

ON APPEAL

FROM THE SUPREME COURT OF NEW SOUTH WALES

COMMON LAW DIVISION COMMERCIAL LIST

BETWEEN:

KOCRAGANG INVESTMENTS PTY. LIMITED

Appellant (Plaintiff)

AND:

RICHARDSON & WRENCH LIMITED

Respondent (Defendant)

TRANSCRIPT RECORD OF PROCEEDINGS

Volume I

SOLICITORS FOR THE APPELLANT

Clayton Utz & Company,
Australia Square,
SYDNEY, N.S.W.

By their Agents:

Clifford-Turner,
Blackfriars House,
19 New Bridge Street,
LONDON, EC 4V 6BY U.K.

SOLICITORS FOR THE RESPONDENT

Freehill, Hollingdale & Page,
M.L.C. Centre,
Martin Place,
SYDNEY, N.S.W.

By their Agents:

Linklaters & Paines,
Barrington House,
59-67 Gresham Street,
LONDON, EC 2V 7JA U.K.

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IN THE SUPREME COURT)
)
OF NEW SOUTH WALES)
)
COMMON LAW DIVISION)

No. 003568 of 1976

KOORAGANG INVESTMENTS PTY.
LIMITED

Plaintiff

RICHARDSON & WRENCH LIMITED

Defendant

STATEMENT OF CLAIM

1. The plaintiff is and at all material times was a company 10
duly incorporated and entitled to sue in and by its said cor-
porate name and style. The plaintiff from time to time invest-
ed money on the security of registered mortgages of real
property.

2. The defendant company is and at all material times was a
company duly incorporated and liable to be sued in and by its
said corporate name and style. At the times aforesaid the
defendant company carried on business and held itself out as
skilled real estate agents and valuers of real estate.

3. On or prior to the 26th March, 1973, the defendant by its 20
servant or a agent valued a property known as 233, 235, 237
Glebe Point Road, Glebe Point and prepared a written valuation
report.

4. The aforesaid written valuation report:

- (a) was stated to be on instructions from Fidelity
Acceptance Pty. Limited
- (b) was stated to be on behalf of an intending mortgagee
- (c) valued the premises at \$160,000.00

Statement of Claim

(d) omitted to refer to the fact that as at 26th March 1973 improvements upon the property had been effected without the consent of Leichhardt Municipal Council and thus had been constructed in contravention of the law.

5. The defendant at all relevant times held itself out to members of the public as being skilled in the valuation of real estate.

6. The defendant knew or ought to have known that reliance would be placed upon the representations contained in the aforesaid valuation report and in particular that reliance would be placed upon the defendant's valuation of the properties by persons who were considering advancing moneys upon the security of the aforesaid properties.

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7. The plaintiff was approached to advance moneys to Giles Bourke Holdings Pty. Limited upon the security of registered first mortgages over the aforesaid properties and in reliance upon the aforesaid valuation report of the defendant advanced the sum of \$104,000.00 to Giles Bourke Holdings Pty. Limited upon security of a registered Memorandum of Mortgage expressed to continue for the term of five years.

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8. The defendant conducted itself negligently in and about the issue of the aforesaid valuation report particulars whereof are as follows:-

(i) The valuation inserted in the report was grossly in excess of the real value of the property at the time of the making of the report.

Statement of Claim

(ii) The valuation report omitted reference to the then illegal alteration works.

9. As a consequence of advancing moneys in reliance upon the valuation of the defendant, the plaintiff has suffered the loss and damage particulars whereof are as follows:-

(a) Loss of capital investment	\$41,142.49	
(b) Loss of interest	17,538.96	
(c) Loss of penalties	1,733.40	
(d) Legal expenses	196.20	10
(e) Expenses of sale	\$2,720.50	
(f) Cost of insurance and repairs	524.90	
(g) Interest on unpaid interest as at 10th March, 1976	1,502.43	
(h) Interest on unpaid penalties as at 10th March, 1976	153.26	
(i) Interest on outstanding principal and unpaid interest and interest on unpaid interest and penalties and interest on penalties from 10th March, 1976 at a daily rate of \$19.39		20

10. Further or in the alternative, the defendant by its servant or agent represented on the 26th March, 1973 that the value of the aforesaid property was \$160,000.00.

11. Such representation was made to induce persons, including the plaintiff, to advance moneys on the security of the aforesaid property.

12. The plaintiff acting in reliance upon the representation made as aforesaid advanced \$104,000.00 upon the security of a registered Memorandum of Mortgage over the aforesaid property.

13. Such representation was false as the defendant well knew

Statement of Claim

or alternatively such representation was false and was made by the defendant's servant recklessly careless as to the truth or falsity of it.

14. As a consequence of advancing the aforesaid sum in reliance upon the misrepresentation of the defendant the plaintiff has suffered loss and damage particulars whereof are as set out in paragraph 9 hereof.

15. And the plaintiff claims damages against the defendant

D.J. Hill (Sgd.)

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Solicitor for the Plaintiff

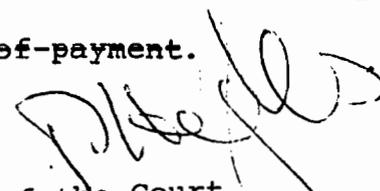
TO THE DEFENDANT:

Richardson & Wrench Limited,
92 Pitt Street,
Sydney.

you are liable to suffer judgment or an order against you unless the prescribed form of notice of your appearance is received in the Registry within fourteen (14) days after service of this Statement of Claim upon you and you comply with the Rules of Court relating to your defence.

20

~~You may, within fourteen (14) days after service of this Statement of Claim upon you, pay to the plaintiff or its solicitors the amount claimed (together with interest thereon at the rate of 10.75% per annum from the date of filing of this Statement of Claim until payment) and also \$ for costs. Further proceedings against you will be stayed when you also file a prescribed form of notice of payment.~~


Clerk of the Court

L.S.

Statement of Claim

PLAINTIFF:

KORAGANG INVESTMENTS PTY. LIMITED
213 Miller Street,
North Sydney. N.S.W. 2060

SOLICITOR:

David John Hill,
C/- Minter Simpson & Co.,
68 Pitt Street,
Sydney. N.S.W. 2000

PLAINTIFF'S ADDRESS
FOR SERVICE:

Minter Simpson & Co.,
68 Pitt Street,
Sydney. N.S.W. 2000

10

ADDRESS OF REGISTRY:

Supreme Court,
King Street,
Sydney. N.S.W. 2000

D.J. Hill (Sgd.)
Solicitor for the plaintiff

FILED 8/6/76.

IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION
COMMERCIAL LIST

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)
)

No. 3568 of 1976

BETWEEN: KOORAGANG INVESTMENTS PTY. LIMITED

Plaintiff

AND: RICHARDSON & WRENCH LIMITED

Defendant

AMENDED STATEMENT OF CLAIM

Filed pursuant to leave granted to the Plaintiff
by Order of His Honour Mr. Justice Meares on the 23rd
of February 1978.

1. The plaintiff is and at all material times was a com- 10
pany duly incorporated and entitled to sue in and by
its said corporate name and style. At all material
times the plaintiff was a registered moneylender who
carried on business as such which said business in-
cluded, inter alia, the advancing of money by way of
loan on a security of first mortgage over real estate.
2. The defendant company is and at all material times
was a company duly incorporated and liable to be sued
in and by its said corporate name and style. At the
times aforesaid the defendant company carried on busi- 20
ness and held itself out as skilled real estate agents
and valuers of real estate.
3. On or prior to 26th March 1973 the defendant by its
servant or agent valued a property known as 233,235,237
Glebe Point Road, Glebe Point (hereinafter called "the
Glebe property") and prepared a written valuation re-
port thereon.

4. The aforesaid written valuation report:
 - (a) was stated to be on instructions from Fidelity Acceptance Pty. Limited;
 - (b) was stated to be on behalf of an intending mortgagee;
 - (c) recommended that the Glebe property was an eligible security for the advancement of funds by way of first mortgage only.
 - (d) estimated the fair market value of the Glebe property at the sum of \$160,000;
 - (e) omitted to refer to the fact that as at 26th March 1973 improvements upon the property had been effected without the consent of Leichhardt Municipal Council and thus had been constructed in contravention of the law.
5. The defendant at all relevant times held itself out to members of the public as being skilled in the valuation of real estate.
6. The defendant knew or ought to have known that reliance would be placed upon the representation contained in the aforesaid valuation report and in particular that reliance would be placed upon the defendant's valuation of the Glebe property by persons who were considering advancing moneys upon the security thereof.
7. The plaintiff was approached to advance moneys to Giles Bourke Holdings Pty. Limited upon the security of registered first mortgages over the Glebe property and in reliance upon the aforesaid valuation report of the defendant

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in respect of the said property the plaintiff advanced the sum of \$104,000.00 to Giles Bourke Holdings Pty. Limited upon security of a registered Memorandum of Mortgage expressed to continue for the term of three years.

8. The defendant conducted itself negligently in and about the issue of the aforesaid valuation report particulars whereof are as follows:

- (i) the valuation inserted in the report was grossly in excess of the true market value of the Glebe property at the time of the making of the said report; 10
- (ii) the Glebe property was not an eligible security for the advancement of funds by way of first mortgage only based on a valuation of \$160,000;
- (iii) the valuation report omitted reference to the then illegal alteration works.

