,000 made by another of the Armstrong companies to the Landmark company engaged on the Paradise Waters project; the 40 per cent share capital interest held by one of the Armstrong companies in the Paradise Waters project was sold to Landmark for \$100,000, in association with which sale Mr. Armstrong was granted an option to purchase at half list price 35 of the residential lots being developed in the Paradise Waters project; and Mr. Armstrong resigned as a director of Landmark and the Landmark companies." 30
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The plaintiff, Mr. Barton, sought in the statement of claim a declaration that the deed of 17th January, 1967, and the ancillary agreements of 18th January, 1967, were executed under duress. Prayer (3) in the statement of claim was in the following terms:

"(3) That it may be declared that the aforesaid Deed, and ancillary Deeds, are void, or alternatively are void so far as concerns the Plaintiff." 50

The plaintiff also sought injunctions restraining the defendants "from acting upon ... the said Deed or ancillary Deeds in any way whatsoever or

alternatively so far as concerns the plaintiff."

Mr. Barton was the sole plaintiff in the suit. There were in all twenty-one defendants, who may, for convenience, be grouped as follows:

1. A.E. Armstrong.
- 2-6. Five companies, being the Armstrong companies who were parties to the deed of 17th January, 1967. 10
- 7-14. A group of seven companies owned or controlled by Landmark Corporation Limited, all of whom were parties to the deed of 17th January, 1967, together with Landmark Corporation Limited itself.
- 15-21. Seven other persons or companies being the persons or companies nominated by Mr. Barton to purchase individual parcels of the 300,000 shares in Landmark Corporation Limited held by one of the Armstrong companies. 20

It is the fifteenth to twenty-first defendants to whom particular significance attaches for present purposes, they being the respondents to the motion.

The terms of the deed of 17th January are summarised in some detail in the reasons published on 19th December, 1968, (pp. 47 - 49), and I shall not re-state that summary. Clause (8) of the deed of 17th January commences: 30

"A.E. Armstrong Pty. Limited agrees to sell to Alexander Barton and seven other persons or companies who have been nominated by the said Alexander Barton and approved by Bruce Henry Smith the shares held by A.E. Armstrong Pty. Limited in Landmark Corporation Limited or to which A.E. Armstrong Pty. Limited is entitled to be registered as holder being approximately and not more than 300,000 \$1 shares on the following terms and conditions." 40

The clause goes on to nominate a price of 60 cents per share, and to provide that this shall be paid by three equal annual instalments on 18th January, 1968, 18th January, 1969, and 18th January, 1970.

The clause includes a provision that:

"The purchase price shall be secured by the securities mentioned in the sixth schedule hereto which shall be in the form already agreed upon by the solicitors for the A Group and the L Group and Alexander Barton."

The sixth schedule is in the following terms:

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"SCHEDULE 6

Securities in respect of Purchase Price of
Landmark Corporation Limited Shares.

1. Deed of Charge and Scrip Lien over shares purchased.
2. Transfer in blank together with share scrip.
3. Guarantee by Alexander Barton in respect of all sales."

Pursuant to the obligation undertaken by him in Clause (8), Mr. Barton arranged for the execution of seven separate agreements purchasing parcels of the total of 300,000 shares to be entered into by the fifteenth defendant (his wife), the sixteenth defendant (his son), the seventeenth and eighteenth defendants (business associates) and the nineteenth to twenty-first defendants (family companies in which the shares were owned or controlled by Mr. Barton); each of these seven agreements was guaranteed by Mr. Barton, he being joined in each for this purpose. It was these seven separate agreements that were referred to as the ancillary deeds in respect of which relief was sought in the statement of claim.

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The suit first came before the Court on 8th January, 1968, when counsel for Mr. Barton sought, and was granted, leave to serve short notice of a

motion returnable on 11th January, 1968. The statement of claim was filed on 10th January, and the notice of motion for interlocutory relief was listed on 11th January. On 11th January appearances were announced for the plaintiff and for the first to sixth defendants inclusive (that is to say, Mr. Armstrong and the five Armstrong companies). The notice of motion was adjourned until 9th February, 1968, upon certain undertakings. The undertaking relevant for present purposes is that the first to sixth defendants undertook that they would not take any action pursuant to the terms of the deed of 17th January, 1967, or the share purchase contracts entered into pursuant to that deed, arising from non-payment of moneys alleged to be due thereunder without giving prior notice to the plaintiff's solicitors; it was noted;

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"This undertaking extends to the obligations of the plaintiff and the fifteenth to twenty-first defendants inclusive respectively under the said deed and share purchase contracts."

Although there was no appearance for the fifteenth to twenty-first defendants, the plaintiff was concerned to stipulate for interim protection from enforcement of the ancillary agreements entered into by the fifteenth to twenty-first defendants, performance of which had been guaranteed by the plaintiff pursuant to Clause (8) of the deed of 17th January, 1967.

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On 9th February, 1968, a number of points of contest on interlocutory matters were raised, some of which were determined on that day. The motion was stood over to 15th February, and it was noted

that "Existing undertakings continued up to and including 15th February, 1968."