9. As a consequence of advancing moneys in reliance upon the valuation of the defendant of the Glebe property the plaintiff has suffered the loss and damage particulars whereof are as follows: 20

(a) Loss of capital investment	\$41,142.49
(b) Loss of interest	17,538.96
(c) Loss of penalties	1,733.40
(d) Legal expenses	196.20
(e) Expenses of sale	\$ 3,041.05
(f) Cost of insurance and repairs	524.90
(g) Interest on unpaid interest as at 10.3.76	1,502.43

- (h) Interest on unpaid penalties
as at 10.3.76 153.26
- (i) Interest on outstanding principal and unpaid interest and interest on unpaid interest and penalties and interest on penalties from 10th March 1976 at a daily rate of \$19.39
10. Further or in the alternative, the defendant by its servant or agent represented on the 26th March 1973 that the fair market value of the Glebe property was the sum of \$160,000. 10
11. Such representation was made to induce persons, including the plaintiff, to advance moneys on the security of the Glebe property.
12. The plaintiff acting in reliance upon the representation made as aforesaid by the defendant advanced the sum of \$104,000 upon the security of a registered Memorandum of Mortgage over the Glebe property.
13. Such representation was false as the defendant well knew or alternatively such representation was false and was made by the defendant's servant recklessly careless as to the truth or falsity of it. 20
14. As a consequence of advancing the aforesaid sum in reliance upon the misrepresentation of the defendant the plaintiff has suffered loss and damage in respect of the Glebe property particulars whereof are as set out in paragraph 9 hereof.
15. On or prior to 14th June 1973 the defendant by its servant or agent valued a property known as Nos. 18 and 20 East 30

Crescent Street, McMahon's Point (hereinafter called "the McMahon's Point property") and prepared a written valuation report thereon.

16. The aforesaid written valuation report:

(a) was stated to be on instructions from Group Unity Securities Pty. Limited;

(b) was stated to be for and on behalf of Cobden Pty. Limited 80 Perry Street, Matraville as mortgagee;

(c) recommended that the McMahon's Point property was an eligible security for the advancement of loan funds by way of first mortgage; 10

(d) estimated the fair market value of the McMahon's Point property at the sum of \$250,000;

17. The defendant at all relevant times held itself out to members of the public as being skilled in the valuation of real estate.

18. The defendant knew or ought to have known that reliance would be placed upon the representations contained in the aforesaid valuation report and in particular that reliance would be placed upon the defendant's valuation of the McMahon's Point property by persons who were considering advancing moneys upon the security thereof. 20

19. The plaintiff was approached to advance moneys to Group Unity Securities Pty. Limited upon the security of a registered first mortgage over the McMahon's Point property and in reliance upon the aforesaid valuation report of the defendant in respect of the said property the plaintiff

advanced the sum of \$160,000 to Group Unity Securities Pty. Limited upon security of a registered Memorandum of Mortgage expressed to continue for the term of three years.

20. The defendant conducted itself negligently in and about the issue of the aforesaid valuation report particulars whereof are as follows:

(i) the valuation inserted in the report was grossly in excess of the true market value of the McMahon's Point property at the time of the making of the said report.

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(ii) the McMahon's Point property was not an eligible security for the advancement of loan funds by way of first mortgage based on a valuation of \$250,000;

21. As a consequence of advancing moneys in reliance upon the valuation of the defendant of the McMahon's Point property the plaintiff has and will suffer loss and damage in realising its said security upon default of Group Unity Securities Pty. Limited under its said mortgage of the said property to the plaintiff which said loss cannot as yet be quantified until the sale of the said property;

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Loss of interest to 30.11.76	\$19,234.98
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22. Further or in the alternative, the defendant by its servant or agent represented on 14th June 1973 that the fair market value of the McMahon's Point property was the sum of \$250,000.

23. Such representation was made to induce persons, including

the plaintiff, to advance moneys on the security of the McMahon's Point property.

24. The plaintiff acting in reliance upon the representation made as aforesaid by the defendant advanced the sum of \$160,000 upon the security of a registered Memorandum of Mortgage over the McMahon's Point property.

25. Such representation was false as the defendant well knew or alternatively such representation was false and was made by the defendant's servant recklessly careless as to the truth or falsity of it. 10

26. As a consequence of advancing the aforesaid sum in reliance upon the misrepresentation of the defendant the plaintiff has suffered loss and damage in respect of the McMahon's Point property particulars whereof are as set out in paragraph 21 hereof.

The Plaintiff claims:

1. Damages.
2. Costs.

J. Lees Solicitor 20
employed by
David John Hill

Solicitor for the Plaintiff

To the Defendant:

Richardson & Wrench Limited,
92 Pitt Street,
SYDNEY.

You are liable to suffer Judgment or an Order against you unless the prescribed form of notice of your appearance is received in the Registry within fourteen days after service of this Amended Statement of Claim upon you and you comply with the Rules of Court relating to your defence. 30

Amended Statement of Claim

Plaintiff: Kooragang Investments Pty. Limited,
213 Miller Street,
NORTH SYDNEY.

Solicitor: David John Hill,
C/- Minter Simpson & Co.,
68 Pitt Street,
SYDNEY.

Plaintiff's address
for service: Minter Simpson & Co.,
68 Pitt Street,
SYDNEY.

10

Address of Registry: Common Law Registry,
Level 5,
Supreme Court Building,
Queens Square,
SYDNEY.

Filed: 23rd February, 78.

L.S.

A handwritten signature in black ink, appearing to be 'D. Hill', written over a faint circular stamp.

IN THE SUPREME COURT)
)
OF NEW SOUTH WALES)
)
COMMON LAW DIVISION)
)
COMMERCIAL LIST)

No. 3568 of 1976

KOORAGANG INVESTMENTS PTY.
LIMITED

Plaintiff

RICHARDSON & WRENCH LIMITED

Defendant

DEFENCE

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1. The answer to paragraph 1 of the amended statement of claim the defendant does not admit that at all material times the plaintiff was a registered moneylender which carried on business as such which said business includes, inter alia, the advancing of money by way of loan on a security of first mortgage over real estate.

2. In answer to paragraph 2 of the amended statement of claim the defendant does not admit that at the times aforesaid it held itself out as skilled real estate agents and valuers of real estate and the defendant says that it carried on business as a licensed real estate agent, auctioneer, valuer and property manager.

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3. In answer to paragraph 3 of the amended statement of claim, the defendant denies that on or prior to 26 March 1973 the defendant by its servant or agent valued a property known as 233, 235, 237 Glebe Point Road, Glebe Point ("the Glebe property") and prepared a written valuation report thereon.

4. In further answer to paragraph 3 of the amended statement of claim the defendant says -

- (a) That it never received instructions from Fidelity Acceptance Pty. Limited or any other person to carry out a valuation of the Glebe property and that it was never employed by Fidelity Acceptance Pty. Limited or any other person to do so;
- (b) that the purported valuation of 26 March 1973 was not a valuation of the defendant and did not come into existence 10 as a result of the furnishing of any instructions by Fidelity Acceptance Pty. Limited or any other person to the defendant or by the employment of the defendant by Fidelity Acceptance Pty. Limited or any other person for that purpose;
- (c) that the purported valuation of 26 March 1973 was to the best of the defendant's information and belief prepared by one Thomas George Rathborne, who was then employed by the defendant as a valuer, but that it was not prepared by the said Thomas George Rathborne in the course of his 20 employment with or pursuant to his employment with the defendant;
- (d) that the said purported valuation is not a valuation of the defendant.

5. In answer to paragraph 4 of the amended statement of claim the defendant repeats the matters more fully set forth in paragraph 4 hereof.

Defence

6. In answer to paragraph 4 of the amended statement of claim the defendant denies that at all material times it held itself out to members of the public as being skilled in the valuation of real estate and the defendant says that at all material times it carried on the business more fully set forth in paragraph 2 hereof.

7. In answer to paragraph 6 of the amended statement of claim the defendant denies that it knew or ought to have known that reliance would be placed upon the representation contained in the said valuation report and in particular that reliance would be placed upon the valuation of the Glebe property by persons who were considering advancing moneys on the security thereof and the defendant further denies that the valuation of the Glebe property was the defendant's valuation.

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8. In answer to paragraph 7 of the amended statement of claim the defendant -

- (a) does not admit that the plaintiff was approached to advance moneys to Giles Bourke Holdings Pty. Limited upon the security of registered first mortgages over the Glebe property;
- (b) denies that in reliance upon the aforesaid valuation report in respect of the Glebe property the plaintiff advanced the sum of \$104,000.00 to Giles Bourke Holdings Pty. Limited upon security of a registered memorandum of mortgage expressed to continue for a term of three years;
- (c) denies that the valuation report was a valuation report

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Defence

of the defendant and repeats the matters more fully set forth in paragraph 4 hereof;

- (d) says that in advancing the said sum of \$104,000 to Giles Bourke Holdings Pty. Limited in the manner alleged in paragraph 7 of the amended statement of claim the plaintiff failed to observe certain procedures which had been agreed between it and the defendant before the plaintiff lent any money on the basis of a valuation made or purported to have been made by the defendant, the observance of which procedures would have disclosed that the purported valuation of 26 March 1973 was not a valuation of the defendant.

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9. In answer to paragraph 8 of the amended statement of claim the defendant denies that it conducted itself negligently in and about the issue of the aforesaid valuation report in the manner alleged and the defendant further says that the said valuation report was not a report of the defendant and repeats the matters more fully set forth in paragraph 4 hereof.

10. In answer to paragraph 9 of the amended statement of claim the defendant denies the truth of the facts alleged therein and each of them.

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11. In answer to paragraph 10 of the amended statement of claim the defendant denies that it by its servant or agent represented on 26 March 1973 that the fair market value of the Glebe property was \$160,000.00.

12. In further answer to paragraph 10 of the amended statement

Defence

of claim insofar as it is alleged that the alleged representation was made in the purported valuation report of 26 March 1973 the defendant repeats the matters more fully set forth in paragraph 4 hereof.

13. In answer to paragraph 11 of the amended statement of claim the defendant denies that it made the representation alleged and repeats the matters more fully set forth in the last preceding paragraph hereof and the defendant denies that such alleged representation was made to induce persons, including the plaintiff, to advance moneys on the security of the Glebe property.

14. In answer to paragraph 12 of the amended statement of claim the defendant denies that the plaintiff acting in reliance upon the alleged representation made as aforesaid by the defendant advanced the sum of \$104,000 upon the security of a registered memorandum of mortgage over the Glebe property and in further answer to paragraph 12 of the amended statement of claim the defendant repeats the matters more fully set forth in paragraph 8 hereof.

15. In answer to paragraph 13 the defendant -

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- (a) denies that it made the alleged representation;
- (b) denies that the alleged representation was false as the defendant well knew;
- (c) denies that the alleged representation was false and was made by the defendant's servant recklessly, careless as to the truth or falsity of it;
- (d) denies that the alleged representation was made by the

Defence

defendant's servant and repeats the matters more fully set forth in paragraph 4 hereof.

16. In answer to paragraph 14 of the amended statement of claim the defendant -

- (a) denies that the plaintiff advanced the aforesaid sum in reliance upon the alleged misrepresentation of the defendant;
- (b) denies that any misrepresentation was made by the defendant;
- (c) denies that the plaintiff has suffered loss and damage in respect of the Glebe property as alleged.

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17. In answer to paragraph 15 of the amended statement of claim the defendant denies that on or prior to 14 June 1973 the defendant by its servant or agent valued a property known as Nos. 18 and 20 East Crescent Street, McMahon's Point ("the McMahon's Point property") and prepared a written valuation report thereon.

18. In further answer to paragraph 15 of the amended statement of claim the defendant says -

- (a) that it never received instructions from Group Unity Securities Pty. Limited or any other person to carry out a valuation of the McMahon's Point property and that it was never employed 20 by Group Unity Securities Pty. Limited or any other person to do so;
- (b) that the purported valuation of 14 June 1973 was not a valuation of the defendant and did not come into existence as a result of the furnishing of any instructions by Group Unity Securities Pty. Limited or any other person to the defendant or by the employment of the defendant by Group

Defence

Unity Securities Pty. Limited or any other person for that purpose;

(c) that the purported valuation of 14 June 1973 was to the best of the defendant's information and belief prepared by one Thomas George Rathborne, who was then employed by the defendant as a valuer, but that it was not prepared by the said Thomas George Rathborne in the course of his employment with or pursuant to his employment with the defendant;

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(d) that the said purported valuation is not a valuation of the defendant.

19. In answer to paragraph 16 of the amended statement of claim the defendant repeats the matters more fully set forth in paragraph 18 hereof.

20. In answer to paragraph 17 of the amended statement of claim the defendant denies that at all relevant times it held itself out to members of the public as being skilled in the valuation of real estate and the defendant says that at all material times it carried on the business more fully set forth in paragraph 2 hereof.

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21. In answer to paragraph 18 of the amended statement of claim the defendant denies that it knew or ought to have known that reliance would be placed upon the representation contained in the said valuation report and in particular that reliance would be placed upon the valuation of the McMahon's Point property by persons who were considering advancing moneys on the security

Defence

thereof and the defendant further denies that the valuation of the McMahon's Point property was the defendant's valuation.

22. In answer to paragraph 19 of the amended statement of claim the defendant -

- (a) does not admit that the plaintiff was approached to advance moneys to Group Unity Securities Pty. Limited upon the security of a registered first mortgage over the McMahon's Point property;
- (b) denies that in reliance upon the aforesaid valuation report 10 in respect of the McMahon's Point property the plaintiff advanced the sum of \$160,000.00 to Group Unity Securities Pty. Limited upon security of a registered memorandum of mortgage expressed to continue for a term of three years;
- (c) denies that the valuation report was a valuation report of the defendant and repeats the matters more fully set forth in paragraph 18 hereof;
- (d) says that the memorandum of mortgage from Group Unity Securities Pty. Limited contained the personal guarantee 20 of John Giles Bourke for the repayment of the principal sum and all interest under the said mortgage;
- (e) says that in advancing the said sum of \$160,000.00 to Group Unity Securities Pty. Limited in the manner alleged in paragraph 19 of the amended statement of claim the plaintiff failed to observe certain procedures which had been agreed between it and the defendant before the plaintiff lent any money on the basis of a valuation made or

Defence

purported to have been made by the defendant, the observance of which procedures would have disclosed that the purported valuation of 26 March 1973 was not a valuation of the defendant.

23. In answer to paragraph 20 of the amended statement of claim the defendant denies that it conducted itself negligently in and about the issue of the aforesaid valuation report in the manner alleged and the defendant further says that the said valuation report was not a report of the defendant and repeats the matters more fully set forth in paragraph 18 hereof. 10

24. In answer to paragraph 21 of the amended statement of claim the defendant denies the truth of the facts alleged therein and each of them.

25. In answer to paragraph 22 of the amended statement of claim insofar as it is alleged that the alleged representation was made in the purported valuation of 14 June 1973 the defendant repeats the matters more fully set forth in paragraph 18 hereof.

26. In answer to paragraph 23 of the amended statement of claim 20 the defendant denies that it made the representation alleged and repeats the matters more fully set forth in the last preceding paragraph hereof and the defendant denies that such alleged representation was made to induce persons, including the plaintiff, to advance money on the security of the McMahon's Point property.

27. In answer to paragraph 24 of the amended statement of claim the defendant denies that the plaintiff acting in reliance upon

Defence

the alleged representation made as aforesaid by the defendant advanced the sum of \$160,000.00 upon the security of a registered memorandum of mortgage over the McMahon's Point property and in further answer to paragraph 24 of the amended statement of claim the defendant repeats the matters more fully set forth in paragraph 22 hereof.

28. In answer to paragraph 25, the defendant -

- (a) denies that it made the alleged representation;
- (b) denies that the alleged representation was false as the defendant well knew;
- (c) denies that the alleged representation was false and was made by the defendant's servant recklessly, careless as to the truth or falsity of it;
- (d) denies that the alleged representation was made by the defendant's servant and repeats the matters more fully set forth in paragraph 18 hereof.

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29. In answer to paragraph 26 of the amended statement of claim the defendant -

- (a) denies that the plaintiff advanced the aforesaid sum in reliance upon the alleged misrepresentation of the defendant;
- (b) denies that any misrepresentation was made by the defendant;
- (c) denies that the plaintiff has suffered loss and damage in respect of the McMahon's Point property as alleged.

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30. In answer to the whole of the amended statement of claim

Defence

the defendant says that insofar as the plaintiff has sustained any damages this has resulted from or been contributed to by the negligence of the plaintiff.

Particulars of contributory negligence -

- (a) The plaintiff's reliance upon photostat copies of the valuations in respect of the Glebe property and the McMahon's Point property in lending the moneys.
- (b) The plaintiff's reliance upon copies of valuations of the Glebe property and the McMahon's Point property in lending the moneys. 10
- (c) The plaintiff's reliance upon valuations received by it respectively from the solicitor for the proposed mortgagor and from a mortgage broker on behalf of the proposed mortgagor in lending the moneys.
- (d) The failure of the plaintiff to obtain an independent valuation before lending the moneys.
- (e) The failure of the plaintiff to instruct a valuer to carry out a valuation before lending the moneys.
- (f) The failure of the plaintiff to follow the procedures laid down between the plaintiff and the defendant for the obtaining of valuations before the plaintiff lent moneys. 20
- (g) The failure of the plaintiff to obtain an up-to-date valuation of the Glebe property prior to lending money thereon.
- (h) The failure of the plaintiff to obtain an up-to-date valuation of the McMahon's Point property before lending money thereon.

Defence

John Broadley
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Solicitor for the Defendant

FILED: 10 August, 1978

IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

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)
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)
)

No. 3568 of 1976

KOORAGANG INVESTMENTS PTY. LIMITED

Plaintiff

RICHARDSON & WRENCH LIMITED

Defendant

REPLY

1. The plaintiff joins issue with the defendant on each and every of the allegations contained in the following paragraphs of the Defence:- 10
 - (a) Paragraphs 1 to 7 inclusive,
 - (b) Paragraphs 8 (a) to 8 (c) inclusive,
 - (c) Paragraphs 9 to 21 inclusive,
 - (d) Paragraphs 22 (a) 22 (d) inclusive,
 - (e) Paragraphs 23 to 29 inclusive.

2. As to the allegations contained in Paragraphs 8 (d) and 22 (e) of the Defence the plaintiff says that there never had been any such agreement between the plaintiff and the defendant as is alleged, and in further answer the plaintiff says that communications took place between the plaintiff and the defendant in relation to the defendant, in connection with mortgage loan applications received by the plaintiff, carrying out preliminary inspections, and then observing certain procedures in relation to subsequent valuation. It is denied that:- 20
 - (a) the plaintiff had any obligation not to rely on any

Reply to Defence

valuation of the defendant received other than in accordance with such procedures and

(b) that procedures were applicable where a valuation of the defendant was submitted with the loan application to the plaintiff.

3. As to Paragraph 30 of the Defence the plaintiff denies that it has been guilty of any contributory negligence or has been guilty of any negligence at all, and says further that in so far as the defendant seeks to rely upon allegations of contributory negligence on the part of the plaintiff in relation to allegations of fraud by the plaintiff against the defendant, such reliance upon contributory negligence by the defendant is bad in law.

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J. Lees
Solicitor employed by
DAVID JOHN HILL

Solicitor for the Plaintiff

FILED: 20th September, 1978

IN THE SUPREME COURT)
)
OF NEW SOUTH WALES)
)
COMMON LAW DIVISION)
)
COMMERCIAL LIST)

No. 3568 of 1976

KOORAGANG INVESTMENTS PTY.
LIMITED

Plaintiff

RICHARDSON & WRENCH LIMITED

Defendant

AMENDED DEFENCE

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1. In answer to paragraph 1 of the amended statement of claim the defendant does not admit that at all material times the plaintiff was a registered moneylender which carried on business as such which said business includes, inter alia, the advancing of money by way of loan on a security of first mortgage over real estate.