On 15th February, 1968, Mr. Shaw, of counsel announced an appearance for the fifteenth to twenty-first defendants. There was further interlocutory contest, and the motion was stood over to 16th February, 1968, it being noted: "Existing undertakings continued up to and including 16th February, 1968." 10

On 16th February, 1968, a formal submitting appearance was filed on behalf of the fifteenth to twenty-first defendants. Mr. Shaw again appeared for them. There were, of course, also the appearances of senior counsel for the plaintiff and for the first to sixth defendants. The existing undertakings were replaced by undertakings set out in three documents handed up and placed with the papers. 20
The first document comprised an undertaking on behalf of the fifteenth to twenty-first defendants. This undertaking was in two parts, the first being the usual undertaking as to damages insofar as the first to sixth defendants might suffer damages by reason of non-payment by the fifteenth to twenty-first defendants of the amounts respectively payable by them; the second part comprised an undertaking by the fifteenth to twenty-first defendants that assets would not be parted with otherwise than 30
in the ordinary course of business, this undertaking extending until the hearing of the suit or further order.

The second document handed up on 16th February comprised an undertaking by the first to

sixth defendants that they would not on or before 14th May, 1968, take any action against the plaintiff pursuant to the deed or the ancillary agreements.

The third document handed up on 16th February comprised an undertaking by the first to sixth defendants in favour of the fifteenth to twenty-first defendants. It is the undertaking in this third document which is of particular relevance to the present matter, and I quote it in full: 10

"The fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth and twenty-first defendants having given their respective undertakings to the Court, the first defendant by his counsel undertakes that he will not, and the second, third, fourth, fifth and sixth defendants, by their respective counsel each undertakes that it will not act on or before 14th May, 1968, take any action against any of the fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth and twenty-first defendants pursuant to any of the deeds mentioned in para. 15 of the statement of defence of the first-named defendant Alexander Ewan Armstrong arising from non-payment of moneys payable pursuant to any of the said deeds." 20 30

Notwithstanding the reference in the document to "14th May, 1968", the note made on 16th February was to the effect that the undertakings were to continue up to and including 27th February, 1968.

On 27th February, 1968, there was further interlocutory contest. So far as is relevant to the present matter, the order noted on that day was: "I note that the existing undertakings are continued up to the termination of the suit at first instance." 40

The hearing of the suit commenced on 14th May, 1968. Judgment was reserved on Tuesday, 12th

November, 1968. The reasons were published and a decree was made on 19th December, 1968.

I have already mentioned that in connection with the undertakings given on 16th February counsel appeared for the fifteenth to twenty-first defendants on that day, and on the same day a submitting appearance was filed on their behalf. Although 10
there was at various stages of the interlocutory hearings some discussion regarding the terms of the undertakings, there was not at any time a fully argued contest upon the question of interlocutory relief. The plaintiff had moved for interlocutory relief and, as a matter of commonsense, all parties had co-operated in the giving and accepting of undertakings, culminating on 27th February, 1968, in the undertakings being noted as continuing until the termination of the suit at first instance. The 20
plaintiff had been concerned on the question of interlocutory relief to protect not only his own position in respect of the covenants in the deed of 17th January, 1967, but also his position as guarantor under the seven ancillary agreements. In association with these ancillary agreements the plaintiff had pressed strongly for interim protection, and it was this that had resulted in the fifteenth to twenty-first defendants giving to the Court on 16th February, 1968, the undertakings as to damages and otherwise that I have already men- 30
tioned, and gaining in exchange the undertaking by the first to sixth defendants that I have quoted in full.

The interlocutory undertakings having been arranged and formally given to the Court as extending until the termination of the suit, the fifteenth to twenty-first defendants played no further part in the suit. On 24th May, 1968, their solicitors filed a notice of ceasing to act. There is not on the file any document indicating that any other solicitor has appeared subsequently for any of the fifteenth to twenty-first defendants.

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Having stated the relevant background, I turn to the particular circumstances surrounding the notice of motion of 20th June, 1968.

The plaintiff's case was closed on 19th June, 1968, the 15th day of the hearing. When the plaintiff's case closed Mr. Staff moved on behalf of his clients, the first to sixth defendants, for an order releasing them from the undertaking given by them at the interlocutory stage of the proceedings in respect of the fifteenth to twenty-first defendants. This was the undertaking which I have already set out in full. Mr. Staff stated as the ground upon which he sought the release of the undertaking that, the plaintiff's case having now closed, no case had been made out which could justify any grant of relief which would affect or restrict the first to sixth defendants in taking action against the fifteenth to twenty-first defendants respectively under the seven ancillary agreements. I told Mr. Staff that I regarded it as most inconvenient to be asked, half way through the suit, to consider both the factual and legal elements involved in his

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application to be released from this undertaking.
So far as concerns the factual side, there was already an appreciable volume of evidence which would have to be sifted in order to deal with this application for release from the undertaking; this sifting of the oral evidence and exhibits tendered in the previous fifteen days would be necessary in order to form at least a prima facie view of the facts relevant to the application; as the whole of the evidence in the suit was not yet complete I regarded it, and so informed Mr. Staff, as likely to encumber me in dealing with the entirety of the evidence at the end of the suit if I formed and stated any preliminary views at that stage of the proceedings. Quite apart from the task of sifting the evidence, questions of credit might well arise, and here again I took the view that it was most undesirable to form or state any interim conclusions. On the legal side of the considerations involved in Mr. Staff's application, it seemed that it would be necessary to examine not merely the same legal problems which it then appeared would fall for close argument and decision at the end of the whole suit, but also various permutations and combinations might have to be looked at in determining the significance of possible ultimate findings in connection with the position of the fifteenth to twenty-first defendants.