2. In answer to paragraph 2 of the amended statement of claim the defendant does not admit that at the times aforesaid it held itself out as skilled real estate agents and valuers of real estate and the defendant says that it carried on business 20 as a licensed real estate agent, auctioneer, valuer and property manager.

3. In answer to paragraph 3 of the amended statement of claim, the defendant denies that on or prior to 26 March 1973 the defendant by its servant or agent valued a property known as 233, 235, 237 Glebe Point Road, Glebe Point ("The Glebe property") and prepared a written valuation report thereon.

4. In further answer to paragraph 3 of the amended statement

of claim the defendant says:-

- (a) that it never received instructions from Fidelity Acceptance Pty. Limited or any other person to carry out a valuation of the Glebe property and that it was never employed by Fidelity Acceptance Pty. Limited or any other person to do so;
- (b) that the purported valuation of 26 March 1973 was not a valuation of the defendants and did not come into existence as a result of the furnishing of any instructions by Fidelity Acceptance Pty. Limited or any other person to the defendant or by the employment of the defendant by Fidelity Acceptance Pty. Limited or any other person for that purpose; 10
- (c) that the purported valuation of 26 March 1973 was to the best of the defendant's information and belief prepared by one Thomas George Rathborne, who was then employed by the defendant as a valuer, but that it was not prepared by the said Thomas George Rathborne in the course of his employment with or pursuant to his employment with the defendant; 20
- (d) that the said purported valuation is not a valuation of the defendant.

5. In answer to paragraph 4 of the amended statement of claim the defendant repeats the matters more fully set forth in paragraph 4 hereof.

6. In answer to paragraph 4 of the amended statement of claim

Amended Defence

the defendant denies that at all material times it held itself out to members of the public as being skilled in the valuation of real estate and the defendant says that at all material times it carried on the business more fully set forth in paragraph 2 hereof.

7. In answer to paragraph 6 of the amended statement of claim the defendant denies that it knew or ought to have known that reliance would be placed upon the representation contained in the said valuation report and in particular that reliance would be placed upon the valuation of the Glebe property by persons who were considering advancing moneys on the security thereof and the defendant further denies that the valuation of the Glebe property was the defendant's valuation. 10

8. In answer to paragraph 7 of the amended statement of claim the defendant:

- (a) does not admit that the plaintiff was approached to advance moneys to Giles Bourke Holdings Pty. Limited upon the security of registered first mortgages over the Glebe property; 20
- (b) denies that in reliance upon the aforesaid valuation report in respect of the Glebe property the plaintiff advanced the sum of \$104,000.00 to Giles Bourke Holdings Pty. Limited upon security of a registered memorandum of mortgage expressed to continue for a term of three years;
- (c) denies that the valuation report was a valuation report of the defendant and repeats the matters morefully set

forth in paragraph 4 hereof;

- (d) says that in advancing the said sum of \$104,000.00 to Giles Bourke Holdings Pty. Limited in the manner alleged in paragraph 7 of the amended statement of claim the plaintiff failed to observe certain procedures which had been agreed between it and the defendant before the plaintiff lent any money on the basis of a valuation made or purported to have been made by the defendant, the observance of which procedures would have disclosed that the purported valuation of 26 March 1973 was not a valuation of the defendant. 10

9. In answer to paragraph 8 of the amended statement of claim the defendant denies that it conducted itself negligently in and about the issue of the aforesaid valuation report in the manner alleged and the defendant further says that:

- (a) the said valuation report was not a report of the defendant and it repeats the matters more fully set forth in paragraph 4 hereof;
- (b) if the said valuation report was a valuation report of the defendant (which is denied) the defendant did not assume and cannot fairly be held to have assumed a responsibility to the plaintiff for any advice or information contained in the said valuation report for the reason that in all the circumstances of the dealings between the plaintiff and the defendant the defendant was not and ought not to have been aware that the said information and advice would in fact be made available to and be relied on by the plaintiff for the purpose of the plaintiff advancing money 20

on the security of a registered first mortgage over the Glebe property.

Particulars of the dealings between the plaintiff and the defendant:-

- (i) It was the practice of the plaintiff when considering advancing money on the security of real estate in reliance upon, inter alia, an estimate of the fair market value of such real estate comprised in a valuation report of the defendant to communicate with the defendant either to request the defendant to make such a valuation report for the plaintiff as an intending mortgagee at the request and expense of the intending mortgagor or to request the defendant to confirm such a valuation report of such real estate previously made by the defendant or another valuer or to request the defendant to make a preliminary assessment as to whether such real estate was likely to be suitable for the advancing of money by the plaintiff on the security thereof. 10 20
- (ii) The plaintiff did not inform the defendant that it was not following or did not propose to continue to follow the practice set forth in sub-paragraph (i) hereof.
- (iii) The defendant was not aware that the plaintiff was not following or did not propose to continue to follow the practice set forth in sub-paragraph (i) hereof.

Amended Defence

(iv) The plaintiff in advancing the said sum of \$104,000.00 to Giles Bourke Holdings Pty. Limited in the manner alleged in paragraph 7 of the amended statement of claim failed to observe the practice set forth in sub-paragraph (i) hereof, the observation of which practice would have disclosed that the purported valuation of 26 March 1973 was not a valuation of the defendant.

(v) The defendant repeats the matters set forth in paragraph 8 (d) hereof. 10

(c) in the circumstances set forth in sub-paragraph (b) hereof there was no such relationship between the plaintiff and the defendant as gave rise to any duty of care by the defendant to the plaintiff in respect of the information or advice set forth in the purported valuation of 26 March 1973.

(d) in the circumstances set forth in sub-paragraph (b) hereof the defendant only assumed a responsibility to the plaintiff for advice or information given by it in a valuation report if such practices and procedures were followed and disclaimed liability to the plaintiff for advice or information given by it in a valuation report if such practices and procedures were not followed. 20

10. In answer to paragraph 9 of the amended statement of claim the defendant denies the truth of the facts alleged therein and each of them.

11. In answer to paragraph 10 of the amended statement of

Amended Defence

claim the defendant denies that it by its servant or agent represented on 26 March 1973 that the fair market value of the Glebe property was \$160,000.00.

12. In further answer to paragraph 10 of the amended statement of claim insofar as it is alleged that the alleged representation was made in the purported valuation report of 26 March 1973 the defendant repeats the matters more fully set forth in paragraph 4 hereof.

13. In answer to paragraph 11 of the amended statement of claim the defendant denies that it made the representation alleged and repeats the matters more fully set forth in the last preceding paragraph hereof and the defendant denies that such alleged representation was made to induce persons, including the plaintiff to advance moneys on the security of the Glebe property.

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14. In answer to paragraph 12 of the amended statement of claim the defendant denies that the plaintiff acting in reliance upon the alleged representation made as aforesaid by the defendant advanced the sum of \$104,000.00 upon the security of a registered memorandum of mortgage over the Glebe property and in further answer to paragraph 12 of the amended statement of claim the defendant repeats the matters more fully set forth in paragraph 8 hereof.

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15. In answer to paragraph 13 the defendant:

- (a) denies that it made the alleged representation;
- (b) denies that the alleged representation was false as the

Amended Defence

defendant well knew;

- (c) denies that the alleged representation was false and was made by the defendant's servant recklessly, careless as to the truth or falsity of it;
- (d) denies that the alleged representation was made by the defendant's servant and repeats the matters more fully set forth in paragraph 4 hereof.

16. In answer to paragraph 14 of the amended statement of claim the defendant:

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- (a) denies that the plaintiff advanced the aforesaid sum in reliance upon the alleged misrepresentation of the defendant;
- (b) denies that any misrepresentation was made by the defendant;
- (c) denies that the plaintiff has suffered loss and damage in respect of the Glebe property as alleged.

17. In answer to paragraph 15 of the amended statement of claim the defendant denies that on or prior to 14 June 1973 the defendant by its servant or agent valued a property known as Nos. 18 and 20 East Crescent Street, McMahon's Point ("the McMahon's Point property") and prepared a written valuation report thereon.

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18. In further answer to paragraph 15 of the amended statement of claim the defendant says:-

- (a) that it never received instructions from Group Unity Securities Pty. Limited or any other person to carry out a valuation of the McMahon's Point property and that it

Amended Defence

was never employed by Group Unity Security Pty. Limited or any other person to do so;

(b) That the purported valuation of 14 June 1973 was not a valuation of the defendant and did not come into existence as a result of the furnishing of any instructions by Group Unity Securities Pty. Limited or any other person to the defendant or by the employment of the defendant by Group Unity Securities Pty. Limited or any other person for that purpose;

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(c) that the purported valuation of 14 June 1973 was to the best of the defendant's information and belief prepared by one Thomas George Rathborne, who was then employed by the defendant as a valuer, but that it was not prepared by the said Thomas George Rathborne in the course of his employment with or pursuant to his employment with the defendant;

(d) that the said purported valuation is not a valuation of the defendant.

19. In answer to paragraph 16 of the amended statement of claim the defendant repeats the matters more fully set forth in paragraph 18 hereof.

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20. In answer to paragraph 17 of the amended statement of claim the defendant denies that at all relevant times it held itself out to members of the public as being skilled in the valuation of real estate and the defendant says that at all material times it carried on the business more fully set forth in paragraph 2 hereof.

21. In answer to paragraph 18 of the amended statement of claim

Amended Defence

the defendant denies that it knew or ought to have known that reliance would be placed upon the representation contained in the said valuation report and in particular that reliance would be placed upon the valuation of the McMahon's Point property by persons who were considering advancing moneys on the security thereof and the defendant further denies that the valuation of the McMahon's Point property was the defendant's valuation.

22. In answer to paragraph 19 of the amended statement of claim the defendant:

10

(a) does not admit that the plaintiff was approached to advance moneys to Group Unity Securities Pty. Limited upon the security of a registered first mortgage over the McMahon's Point property;

(b) denies that in reliance upon the aforesaid valuation report in respect of the McMahon's Point property the plaintiff advanced the sum of \$160,000.00 to Group Unity Securities Pty. Limited upon security of a registered memorandum of mortgage expressed to continue for a term of three years;

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(c) denies that the valuation report was a valuation report of the defendant and repeats the matters more fully set forth in paragraph 18 hereof;

(d) says that the memorandum of mortgage from Group Unity Securities Pty. Limited contained the personal guarantee of John Giles Bourke for the repayment of the principal sum and all interest under the said mortgage;

(e) says that in advancing the said sum of \$160,000.00 to Group Unity Securities Pty. Limited in the manner alleged in paragraph 19 of the amended statement of claim the plaintiff failed to observe certain procedures which had been agreed between it and the defendant before the plaintiff lent any money on the basis of a valuation made or purported to have been made by the defendant, the observance of which procedures would have disclosed that the purported valuation of 26 March 1973 was not a valuation of the defendant.

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23. In answer to paragraph 20 of the amended statement of claim the defendant denies that it conducted itself negligently in and about the issue of the aforesaid valuation report in the manner alleged and the defendant further says that:-

(a) the said valuation report was not a report of the defendant and it repeats the matters more fully set forth in paragraph 4 hereof;

(b) if the said valuation report was a valuation report of the defendant (which is denied) the defendant did not assume and cannot fairly be held to have assumed a responsibility to the plaintiff for any advice or information contained in the said valuation report for the reason that in all the circumstances of the dealings between the plaintiff and the defendant the defendant was not and ought not to have been aware that the said information and advice would in fact be made available to and be relied on by the

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Amended Defence

plaintiff for the purpose of the plaintiff advancing money on the security of a registered first mortgage over the McMahon's Point property.

Particulars of the dealings between the plaintiff and the defendant:-

- (i) It was the practice of the plaintiff when considering advancing money on the security of real estate in reliance upon, inter alia, an estimate of the fair market value of such real estate comprised in a valuation report of the defendant to communicate with the defendant either to request the defendant to make such valuation report for the plaintiff as an intending mortgagee at the request and expense of the intending mortgagor or to request the defendant to confirm such a valuation report of such real estate previously made by the defendant or another valuer or to request the defendant to make a preliminary assessment as to whether such real estate was likely to be suitable for the advancing of money by the plaintiff on the security thereof.
- (ii) The plaintiff did not inform the defendant that it was not following or did not propose to continue to follow the practice set forth in sub-paragraph (i) hereof.
- (iii) The defendant was not aware that the plaintiff was not following or did not propose to continue to

Amended Defence

follow the practice set forth in sub-paragraph (i) hereof.

- (iv) The plaintiff in advancing the said sum of \$160,000.00 to Group Unity Securities Pty. Limited in the manner alleged in paragraph 22 of the amended statement of claim failed to observe the practice set forth in sub-paragraph (i) hereof, the observation of which practice would have disclosed that the purported valuation of 14 June 1973 was not a valuation of the defendant. 10
- (v) The defendant repeats the matters set forth in paragraph 8 (d) hereof.
- (c) in the circumstances set forth in sub-paragraph (b) hereof there was no such relationship between the plaintiff and the defendant as gave rise to any duty of care by the defendant to the plaintiff in respect of the information or advice set forth in the purported valuation of 14 June 1973;
- (d) in the circumstances set forth in sub-paragraph (b) hereof the defendant only assumed a responsibility to the plaintiff for advice or information given by it in a valuation report if such practices and procedures were followed and disclaimed liability to the plaintiff for advice or information given by it in a valuation report if such practices and procedures were not followed. 20

24. In answer to paragraph 21 of the amended statement of claim the defendant denies the truth of the facts alleged

therein and each of them.

25. In answer to paragraph 22 of the amended statement of claim insofar as it is alleged that the alleged representation was made in the purported valuation of 14 June 1973 the defendant repeats the matters more fully set forth in paragraph 18 hereof.

26. In answer to paragraph 23 of the amended statement of claim the defendant denies that it made the representation alleged and repeats the matter more fully set forth in the last preceding paragraph hereof and the defendant denies that such alleged representation was made to induce persons, including the plaintiff, to advance money on the security of the McMahon's Point property. 10

27. In answer to paragraph 24 of the amended statement of claim the defendant denies that the plaintiff acting in reliance upon the alleged representation made as aforesaid by the defendant advanced the sum of \$160,000.00 upon the security of a registered memorandum of mortgage over the McMahon's Point property and in further answer to paragraph 24 of the amended statement of claim the defendant repeats the matters more fully set forth in paragraph 22 hereof. 20

28. In answer to paragraph 25, the defendant:

- (a) denies that it made the alleged representation;
- (b) denies that the alleged representation was false as the defendant well knew;
- (c) denies that the alleged representation was false and was made by the defendant's servant recklessly, careless as to

the truth or falsity of it;

- (d) denies that the alleged representation was made by the defendant's servant and repeats the matters more fully set forth in paragraph 18 hereof.

29. In answer to paragraph 26 of the amended statement of claim the defendant:

- (a) denies that the plaintiff advanced the aforesaid sum in reliance upon the alleged misrepresentation of the defendant; 10
- (b) denies that any misrepresentation was made by the defendant;
- (c) denies that the plaintiff has suffered loss and damage in respect of the McMahon's Point property as alleged.

30. In answer to the whole of the amended statement of claim the defendant says that insofar as the plaintiff has sustained any damages this has resulted from or been contributed to by the negligence of the plaintiff.

PARTICULARS OF CONTRIBUTORY NEGLIGENCE

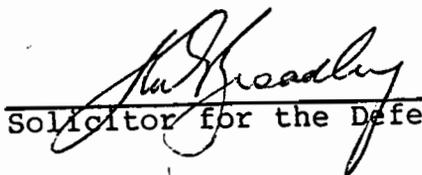
- (a) The plaintiff's reliance upon photostat copies of the valuations in respect of the Glebe property and the McMahon's Point property in lending the moneys. 20
- (b) The plaintiff's reliance upon copies of valuations of the Glebe property and the McMahon's Point property in lending the moneys.
- (c) The plaintiff's reliance upon valuations received by it respectively from the solicitor for the proposed mortgagor and from a mortgagor broker or on behalf of the proposed

Amended Defence

mortgagor in lending the moneys.

- (d) The failure of the plaintiff to obtain an independent valuation before lending the moneys.
- (e) The failure of the plaintiff to instruct a valuer to carry out a valuation before lending the moneys.
- (f) The failure of the plaintiff to follow the procedures laid down between the plaintiff and the defendant for the obtaining of valuations before the plaintiff lent moneys.
- (g) The failure of the plaintiff to obtain an up-to-date valuation of the Glebe property prior to lending money thereon.
- (h) The failure of the plaintiff to obtain an up-to-date valuation of the McMahon's Point property before lending money thereon.

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Solicitor for the Defendant

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FILED:

IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION
COMMERCIAL LIST

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No. 3568 of 1976

CORAM: ROGERS, J.

MONDAY: 2nd June, 1980.

KOORAGANG INVESTMENTS PTY. LIMITED

v.

RICHARDSON & WRENCH LIMITED

MR. CLARKE, Q.C., with MR. BURNS appeared for the Plaintiff.
MR. MORLING, Q.C., and MR. ROLFE, Q.C., with MR. AUSTIN appeared
for the Defendant.

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MR. CLARKE: Your Honour, as we explained outside, there has been some problem about the agreed bundle of documents. Could I hand to your Honour, purely for the purpose of opening, documents marked with the letter E, which will be the documents to which I will be first referring. The plaintiff in this case is suing Richardson & Wrench, as real estate agents and valuers, asserting in broad terms a claim under the Hedley Byrne doctrine. The background is this, that Kooragang was a company set up - and I need not go into the mechanics - on 9th February 1972. It was a wholly owned subsidiary of Australian Fertilizers Limited, and it was set up for the purpose of lending moneys which were then available. Australian Fertilizers Limited had a long association with Richardson & Wrench, and preparatory to setting up this lending organisation, discussions took place between Kooragang and Richardson & Wrench to develop the lending operation and procedures. If I could refer your Honour to Ell, it is a minute of Kooragang Investments, and the item is number 49, 2, a minute of 25th February 1972. It is simply background, and there were variations to this minute. In item (c) one sees, "An amount of a loan not exceeding 65 per cent of valuation of an approved valuation without special reference to the board", and then on the following page, item 4, Richardson & Wrench are approved as valuers. I might defer the tender of that until the agreed bundle is handed to your Honour.

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MR. MORLING: There will be no objection to it, your Honour.

MR. CLARKE: Just filling in a bit more detail, between Richardson & Wrench and Kooragang a scheme was worked out, broadly, that if the borrower approached Kooragang and there was no

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valuation, instead of putting the borrower to the expense of getting a valuation, Kooragang would have Richardson & Wrench do what they called a "quickie", which was really a look over the place, to see whether it had any prospect of being a viable proposition for lending and for that a fee of \$25 was to be paid, and if Richardson & Wrench said, "Yes, it seems to be all right", the matter would go ahead and the valuation would subsequently be obtained. That was a procedure which operated when there were no valuations available at the time.

The next background matter is that Kooragang also had had on occasions dealings with a mortgage broker named Donald G. Cameron & Company; so that prior to the event in question Kooragang had an association both with Richardson & Wrench and Donald Cameron. It had no previous experience with a group of companies which could be called conveniently the Giles Bourke Companies. 10

At the end of June 1973 Kooragang received a letter from Donald G. Cameron and Associates, which letter is E2 in the bundle your Honour has. Your Honour will see there was an application from Giles Bourke Holdings for a loan of \$104,000. There was a copy of a valuation report enclosed, and if I could take your Honour first to that, E1. It is a photostat copy, and perhaps I can tender at this stage both the photostat copy received by them and the valuation and the other document referred to in the letter. 20

HIS HONOUR: I had in mind that at some stage we might make the agreed bundle Exhibit A, rather than have individual documents.