In pointing out these matters to Mr. Staff, I made it abundantly clear that I held a firm view that his application should not be pressed; if at

the end of the whole of the evidence the plaintiff failed in the suit, then that would automatically involve a release from the undertaking; if, on the other hand, the plaintiff succeeded, then the question of relief affecting the fifteenth to twenty-first defendants would have to be determined, and the undertaking would be released for the purpose of 10 being replaced by such declarations or orders, if any, as might be demonstrated to be appropriate. In either event, not only was the undertaking expressed to end upon the termination of the hearing at first instance, but the decision in the suit would of itself involve its coming to an end. Moreover, the undertaking in question having been obtained in express terms until the termination of the suit at first instance, the fifteenth to twenty-first defen- 20 dants had subsequently withdrawn from further participation in the suit by terminating their instructions to their solicitor.

Notwithstanding the clear and direct terms of my indication to Mr. Staff that I was of the view that his application was not appropriate to be brought forward for decision halfway through the suit, he sought to press upon me an entitlement to move and to be heard in support of his motion. I shall not recount the discussion that followed. The respondents to the proposed motion were not represent- 30 ed at the hearing of the suit. I told Mr. Staff that I could not deny him his right to move, but that, if he wished to move, he must apply properly on motion, and the matter could be placed in the

ordinary Friday motion list; this would enable the hearing of the suit itself to proceed uninterrupted and without suit days being taken up to the prejudice of other litigants with an application that I had already made clear I did not look upon with any favour. The note I then made was "I defer entertaining these motions".

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At the conclusion of the discussion on Mr. Staff's application to be released from the undertaking, and upon his foreshadowing that he would later submit a notice of motion returnable for the next ensuing Friday for the endorsement of leave to serve short notice, Mr. Staff formally closed the case for the fifth defendant, Goulburn Acceptance Pty. Limited. He then moved for a decree in favour of the fifth defendant. I informed Mr. Staff that this appeared to me to be a step aimed at obtaining a ruling at that stage of the suit upon the same matters that I had already indicated I was reluctant to rule upon pending the whole of the evidence being complete and the matter being fully argued. I reiterated that I did not consider it appropriate to hear argument upon, and decide, questions of fact and law at this half-way stage in the suit. Mr. Staff nevertheless pressed his application for a decree in favour of the fifth defendant, and I invited him to make submissions upon the practice of the Equity Court in regard to a motion by one defendant for a decree in its favour prior to the remaining defendants having closed their cases. Neither Mr. Staff nor Mr. Gruzman was then able to refer me to any authority laying down the practice of the

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Judgment of his Honour
Mr. Justice Street on
Notice of Motion

Equity Court. I accordingly deferred entertaining this application until the following day so as to afford counsel an opportunity to make some research into this question of practice and procedure.

It was later that day, 19th June, 1968, that the formal notice of motion seeking release from the undertaking was presented to me for endorsement of the leave to effect short notice. Whilst I felt bound to permit the notice of motion to be taken out returnable for the next ensuing Friday, I made it clear that it was improbable in the extreme that there would be time available in the Friday list to hear the motion and in any event, even if it were heard, it was unlikely that any decision would be given prior to the termination of the suit. I was most unfavourably disposed to the taking out of the motion and I said so. 10 20

On Thursday, 20th June, 1968, there was further reference to the motion for decree on behalf of the fifth defendant. At p. 441 of the transcript I stated briefly my reasons for the order I then made deferring further consideration at that motion until the point of time when all the evidence was concluded. No further reference was made at any time thereafter to this motion.

The notice of motion for release from the undertaking was duly listed on Friday, 21st June, 1968. On that date Mr. Staff and his two juniors appeared for the applicants, the first to sixth defendants, and Mr. McLelland of counsel announced an appearance for the respondent, John Osborne Bovill. 30

Judgment of his Honour
Mr. Justice Street on
Notice of Motion

There was not at that stage or at any time there-
after any solicitor on the record for the respondent
Bovill or for any of the remaining six respondents
named in the motion. There was never any appear-
ance announced on the motion by any of the other
six respondents thereto. The motion sought, in ad-
dition to release of the undertaking, costs of the 10
motion against the respondents (the fifteenth to
twenty-first defendants). There was not at any
stage any evidence of service upon any of the seven
respondents to the motion, nor was there ever filed
any affidavit in support of the notice of motion.
It is to be observed, moreover, that the plaintiff
was not a respondent to the motion; no relief was
sought against the plaintiff in the motion, and it
may be that he would have needed leave to appear by
his counsel to be heard on the motion. 20

But even placing aside these technicalities
of greater and lesser importance, the view which I
held on 19th June, and which I still hold, is that
this notice of motion ought never to have been
taken out. I had made it abundantly clear to Mr.
Staff that I would not be enticed into an interim
consideration and an interim decision upon the
difficult questions of fact, credit and law arising
in the suit. It was in the face of this indication
that the notice of motion was taken out. The pro- 30
ceedings in Court on 19th June after the conclusion
of the plaintiff's case were conducted not without
heat, and I have the strong impression that the
notice of motion had its origin in counsel's dis-
appointment at not having succeeded in forcing a

situation in which a ruling on matters of fact and law would be given at the half-way stage of the suit. It may be accepted as a perfectly legitimate procedure for counsel, on behalf of his clients, to have sought interim decisions such as were involved in the applications made at the close of the plaintiff's case. But on 19th June a stage was reached 10 when it had been made clear beyond any doubt that I regarded it as undesirable and inconvenient in the extreme that any such interim decision should be given, and I had made it clear that the motion would not be an effective means of obtaining any such interim decision.

In such circumstances I am of the view that the motion should be characterised as unnecessary. It could not, at the time it was taken out, have been reasonable anticipated as likely to serve any 20 useful purpose. Its origin lay, as I have already said, in counsel's disappointment.