MR CLARKE: Yes, I think it might be necessary to tender the copy we got, because we only received a copy valuation.

HIS HONOUR: In any instance where it is necessary to have a particular document, by all means let us have it. 30

MR MORLING: Your Honour, I will not be objecting to the tender, either separately or as a bundle, save that my failure to object is not to be taken as any indication or admission that the documents are in fact the defendant's documents. My friend might assist the Court and me by informing the Court as to the state in which the copy was when it was received, because it does seem to have some ink markings on it.

MR CLARKE: I would seek to tender as a separate tender the copy received by the plaintiff, and also the original valuation, which was not received by the plaintiff but is, I understand, stated to be Mr. Rathborne's document. 40

MR MORLING: I am prepared to admit that the words "Richardson & Wrench Limited" on the final page of each of the original documents are in the handwriting of Mr. T.G. Rathborne.

HIS HONOUR: Yes, I will have that noted.

MR CLARKE: The copy which I seek to tender was received, as I

understand it, without any writing of numbers or circling upon it - there is a circle around the date - nor with a layout which is in ink on the back page of the valuation. I have left with it a copy of the other document referred to in the letter.

(Original and copy valuation, bearing the name of Richardson & Wrench Limited, of premises 233/235 Glebe Point Road, Glebe, dated 26.3.73 tendered and marked Exhibit "B". His Honour noted that the tender did not include the circles and layout within the document.)

MR. CLARKE: If I can refer to the copy at this stage, your Honour will see its format. Your Honour will see under the zoning the residential 2D redevelopment; a description of the premises; and then on the second page the recommendation and then the fair market value of \$160,000. There was also included with the letter a document E6, which is the loan application form; I do not think I need to take your Honour to that in significant detail. I ought to interpose here that your Honour will see the letter E2 is addressed to Mr. D. Minks. Mr. Minks held a position with the plaintiff at that time as financial analyst, but on 13th July he resigned from the company and the general organisation of the work involved in the lending was carried out by a Mr. Little from then on for some period. It is to be noted that the directors of Kooragang were all employees of Australian Fertilizers and their main function was their work for Australian Fertilizers, although they did devote proper time to this company. 10 20

The next thing that happened then, with the disruption, to the extent that there was disruption by Mr. Minks leaving, was that on 23rd July Mr. Little inspected the premises at Glebe, and that appears from E7. Mr. Little was the Commercial Services Manager actually of A.F.L., and you will see he inspected, talked about the recommendation, "And my inspection starts the report". That took place on 23rd July. 30

The next event of the note was 27th July, 1973, when Kooragang held a meeting of directors, of Mr. Satchwell, Mr. Little and Mr. Simpson, and item 144 refers to the application - (reads). That is E8.

Then the next relevant date was 6th August and if I can take your Honour to E12, minutes of 6th August, 1978, at 11 a.m. (reads 144). There is also a reference in 140, future lending, the present policy of lending to be to 65 per cent of valuation for approved valuations, and that consideration had been given to raising that percentage. 40

Then if I can take your Honour back to E9, that was a document received from Gridiger & Company, the solicitors for Mr. Bourke's group of companies, or certainly the company involved in this part of the case. Your Honour will see there reference to statements from Bentley, Wheeler, Cartledge & Company.

They refer to and are addressed to a number of companies - that is E10 - and in each case they say, "We advise we have sought current valuations of the properties by Richardson & Wrench Limited". So far as the property in question at the moment is concerned, it appears in the very last of the letters in the bundle, a letter of 3rd August, 1973, to Giles Bourke Holdings Limited; \$160,000 was the current valuation.

Then the next document is a document prepared by Mr. Little, E11, which really is a summary of those assets and liabilities and equities. It would appear that that statement by Bentley, Wheeler, Cartledge was received prior to 9th August, because on that day a telex, which is E13, was sent from Mr. Satchwell, the chairman of directors of Kooragang, to Mr. D. Paech. By way of explanation, Mr. Paech was on the board - or concerned with, I am not sure whether he was on the board at that time - of Australian Fertilizers and also I.C.I., Melbourne. But the policy of Kooragang was to get approval for those loans from Mr. Hamer, the chairman of A.F.L., but if Mr. Hamer was not there, then from Mr. Paech and a Mr. Guttridge. If one looks at the telex, the very last note on the telex is seeking an approval in respect of the Glebe Point premises, and your Honour will see that answers were sought in relation to all of the matters by midday on 9th August. Endorsed on that telex is a notation, "Approved, S, 9/8", which is an endorsement which was put on it by Mr. Satchwell indicating his receipt of approval from Melbourne in respect of the Glebe property. Then the next significant event was shortly after 21st August, 1973, a letter was received, which is E15, from Gridiger, which enclosed a number of things, including a letter from Giles Bourke Holdings Pty. Limited, and that letter is enclosed and that is E14. Thereupon, in E17, a minute of 27th August, at 9 a.m., the recommendation was made for the approval of the loan.

Then going back to E16, consequent upon that, and the approval from Melbourne already being received, a letter was sent on 27th August, 1973, offering the loan of \$104,000, conditional upon good title, and your Honour will see that an acceptance was called for, and the acceptance was dated 27th August, 1973.

Then if I can take your Honour to E20, there is the sending of the acceptance to Kooragang Investments.

The matter was then placed in the hands of Minter Simpson & Company, as per letter E24 of 12th September, 1973. Form A will not be with your Honour's copy, but nothing turns on that, it is the loan application form. The matter at Minter Simpson was handled by Mr. Ken Johnson, who has since deceased.

Then the next document which is relevant is E47; the conveyancing was all left in the hands of Mr. Johnson; the sending of the cheque in settlement. Then E50 was the note about completion, and E52 and E53 are the two mortgages which were granted by the borrowing company. Your Honour will see on the

second page of the first of those mortgages that a guarantee was entered into by Mr. Bourke.

So that is really the history of the first loan to that stage. What happened thereafter was that default occurred under the mortgage, as appears from E62. The last payment was made on 15th June, 1974, and that appears in a memo from a Mr. Worrell, who was a legal director. Then on E64 letters were sent on 13th August, 1974, to Richardson & Wrench in respect of this transaction, asking Richardson & Wrench to take over management of both properties. The question of damages will, so far as figures are concerned, I anticipate, be the subject of agreement. There will be no doubt arguments as to proper principles to be applied in matters such as that, but if I can briefly say that what happened was that following this date, August 1974, there were ejection proceedings involving a real estate agent known as Peter Craig Pty. Limited, which was another one of the Giles Bourke companies. That caused some delay, and then in March of the next year the property was put up for auction and eventually the property sold on a mortgagee's sale. The property on the sale recovered, I think the sale price was \$65,000, with net proceeds of sale being \$62,857.51, and the contract to a Mr. White was dated 12th December, 1975, and the transfer was dated 9th March, 1976. 10 20

Without going into at this stage the basis of the case made, could I just say this, that there are two aspects of the valuation in question: one is it showed a value of \$160,000, whereas our case is that a proper valuation - proper in the sense of being a reasonably accurate valuation - should have been in the order of \$70,000, and from that gross excessiveness we would submit the inference of negligence should be drawn. 30

There is another aspect, that as at the date of valuation itself there had been certain renovations carried out to the property which had not fully the approval of the Council, and there was no reference to that in the valuation. However, prior to the consideration of the valuation by my clients, the board had approved and set aside the order of the Council, so that the works could then be considered authorised works; and so that no loss would flow from the failure to mention the unauthorised works in the valuation, although we would suggest or submit that it supports the inference that the valuation was a negligently-given valuation. I will deal with the broad basis of our claim when I am finished with the arguments on the property. 40

Could I take your Honour then to s.F. By 1st August Mr. Gridiger, who was the solicitor for some of these companies, was obviously aware of Kooragang and he wrote directly to Kooragang, as shown in F2, on 1st August, enclosing a valuation report and setting out the requirements. If I could tender at this stage the copy valuation received; it did not have the numbers endorsed on the front page; and also the original valuation.

MR. MORLING: Once again, your Honour, on the same basis. 50

HIS HONOUR: Yes.

MR. CLARKE: And I understand that is Mr. Rathborne's writing.

(Original and copy valuations on letterhead of Richardson & Wrench Limited in respect of property 18 and 20 East Crescent Street, McMahon's Point, bearing date 14.6.73, tendered and marked Exhibit "C".)

If I could point to F1, last page, "A valuation is made having regard to the earning capacity of the property ...". The property was recommended as an eligible security for the advancement of loan funds and the estimated value was \$250,000. 10

HIS HONOUR: Does the term "eligible security" have some meaning between the parties?

MR. CLARKE: The "eligible security" is the form normally used by Richardson & Wrench. It was not directed to particularly our part in it, because Richardson & Wrench's case of course is that they did not do this for us.

The next document, and it does not matter very much, is an application form filled in by Mr. Little of our organisation.

Coming then to F5, it is the same meeting of 6th August, which I have referred your Honour to already, but Item No. 149 refers to the loan and there had been no inspection of premises by Mr. Little at that stage, and it was agreed that the property should be inspected. As a valuation had already been obtained from Richardson & Wrench, it was suggested that Richardson & Wrench should clarify the zoning position, and the financial position of the borrowers. For completeness I refer to the second proposal that was suggested, rather than a second mortgage for Kooragang to lend all the borrower's requirements. 20

The next document F4 is a memo of Mr. Little of his inspection of East Crescent Street, McMahon's Point, and might I say that the meeting where the inspection was permitted was held at 11 a.m. and the inspection took place the same day. 30

The next event of consequence that is recorded is the notation by Mr. Little in F6 of the gross rentals etc. Two other matters were referred to in the minutes: one was the zoning position to be clarified with Richardson & Wrench. As I understand it, Mr. Little's recollection is that Richardson & Wrench were not spoken to about the zoning, but in fact he went to the local council, the North Sydney Council, Kooragang's offices being very close thereto, and he clarified the zoning with the council or satisfied himself as to the zoning. The other matter was the financial position of the borrower, and that was, to the extent the document suggests, satisfied so far as Kooragang was concerned by the Bentley, Wheeler letters to which I have referred previously. 40

So then on 9th August in the telex to which I have referred previously, which is F7 here, the proposal that was put up was \$190,000, being a loan of 76 per cent or alternatively a loan of 65 per cent of valuation; and the notation by Mr. Satchwell is, "This under consideration. May drop back to 65 per cent of valuation. Will advise further today."

Then the next document is F8, which is to Mr. Satchwell from Guttridge, indicating a preference for the loan to be limited to 65 per cent of valuation rather than full sum.

Upon receipt of that approval, on 9th August, 1973, a letter of offer of \$160,000 was sent, and I think your Honour will see endorsed on the bottom of F9 the acceptance. F11 is the letter sending the acceptance, which is 17th August, 1973.

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The next document to which I wish to refer is F19, an agenda for the meeting of the board of directors of 27th August, and your Honour sees, "The note of offer of \$160,000 for three years has been accepted ... not approved by I.C.I. Pty. Limited". Then F20, which is the minutes of the meeting of 27th August, 1973, and 149 deals with this matter, not in terms of the agenda accurately, because the loan had already been accepted, but it is noted there that the "zoning position and financial state had been investigated and found to be satisfactory".

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Then F34 is the sending on 5th October, 1973, of the moneys to Minter Simpson & Company. F36 is the mortgage dated 5th October, 1973, and again Mr. Giles Bourke is the guarantor. There is a notation amongst these documents that Mr. Little informed Mr. Johnson that he would accept Giles Bourke as sole guarantor.

The next matter is that there was default in June 1974 and that was set out in the document to which I have previously referred your Honour, E62; and the property was managed by Richardson & Wrench, and again I would anticipate that the figures would be agreed and there is no question of no sale at the proper time, as I understand it, but Richardson & Wrench managed the property until a sale was carried out or completed, on 25th June 1979, and the amount received on the sale was \$155,372.66, being from a sale price of \$160,000. The claims as we have made them, claims loss, being the difference between the principal and the amount recovered of the interest and the expenditure on the property in respect of this property amounts in all to, at the date of sale, \$70,302.66, and with interest from the date of completion, which is somewhat different, a total of \$77,375.31. In respect of the Glebe property, the difference claimed is \$68,550.76, and with interest from the date of completion to the present time, it totals \$102,618.22.

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The case will be that in this instance the maximum of a proper valuation would have been \$180,000, so that the valuation was something around between 40 and 45 per cent out, in our submission, although the valuation could properly have been

thought to be much lower than that, and \$180,000 was the high side of the scale, because 12 months later or something after 12 months later, after the market had subsided to some degree, Mr. Hodgson put a valuation of \$100,000 on the property, Mr. Hodgson being the director of valuations of Richardson & Wrench.

Could I then come to seek to outline the case that we make. We say first of all that Richardson & Wrench are real estate agents, skilled in valuation, or that they employ valuers skilled in valuation, and hold themselves out to the public as persons skilled in valuation. A Mr. Rathborne was employed by Richardson & Wrench as a valuer, first on 20th July having been transferred from Lend Lease to Richardson & Wrench on that day. Mr. Rathborne progressed to become a senior valuer. Valuers at Richardson & Wrench were, in our case, authorised to accept instructions for valuations, to make valuations, and to sign valuations in the corporate style.

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Furthermore, our case will be established that Richardson & Wrench had, at least for a year, prior to 1973 but probably for some years, performed valuations for some of the Giles Bourke group of companies, and particularly for Fidelity Acceptance, which is the company whose name appears on the valuation, for Giles Bourke Holdings, and for Group Unity. So that Mr. Rathborne was a man who, at the relevant date, not only had authority to accept instructions, but to complete the valuations, to sign them.

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Our case then is that Mr. Rathborne prepared and signed the valuations in question, signing them Richardson & Wrench Limited, in accordance with his authority. The valuations were completed, knowing and intending that they be acted upon by intending mortgagees. Photostat copies of the actual valuations were submitted to the plaintiff as intending mortgagees. The plaintiff, in reliance on those valuations, lent 65 per cent of the values specified therein. The valuations each grossly overstated the value of the properties, and we would seek that your Honour draw the inference that they were therefore negligently completed; and as a result, the plaintiff on each instance lent 65 per cent of the amount of the valuations and, on default of the mortgagees, suffered a loss to which I have referred.

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Could I interpolate there, your Honour: both borrowing companies have been placed in liquidation and there has been no endeavour to recover from them, although there has been correspondence with the liquidator, and I will deal with this shortly, because I may be able to come to some arrangement with my learned friend about this. Mr. Bourke was subjected to a bankruptcy notice, which no one was able to serve, and he has not been located. Therefore the claim is made against Richardson & Wrench in the sense it is.

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If I could, having said that, outline the issues - subject to correction by my learned friend - as I see it: the defendant

denies that either of the valuations were the defendant's valuation, and whilst conceding that they were signed by Rathborne, denied more specifically that they were prepared and signed by him in the course of his employment.

If I could say very broadly, subject to refinement of course, what the plaintiff's case is in relation to that: we say that Rathborne was the employee of the defendant, whose specific duties included the acceptance of instructions to prepare valuations and to sign valuations; and we furthermore say that in those circumstances, whether he was doing the act for the benefit of the defendant or not, they are treated at law qua a person in the position of my client as the valuations of the defendant. 10

HIS HONOUR: There is no room in your case for an estoppel against the plaintiff, that he, Mr. Rathborne, was acting outside his requirements?

MR. CLARKE: Not on any holding. The statement on which we found this is a very old statement, that, "Where on the act of a servant, honest or dishonest, the ground of the master's liability is he has put the agent in his place to do that class of acts, he must be answerable for the manner in which that agent has conducted himself in doing the business which it was the act of the master to place himself in". We distinguish between the document, rightly or wrongly, signed by Mr. Rathborne, and a document signed by a person who was not placed in that position. That would appear to be the fundamental issue in the case. There are other issues to which I will come, but that is the fundamental issue. 20

The next issue is the issue of negligence, and that embodies, as I understand it, the two separate arms - perhaps more, but basically two separate arms - where Richardson & Wrench owed a duty of care; assuming I am right in my first argument that Richardson & Wrench owed a duty of care to Kooragang in the circumstances of this case; and secondly, whether the valuations were negligently completed valuations. As to the first issue, where one valuation is for a proposed mortgagee, who admittedly is stipulated, and the other is for an intending mortgagee who is not stipulated, it is our submission that Richardson & Wrench owed at least a duty to the class of persons to whom they would know or ought to know the valuation might be shown, and that we in the circumstances of each of these valuations, fell within that class of persons. 30 40

We would also in this branch of the case rely on an authority which is a majority decision, which establishes or lays down the principle that the ordinary rules of foreseeability apply, so that there is no limitation other than limitation imposed by foreseeability.

HIS HONOUR: Which decision is this?

MR. CLARKE: I have not got the name of it here, but it is a decision of the New Zealand Court against some auditors - the President, Mr. Justice Richmond. As to the negligence aspect, I think I have put our case there.

The next issue is the issue as to damages, and during the case Mr. Morling and I no doubt can formulate where we depart on the issue of damages.

The final issue, on which I will say very little at this stage, is that the defendant raises an allegation of contributory negligence, broadly asserting that there was an acting on a copy valuation, and failure to take reasonable care of valuations. In that respect there have been some additions to particulars. 10

The final issue is the issue of fraud. It may or may not loom large in the case, depending on the evidence as a whole; but, asserted by the plaintiff, it is that there is demonstrated at the least a reckless carelessness in the valuation of the properties, and therein a wrong and recklessly made statement of opinion.

Your Honour, that sums up, subject to anything my learned friend may wish to say, the issues as we see them in the case. 20

MR. MORLING: That fairly states it.

HIS HONOUR: Mr. Clarke, before you go any further, I think I should tell you this, and also Mr. Morling. Some years ago I had a brief for someone who was engaged in some commercial transactions with Australian Fertilizers, and he raised a defence, in that suit, of the Moneylenders Act. That action was subsequently compromised, but it then engendered quite a deal of ill-feeling with my client, and no doubt it then reflected on my advisers and A.F.L. Unfortunately I was not aware that Kooragang was a subsidiary of A.F.L. I do not feel any embarrassment in hearing the case, but I thought I should tell you that that ill-feeling was present. If you ask me the name of my client, I have absolutely no recollection of who it was. I just remember that case, because there was a hearing before the Master and there was a certain amount of ill-feeling there. I will adjourn for a few minutes and you can get some instructions on that if you wish. 30

The other things I thought I would mention at this stage are, I assume you are not calling Mr. Rathborne, are you? 40

MR. CLARKE: I think your Honour's assumption is correct.

HIS HONOUR: Mr. Morling may well do so, and the thing I would like somebody to consider is, if he is called, whether I should warn him at all, that there is anything in the plaintiff's case which, if true, would expose him to any defence in relation to which a warning should be given to him.

The other matter is a mechanical one. You referred to the fact that the valuations which were prepared by Mr. Rathborne were grossly excessive, and you gave a figure in each instance as to what you considered the property valuation to be. Have the parties exchanged the respective valuations in their possessions?