The motion remained in the Friday list from Friday to Friday after 21st June. There were a great many other matters awaiting hearing in the Friday list to which I accorded priority. The motion was not in fact ever called on for hearing nor, indeed, once the heat of 19th June had subsided, was any serious attempt made to have it heard. I reserved my decision in the suit on 12th November. 30 On the immediately following Friday, 15th November, 1963, when the motion was again in the list, there was no appearance for any party and I ordered that the motion stand over until the date on which the

suit should be listed for judgment. This was in fact 19th December, 1968, and on that date I made the order against which this appeal is now brought. The order for costs was one which, as a matter of discretion, I regarded as appropriate. What the costs of the respondents, (the fifteenth to twenty-first defendants) may have been is a matter of speculation, bearing in mind the matters that I have already mentioned regarding the absence of any solicitor on the record for any of these respondents, and, indeed, of any evidence of the service of the motion; the significance of counsel having appeared for one of them on 21st June and on occasional Friday mentions thereafter may be a matter of debate if and when a taxing officer is called upon to decide the matter. 10

I regarded the whole of the circumstances surrounding this notice of motion with some distaste, and that was why I refrained from stating any reasons on 19th December last. I did, however, set them down, and now, in response to the request made in motions generally, I publish them as requested 20

I certify that this and the preceding 16 pages are a true record of his Honour's Reasons for Judgment.

Barbara Hawke
Associate
31/10/69

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IN THE SUPREME COURT)
OF NEW SOUTH WALES)
IN EQUITY)

No. 23 of 1968

BETWEEN:

ALEXANDER BARTON

Plaintiff

<u>AND:</u>	<u>ALEXANDER EWAN ARMSTRONG</u>	1st Defendant	
<u>AND:</u>	<u>GEORGE ARMSTRONG & SON PTY. LTD</u>	2nd Defendant	
<u>AND:</u>	<u>FINLAYSIDE PTY. LTD.</u>	3rd Defendant	10
<u>AND:</u>	<u>SOUTHERN TABLELANDS FINANCE CO. PTY. LTD.</u>	4th Defendant	
<u>AND:</u>	<u>GOULBURN ACCEPTANCE PTY. LTD.</u>	5th Defendant	
<u>AND:</u>	<u>A.E. ARMSTRONG PTY. LTD.</u>	6th Defendant	
<u>AND:</u>	<u>LANDMARK (QUEENSLAND) PTY. LTD. (In Liquidation)</u>	7th Defendant	
<u>AND:</u>	<u>PARADISE WATERS (SALES) PTY. LTD.</u>	8th Defendant	
<u>AND:</u>	<u>PARADISE WATERS LTD.</u>	9th Defendant	20
<u>AND:</u>	<u>GOONDOO PTY. LTD.</u>	10th Defendant	
<u>AND:</u>	<u>LANDMARK HOME UNITS PTY. LTD.</u>	11th Defendant	
<u>AND:</u>	<u>LANDMARK FINANCE PTY. LTD.</u>	12th Defendant	
<u>AND:</u>	<u>LANDMARK HOUSING & DEVELOPMENT PTY. LTD. (In Liquidation)</u>	13th Defendant	
<u>AND:</u>	<u>LANDMARK CORPORATION LTD.</u>	14th Defendant	
<u>AND:</u>	<u>CLARE BARTON</u>	15th Defendant	30
<u>AND:</u>	<u>TERRENCE BARTON</u>	16th Defendant	
<u>AND:</u>	<u>AGOSTON GONCZE</u>	17th Defendant	
<u>AND:</u>	<u>JOHN OSBORNE BOVILL</u>	18th Defendant	
<u>AND:</u>	<u>HOME HOLDINGS PTY. LTD.</u>	19th Defendant	
<u>AND:</u>	<u>ALLEBART PTY. LTD.</u>	20th Defendant	
<u>AND:</u>	<u>ALLEBART INVESTMENTS PTY. LTD.</u>	21st Defendant	

Decree

THURSDAY the nineteenth day of December One thousand nine hundred and sixty-eight.

UPON MOTION made the twenty-first day of June last and the thirtieth day of July last unto this Court before the Honourable Laurence Whistler Street a Judge of the Supreme Court sitting in Equity by Counsel on behalf of the Defendants Alexander Ewan Armstrong George Armstrong & Son Pty. Limited Finlayside Pty. Limited Southern Tablelands Finance Co. Pty. Limited Goulburn Acceptance Pty. Limited and A.E. Armstrong Pty. Limited in pursuance of Notice of Motion filed herein the twentieth day of June last WHEREUPON AND UPON HEARING READ the said Notice of Motion AND UPON HEARING what was alleged by Mr. Staff of Queen's Counsel with whom were Mr. Bainton and Mr. Bruce of Counsel for the applicants and by Mr. McLelland of Counsel for the respondent John Osborne Bovill on the twenty-first day of June last AND by Mr. Staff of Queen's Counsel with whom were Mr. Bainton Mr. Goldstein and Mr. Bruce of Counsel for the applicants and by Mr. Young of Counsel for the said respondent John Osborne Bovill on the thirtieth day of July last THIS COURT DID ORDER that the further hearing of the said Notice of Motion do stand over until the second day of August last AND THIS MOTION standing in the paper the fifteenth day of November last AND there being no appearance for any party that day THIS COURT DID ORDER that the said Notice of Motion do stand over until the date on which the suit be listed for judgment AND THIS MOTION standing in the paper for judgment this day AND judgment in the suit being delivered this day THIS COURT BOTH ORDER that

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Decree

this Motion be and the same is hereby dismissed out
of this Court AND THIS COURT DOTH FURTHER ORDER
that it be referred to the Deputy Master and Re-
gistrar or the Deputy Registrar or Chief Clerk in
Equity to tax and certify the costs of the respon-
dents of the said Notice of Motion AND that such
costs when so taxed and certified be paid by the
applicants to the respondents or to their solici-
tors within fourteen (14) days after service upon 10
the applicants or their solicitors of an office copy
of the Certificate of such taxation AND all parties
are at liberty to apply as they may be advised.

PASSED THIS Second day of September 1969.

A.V.K.

ENTERED same day. A.M.

L.S.

(Sgd.) A.V. Ritchie (L.S.)

DEPUTY MASTER AND REGISTRAR
IN EQUITY.

IN THE SUPREME COURT }
OF NEW SOUTH WALES }
COURT OF APPEAL }

No. 22 of 1969.

BETWEEN:

ALEXANDER BARTON

Plaintiff

AND: ALEXANDER EWAN ARMSTRONG First Defendant
AND: GEORGE ARMSTRONG & SON PTY. LIMITED. Second Defendant
AND: FINLAYSIDE PTY. LIMITED. Third Defendant 10
AND: SOUTHERN TABLELANDS FINANCE CO. PTY. LIMITED. Fourth Defendant
AND: GOULBURN ACCEPTANCE PTY. LIMITED. Fifth Defendant
AND: A. E. ARMSTRONG PTY. LIMITED Sixth Defendant
AND: LANDMARK (QUEENSLAND) PTY. LIMITED. Seventh Defendant
AND: PARADISE WATERS (SALES) PTY. LIMITED. Eighth Defendant
AND: PARADISE WATERS LIMITED Ninth Defendant 20
AND: GOONDOO PTY. LIMITED. Tenth Defendant
AND: LANDMARK HOME UNITS PTY. LIMITED. Eleventh Defendant
AND: LANDMARK FINANCE PTY. LIMITED. Twelfth Defendant
AND: LANDMARK HOUSING & DEVELOPMENT PTY. LIMITED (In Liquidation) Thirteenth Defendant
AND: LANDMARK CORPORATION LIMITED. Fourteenth Defendant 30
AND: CLARE BARTON Fifteenth Defendant
AND: TERRENCE BARTON Sixteenth Defendant
AND: AGOSTON GONCZE Seventeenth Defendant
AND: JOHN OSBORNE BOVILL Eighteenth Defendant
AND: HOME HOLDINGS PTY. LIMITED Nineteenth Defendant
AND: ALLEBART PTY. LIMITED Twentieth Defendant
AND: ALLEBART INVESTMENTS PTY. LIMITED. Twenty-first Defendant

3244. Notice of Appeal for Mr. Armstrong.

NOTICE OF APPEAL

NAME OF APPELLANTS: ALEXANDER EWAN ARMSTRONG,
GEORGE ARMSTRONG & SON PTY.
LIMITED,
FINLAYSIDE PTY. LIMITED,
SOUTHERN TABLELANDS FINANCE
CO. PTY. LIMITED,
GOULBURN ACCEPTANCE PTY. 10
LIMITED,
A.E. ARMSTRONG PTY. LIMITED.

NAME OF RESPONDENTS: JOHN OSBORNE BOVILLE, CLARE
BARTON, TERRENCE BARTON,
AGOSTON GONCZE, HOME
HOLDINGS PTY. LIMITED,
ALLEBART PTY. LIMITED and
ALLEBART INVESTMENTS PTY.
LIMITED.

COURT FROM WHICH APPEAL Supreme Court of New South 20
IS BROUGHT: Wales, in Equity.

NAME OF THE JUDGE OF Mr. Justice Street.
THE COURT FROM WHICH
THE APPEAL IS BROUGHT:

DAY OR DAYS OF HEARING The action upon which the
OF FIRST INSTANCE: order appealed against was
made was not heard by his Honour at all.

WHETHER APPEAL IS 30
AGAINST THE WHOLE OR
PART ONLY OF THE ORDER: Part only.

ORDER SOUGHT TO BE The order that the above-
SET ASIDE: named appellant, the ap-
plicants on a motion to be released from certain
undertakings, do pay the costs of the abovenamed
respondents, the respondents to that motion, of
the said motion.

ORDER SOUGHT IN LIEU That there be no order as 40
THEREOF: to the costs of the said
motion.

GROUND OF APPEAL: (1) That his Honour hav-
ing indicated that he would not hear a motion by
the appellants to be released from certain

Notice of Appeal for
Mr. Armstrong.

undertakings until the conclusion of the suit, before making an order dismissing the said suit, dismissed the said motion and ordered the appellants to pay the costs of the respondents thereto without having offered the appellants any opportunity to be heard on the said motion or upon the burden of the costs of the same.

(2) That after the closing 10
of the case for the plaintiff in the suit there remained no basis upon which the appellants should have been held to their undertakings given on any application for an interlocutory injunction and the appellants should have been released from such undertakings upon the motion abovementioned.

(3) That his Honour should
have granted the relief sought in the said motion and ordered the respondents to pay the costs of the said motion.

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DATED this day of day of January, 1969.

Counsel for appellants.

IN THE SUPREME COURT
OF NEW SOUTH WALES
IN EQUITY.

No. 23 of 1968.

BETWEEN:

ALEXANDER BARTON

Plaintiff.

AND: ALEXANDER EWAN ARMSTRONG 1st Defendant
AND: GEORGE ARMSTRONG & SON PTY.LTD 2nd Defendant
AND: FINLAYSIDE PTY. LTD. 3rd Defendant
AND: SOUTHERN TABLELANDS FINANCE 10
CO. PTY. LTD. 4th Defendant
AND: GOULBURN ACCEPTANCE PTY. LTD. 5th Defendant
AND: A.E. ARMSTRONG PTY. LTD. 6th Defendant
AND: LANDMARK (QUEENSLAND) PTY.
LTD. (In Liquidation) 7th Defendant
AND: PARADISE WATERS (SALES) PTY.
LTD. 8th Defendant
AND: PARADISE WATERS LTD. 9th Defendant
AND: GOONDOO PTY. LTD. 10th Defendant
AND: LANDMARK HOME UNITS PTY.LTD. 11th Defendant 20
AND: LANDMARK FINANCE PTY. LTD. 12th Defendant
AND: LANDMARK HOUSING & DEVELOPMENT
PTY. LTD. (In Liquidation) 13th Defendant
AND: LANDMARK CORPORATION LTD. 14th Defendant
AND: CLARE BARTON 15th Defendant
AND: TERRENCE BARTON 16th Defendant
AND: AGOSTON GONCZE 17th Defendant
AND: JOHN OSBORNE BOVILL 18th Defendant
AND: HOME HOLDINGS PTY. LTD. 19th Defendant
AND: ALLEBART PTY. LTD. 20th Defendant 30
AND: ALLEBART INVESTMENTS PTY. LTD 21st Defendant

THURSDAY the nineteenth day of December One
thousand nine hundred and sixty-eight. THIS SUIT
coming on to be heard the fourteenth fifteenth

Decree.

sixteenth twenty-first twenty-second twenty-third
twenty-eight twenty-ninth and thirtieth days of May
last the fourth fifth sixth twelfth thirteenth eight-
eenth nineteen twentieth and twenty-first days of
June last the thirtieth and thirty-first days of
July last the first seventh eighth thirteenth four-
teenth fifteenth twenty-first twenty-second twenty-
seventh twenty-eighth and twenty-ninth days of
August last the third fourth fifth tenth eleventh 10
twelfth seventeenth twenty-fourth twenty-fifth and
twenty-sixth days of September last the first second
third fifteenth sixteenth seventeenth twenty-second
twenty-third twenty-fourth twenty-ninth thirtieth and
thirty-first days of October last the fifth sixth
seventh and twelfth days of November last before the
Honourable Laurence Whistler Street a Judge of the
Supreme Court sitting in equity WHEREUPON AND UPON
HEARING what was alleged by Mr. Gruzman of Queen's
Counsel with whom were Mr. Priestley and Mr. Purvis 20
of Counsel for the Plaintiff by Mr. Staff of Queen's
Counsel with whom were Mr. Bainton Mr. Goldstein and
Mr. Bruce of Counsel for the Defendants Alexander
Ewan Armstrong George Armstrong & Son Pty. Limited
Finlayside Pty. Limited Southern Tablelands Finance
Co. Pty. Limited Goulburn Acceptance Pty. Limited
and A. E. Armstrong Pty. Limited and by Mr. Bennett
of Counsel for the Defendant Landmark Corporation
Limited (In Liquidation) (THIS COURT DID GRANT LEAVE
on the ninth day of February last to the Plaintiff 30
to file the Amended Statement of Claim initialled by
the said Judge AND such Amended Statement of Claim
being filed accordingly THIS COURT DID FURTHER GRANT

Decree.

LEAVE on the sixteenth day of May last to the Plaintiff to amend the Amended Statement of Claim by alleging agency of the Defendants George Armstrong & Son Pty. Limited Finlayside Pty. Limited Southern Tablelands Finance Co. Pty. Limited Goulburn Acceptance Pty. Limited and A. E. Armstrong Pty. Limited by the Defendant Alexander Ewan Armstrong by inserting a specific allegation where so desired after references to the Defendant Alexander Ewan Armstrong therein AND THIS COURT DID FURTHER ORDER that the costs of such amendments be and the same were thereby reserved AND amendments to the said Amended Statement of Claim having been made accordingly AND the said lastmentioned Defendants having pursuant to Rule 176 of the Consolidated Equity Rules; 1902 amended their respective Statements of Defence in consequence of such amendments by the Plaintiff to the Amended Statement of Claim WHERE-
UPON AND UPON HEARING READ the pleadings so amended AND UPON HEARING the oral evidence of Alexander Vojinovic Alexander Barton and John Osborne Bovill called on behalf of the Plaintiff and of Bruce Henry Smith Robert Ian Grant Richard Edward Lendrum Maurice James Wild Albert George Follington Alexander Ewan Armstrong Thomas Noel Miles Dorothy Ellen Rosewell John Eric Murray Annette Veronica Catt Anthony John Pratten Mary Verena Catt Frederick Hume Evan Clifford Simons Green and Michael Joseph Gibbons called on behalf of the Defendants Alexander Ewan Armstrong George Armstrong & Son Pty. Limited Finlayside Pty. Limited Southern Tablelands Finance Co. Pty. Limited Goulburn Acceptance Pty. Limited and A.E. Armstrong Pty. Limited AND UPON READING

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Decree.

AND EXAMINING the exhibits put in evidence on behalf of the Plaintiff marked with the letters "A" "B" "C" "D" "E" "F" "G" "H" "J" "K" "L" "M" "N" "O" "P" "Q" "R" "S" "T" "U" "V" "W" "X" "Y" "Z" "AA" "BB" "CC" "DD" "EE" "FF" "GG" "HH" "JJ" "KK" "LL" "MM" "NN" "OO" "PP" "QQ" "RR" "SS" "TT" "UU" "VV" "WW" "XX" respectively and the exhibits put in evidence on behalf of the said lastnamed defendants marked with the figures "1" "2" "3" "4" "5" "6" 10 "7" "8" "9" "10" "11" "12" "13" "14" "15" "16" "17" "18" "19" "20" "21" "22" "23" "24" "25" "26" "27" "28" "29" "30" "31" "32" "33" "34" "35" "36" "37" "38" "39" "40" "41" "42" "43" "44" "45" "46" "47" "48" "49" "50A" "50B" "50C" "50D" "50E" "50F" "50G" "50H" "50J" "50K" "50L" "50M" "50N" "50O" "50P" "50Q" "50R" "50S" "51" "52" "53" "54" "55" "56" "57" "58" "59" "60" "61" "62" "63" "64" "65" "66" "67" "68" "70" "71" "72" "73" "74" "75" "76" "77" "78" "89" "80" "81" "82" "83" "84" "85" "86" and 20 "87" respectively AND UPON HEARING what was alleged by the said respective Counsel THIS COURT DID ORDER that this suit should stand for judgment AND the same standing in the paper this day for Judgment accordingly THIS COURT DOTH ORDER that this suit be and the same is hereby dismissed out of this Court AND THIS COURT DOTH FURTHER ORDER that it be referred to the Deputy Master and Registrar or the Deputy Registrar or Chief Clerk in Equity to tax and certify the costs of the Defendants Alexander 30 Ewan Armstrong George Armstrong & Son Pty. Limited Finlayside Pty. Limited Southern Tablelands Finance Co. Pty. Limited Goulburn Acceptance Pty. Limited

Decree.

including all reserved costs AND that such costs when so taxed and certified be paid by the Plaintiff to the said Defendants or their Solicitor within fourteen days after service upon the Plaintiff or his Solicitor of an office copy of the certificate of such taxation AND THIS COURT DOTH FURTHER ORDER that it be referred to the Deputy Master and Registrar the Deputy Registrar or Chief Clerk in Equity to tax and certify the costs of the remain- 10
ing Defendants who appeared in the suit on the basis that each such Defendant was a submitting Defendant only AND that such costs when so taxed and certified be paid by the Plaintiff to the said remaining Defendants or their respective solicitors within fourteen days after service upon the Plaintiff or his Solicitor of an office copy of the certificate of such taxation AND THIS COURT DOTH
FURTHER ORDER that the said exhibits be retained in Court for three months from this day and be then 20
returned to the custody of the party or person respectively producing them with liberty to any party or person to apply informally for earlier release of particular exhibits AND THIS COURT DOTH FURTHER
ORDER the liberty be and it is hereby reserved to any party to apply on any question of costs not covered by the terms of this decree.

PASSED this First day of September 1969.

A.V.K.

ENTERED same day.
A.M.

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(Sgd.) A. V. Ritchie (L.S.)
DEPUTY MASTER AND REGISTRAR IN EQUITY

IN THE SUPREME COURT)
OF NEW SOUTH WALES) No. of 1969.
IN EQUITY)

BETWEEN:

ALEXANDER BARTON

Plaintiff

AND: ALEXANDER EWAN ARMSTRONG First Defendant

AND: GEORGE ARMSTRONG & SON PTY. LIMITED Second Defendant

AND: FINLAYSIDE PTY. LIMITED Third Defendant 10

AND: SOUTHERN TABLELANDS FINANCE CO. PTY. Fourth Defendant

AND: GOULBURN ACCEPTANCE PTY. LIMITED Fifth Defendant

AND: A.E. ARMSTRONG PTY. LIMITED Sixth Defendant

AND: LANDMARK (QUEENSLAND) PTY. LIMITED (In Liquidation) Seventh Defendant

AND: PARADISE WATERS (SALES) PTY. LIMITED Eighth Defendant

AND: PARADISE WATERS LIMITED Ninth Defendant 20

AND: GOONDOO PTY. LIMITED Tenth Defendant

AND: LANDMARK HOME UNITS PTY. LIMITED Eleventh Defendant

AND: LANDMARK FINANCE PTY. LIMITED Twelfth Defendant

AND: LANDMARK HOUSING & DEVELOPMENT PTY. LIMITED (In Liquidation) Thirteenth Defendant

AND: LANDMARK CORPORATION LIMITED Fourteenth Defendant 30

AND: CLARE BARTON Fifteenth Defendant

AND: TERRENCE BARTON Sixteenth Defendant

AND: AGOSTON GONCZE Seventeenth Defendant

AND: JOHN OSBORN BOVILL Eighteenth Defendant

AND: HOME HOLDINGS PTY. LIMITED Nineteenth Defendant

AND: ALLEBART PTY. LIMITED Twentieth Defendant

AND: ALLEBART INVESTMENTS PTY. LIMITED Twentyfirst Defendant

NOTICE OF APPEAL

Name of Appellant: Alexander Barton.

Name of Respondents: Alexander Ewan Armstrong,
George Armstrong & Son
Pty. Limited,
Finlayside Pty. Limited,
Southern Tablelands Finance
Co. Pty. Limited,
Goulburn Acceptance Pty.
Limited, 10
A. E. Armstrong Pty. Limited,
Landmark (Queensland) Pty.
Limited (In Liquidation),
Paradise Waters (Sales)
Pty. Limited,
Paradise Waters Limited,
Goondoo Pty. Limited,
Landmark Home Units Pty.
Limited,
Landmark Finance Pty. Limited, 20
Landmark Housing &
Development Pty. Limited,
Landmark Corporation Limited,
Clare Barton,
Terrence Barton,
Agoston Goncze,
John Osborne Bovill,
Home Holdings Pty. Limited,
Allebart Pty. Limited,
Allebart Investments Pty. 30
Limited

Court from which
Appeal is brought: Supreme Court of New South
Wales in Equity

Name of the Judge of
the Court from which
the Appeal is brought: His Honour Mr. Justice
Street.

Day or days of hearing
at first instance: 14, 15, 16, 21, 22, 23, 28, 29, 30
May, 1968; 4, 5, 6, 12, 13, 19,
20 June, 1968; 30, 31 July,
1968; 1, 7, 8, 13, 14, 15, 21, 22, 40
27, 28, 29 August, 1968; 3, 4,
5, 10, 11, 12, 17, 24, 25, 26
September, 1968; 1, 2, 3, 15,
16, 17, 22, 23, 24, 29, 30, 31
October, 1968; 5, 6, 7, 12, 13
November, 1968.

Whether appeal is against
the whole or part only of
the order, decree,
judgment or verdict: The whole of the Decree. 50

Order, decree, judgment
or verdict sought to be
set aside:

Order that the suit be dismissed; Order the
plaintiff to pay the costs of the first, second,
third, fourth, fifth and sixth defendants, such

Notice of Appeal by
3253. Mr. Barton

costs to include all reserved costs; Order the plaintiff to pay the costs of those of the remaining defendants who appeared in the suit, such costs in each instance to be paid on the basis that each such defendant was a submitting defendant only.

Order sought in lieu thereof:

ORDER:

1. That it be declared that the Deed executed by the plaintiff dated the 17th day of January, 1967 and the ancillary Deeds thereto were executed by the Plaintiff under duress and were not his deeds. 10
2. That it may be declared that the aforesaid deed and said ancillary deeds were executed by the plaintiff under duress and have been duly avoided by the plaintiff.
3. That it may be declared that the aforesaid deed, and ancillary deeds, are void, or alternatively are void so far as concerns the plaintiff. 20
4. That the defendants, and each of them may be restrained from acting upon or purporting to act upon the said deed, and ancillary deeds in any way whatsoever, or alternatively so far as concerns the plaintiff, and from acting upon or purporting to act upon any rights or powers under any deeds, agreements or other documents coming into existence consequently upon the said deed, or ancillary deeds in any way whatsoever or alternatively so far as concerns the plaintiff. 30

5. That the guarantees and mortgages by the plaintiff and other obligations of the plaintiff contained in the said ancillary deeds are invalid and void and not binding upon the plaintiff.
6. That the defendants be ordered to pay the plaintiff's costs of this suit.
7. That the plaintiff may have such further or other relief as the nature of the case may require. 10

Grounds of Appeal:

1. That upon the findings of the fact made by his Honour, his Honour erred in law in dismissing the plaintiff's suit.
2. That upon the findings of fact made by his Honour and upon the evidence his Honour erred in law in dismissing the plaintiff's suit.
3. That upon the evidence his Honour erred in law in dismissing the plaintiff's suit. 20
4. That upon the findings of fact made by his Honour his Honour should have granted the plaintiff the relief sought by him in the suit.
5. That upon the findings of fact made by his Honour and upon the evidence his Honour should have granted the plaintiff the relief sought by him in the suit.
6. That upon the evidence his Honour should have granted the plaintiff the relief sought by him in the suit. 30

7. That having found that the plaintiff was being subjected to threats and intimidation by the defendant Armstrong, that these were current during the negotiations, that the plaintiff was in fear for the safety of himself and his family, (summarised from Page 16 of the reasons for judgment) and that on the 12th January, 1967 the defendant Armstrong directly threatened the plaintiff regarding the signing of the agreement (summarised from Pages 66 and 67 of the reasons for judgment) his Honour erred in law in not finding or alternatively should have found that the agreement was signed by the plaintiff as the result of duress or unlawful pressure, or alternatively would not have been signed but for such duress or unlawful pressure. 10
8. That his Honour's finding that the plaintiff was not coerced by the defendant Armstrong into signing the agreement was against the evidence and the weight of evidence. 20
9. That the case having been fought on the issue whether or not the plaintiff had been threatened by the defendant Armstrong during the course of negotiations and prior thereto and his Honour having found this fact in favour of the Plaintiff his Honour should have made a decree in favour of the plaintiff. 30
10. That his Honour erred in holding

- (a) That there was not sufficient evidence to make a judicial finding that the defendant Armstrong was implicated through Mr. Hume either in a plot as alleged on the pleadings to have the plaintiff killed or injured or in some other identifiable plot adverse to him.
- (b) That the written statement of Mr. Hume taken by Detective Sergeant Wilde and Constable Follington never existed. 10
- (c) That the plaintiff was not intimidated by the defendant Armstrong's threat into signing the agreement.

11. That upon the findings of fact made by his Honour and upon the evidence his Honour should have found as a matter of inference

- (a) That the defendant Armstrong was implicated through Mr. Hume in a plot to have the plaintiff killed. 20
- (b) A statement of Mr. Hume made to Detective Sergeant Wilde and Constable Follington did exist and was seen by the plaintiff and the terms of the statement were as given in the plaintiff's evidence.

DATED this 15th day of January, 1969.

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Counsel for the Claimant

To the abovenamed Defendants.