MR. CLARKE: Your Honour, can I say this, so that I can put our position; I think I can then also put Mr. Morling's position. But the valuation of, I think I said \$70,000 in respect of Glebe, has, to the best of my understanding, been the subject of discovery, because it was obtained prior to the contract litigation. So that that has in that sense been exhausted, and my learned friend has had a consideration of that. In respect of the McMahons Point property there was a similar value, of somewhat less than \$180,000, but I have since obtained access to another valuation - I do not think it is any secret that there are other proceedings involved in a case of W.R. Carpenter v. Richardson & Wrench - and I have had access to another valuation or valuer, and I am still awaiting the final form of valuation from him, but as soon as I have it, a copy will be given to my learned friend. Mr. Morling has told me that he is getting valuations, but he has not yet got valuations in the final form. 10 20

HIS HONOUR: Mr. Clarke, from my limited experience of valuation, usually there are comparable sales that they rely on. No doubt your valuations seek to utilise that route. Will you make available to Mr. Morling, and vice versa, details of the comparable sales and any documentary material that you intend to rely on to support the valuations, so that we can save time?

MR. CLARKE: Yes your Honour. I think there are, in the discovered documents, some comparisons by Mr. Hodgson or one of his assistants, and they might save a lot of time. But we will certainly do that. 30

HIS HONOUR: The allegations in the statement of claim in paragraph 8(ii) and 20(ii) that in each instance the property was not an eligible security really raises in my mind much the same sort of notion that I had raised with you when you were taking me through the documentation. What it is intended to convey is nothing very magic, except another way of saying that they were not proper security for a loan of that amount.

MR. CLARKE: Of that amount, yes your Honour. 40

HIS HONOUR: Is there any agreement between you as to whether these recommendations or alterations were, at the time of making them, without approval, and the nature of the alterations, so that we do not have to spend time on that.

MR. CLARKE: I have not discussed that with my learned friend, but I will discuss it.

HIS HONOUR: I will adjourn for a few minutes, to give each of

you an opportunity of speaking to your clients about that matter that I raised.

(Short adjournment.)

ON RESUMPTION -

MR. CLARKE: We thank your Honour for informing us about that previous matter. There is no objection.

MR. MORLING: Or from us.

HIS HONOUR: Very well.

KEITH SATCHWELL
Sworn and examined:

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MR. CLARKE: Q. What is your full name please? A. My name is Keith Satchwell.

Q. And your address? A. 1 Wellesley Road, Pymble.

Q. You are presently I think the managing director of Australian Fertilizers Limited? A. That is correct.

Q. In 1972-1973 were you the general manager and I think a director of Australian Fertilizers Limited? A. That is correct, yes.

Q. In February 1972, and I do not want to go into the details, but in February 1972 the company Kooragang Investments Pty. Limited commenced operation for the purpose of lending moneys, both in the inter-company market and also on real estate investment? A. Yes.

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Q. And I think you were on the board of the company as chairman of directors? A. Yes.

Q. Mr. Simpson was on the board? A. Yes.

Q. And at that stage Mr. Little - was he involved in it at that stage? A. I think Mr. J.P. Cordner was State director at that time - that is, at the time of the inception of the company.

Q. And Mr. F.C. Cook was the secretary of the company at that time? A. Yes.

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Q. And Mr. Cook, just for the record, is deceased, is he not? A. Yes, he died earlier this year.

Q. Then Mr. Simpson took part, to your knowledge, in discussions with Richardson & Wrench and with Minter Simpson & Company, with a view to setting up a format for the lending? A. Yes.

Q. And at a meeting of the directors on 25th February, 1972,

resolutions were passed as to the procedure to be followed in relation to loans by Kooragang. Perhaps you might like to look at the copy of the minute. (Approaches witness.) I show you the copy of the minute of 25th February, 1972, and particularly the second page; is that correct? A. Yes.

Q. Australian Fertilizers had at that time had a fairly long association with Richardson & Wrench, had they not? A. That is correct. I understand that the company has dealt with Richardson & Wrench since its formation; from 1920 we have dealt with Richardson & Wrench, until the last 12 months or so.

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Q. Prior to 13th July, 1973, the running of the investment of Kooragang - the day to day running - was carried out by a Mr. Minks, was it not? A. Yes.

Q. And he was employed as financial analyst by A.F.L., is that right? A. Yes.

Q. Is it the position that each of the directors of Kooragang were employees of A.F.L.? A. That is correct.

Q. And they would carry out their Kooragang functions as well as the normal functions with A.F.L.? A. Yes.

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Q. And after I think 13th July 1973 Mr. Minks resigned and for a while thereafter Mr. Little looked after the day to day running of Kooragang Investments? A. That is correct.

Q. You, however, before a board meeting, would see each of the documents that were put before the meeting, to consider whether a loan should be recommended or not? A. Yes, every director saw all the supporting material associated with each application for a loan.

Q. Part of the operation was to obtain the approval of usually the chairman of A.F.L., was it not? A. Yes, that was the requirement of the company. It was a 100 per cent subsidiary of A.F.L., and the A.F.L. board had determined that the chairman should approve of each loan made on 1st mortgage security, before it was made. It was not necessary, however, to obtain such approval for inter-company lending to approved borrowers.

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Q. Then the chairman at that time was a Mr. Hamer, and if he was not available, the approval was to be sought from whom? A. From whomever he authorised; that was normally Mr. Paech, the finance director of I.C.I., or Mr. Guttridge, who was the treasurer of I.C.I. and also a director of the A.F.L. board.

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Q. Again without detail, I.C.I. and A.F.L. are companies which are associated, are they not? A. A.F.L. is a subsidiary of I.C.I.; I.C.I. holds 55 per cent interest in the company.

Q. Had you yourself taken any part in the day to day organisation of these investments or mortgage loans? A. No, but I was familiar with the procedures that were being followed.

MR. CLARKE: Your Honour, could I just seek some guidance to this extent. I, in other circumstances might have taken your Honour through these documents that I took your Honour through in opening.

HIS HONOUR: Yes; I would not expect you to do that.

MR. CLARKE: Thank you.

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Q. In relation to the Glebe property - and you know which property we are talking about? A. Yes, well, I don't know the numbers in Glebe Point Road, but I could recognise the property; I have sighted it.

Q. The company agreed or decided on 27th August to recommend a loan of \$104,000 at particular rates of interest for a particular term as set out in a minute of the meeting of that day, and you were present at that meeting, were you not? Would you just look at E17? A. Yes, I was present.

Q. Had you yourself, prior to that meeting, seen the copy valuation received - your Honour, it is Exhibit "B"; I wonder if I could have it - which is the photostat document on the top of the bundle of Exhibit "B" - (shown)? A. Yes.

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Q. You had seen that prior to the meeting? A. Yes I had.

Q. In your part in this, did you place any reliance on that copy valuation in recommending the loan of \$104,000? A. I certainly did, yes.

Q. And the policy that was noted early in February 1972 of lending only 65 per cent of a valuation, was that policy still operative as at the time of that motion recommending this loan?

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A. Yes.

Q. Did the company lend the \$104,000 thereafter? A. It did.

Q. I think the form was that an approval of loan would be sent out to the borrower, who would notify his acceptance by endorsing the acceptance on the approval form, and thereafter the matter would be placed in the hands of your solicitor?

A. That is correct.

Q. Is that what transpired in this case, that after getting the acceptance form, the matter was then placed in the hands of your solicitor? A. Yes.

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MR. CLARKE: There is no issue, as I understand it, that Richardson & Wrench is a well known real estate agent and licensed valuer, and carries out functions of valuations of real estate in the City of Sydney.

HIS HONOUR: Does that mean that a number of paragraphs in the defence are not being pressed, Mr. Morling: For example, you might look at paragraph 2 of the defence. If it should matter, Mr. Clarke, and I do not think it does, I do not think you have proved that the plaintiff is a registered moneylender, which is put in issue. 10

MR. MORLING: Your Honour, I will formulate an admission which I am sure will be satisfactory to my friend. There was some reason why the defence was carefully drawn, but my friend need not pursue it with the officers, nor need he prove the licensing.

MR. CLARKE: Q. Could I then come to McMahons Point transaction, but before doing that - had you yourself, prior to July 1973, any knowledge of the mortgage broking firm of Donald G. Cameron & Associates? A. Donald G. Cameron & Associates approached Kooragang Investments and said they were interested in putting submissions to the company for consideration. I did not personally know of Donald Cameron & Company prior to that time. We had had contact with the company through Mr. Minks, but I personally had not had any personal contact with them. 20

Q. In relation to the McMahons Point property - 18 to 20 East Crescent Street, McMahons Point, you sent a telex on 9th August 1973 to Mr. Paech, in Melbourne, seeking approval. Do you recall that? A. I recall sending a telex about that time.

Q. Would you have a look at F7, please? Is that a copy of the telex that you sent? A. It is. 30

Q. Would you just keep it in front of you. There is handwriting on the righthand side; is that your handwriting? A. It is.

Q. Perhaps you might, for the purpose of the record, read on to the record what you say there in relation to the McMahons Point property? A. "Still under consideration. May drop back to 65 per cent of valuation. Will advise further today", and I have signed it and dated it.

Q. And the endorsement that you put on that, is that merely an endorsement of the reply you received from Melbourne? A. Yes, I have written that endorsement on the telex after speaking to Mr. Paech by telephone. 40

Q. Would you have a look at F8. Is that the copy of a telex you received from Mr. Guttridge in Melbourne? A. Yes.

Q. And thereafter did Kooragang proceed with a loan at 65 per cent of valuation? A. That is correct.

Q. In relation to that loan, once the acceptance of the approval had been received, were instructions then transmitted to Minter Simpson & Company for the purpose of carrying out the conveyancing side of the transaction? A. I am not sure whether there was a board meeting held between receipt of that information and issuing instructions to Minter Simpson, but certainly the board had met prior to that telex being sent to Melbourne and the loan would have been made, subject to the approval of Mr. Paech. 10

Q. You can take it, Mr. Satchwell, that Mr. Guttridge's telex is 9th August and the letter of approval was sent out on the same day, 9th August, and the acceptance received shortly after 14th August? A. Yes, in that case we have acted immediately.

Q. You have referred then to Minter Simpson & Company to carry out the conveyancing? A. Yes.

Q. In relation to the loan which was subsequently made, of \$160,000, would you have a look at the photostat copy document which appears in the middle of the bundle of Exhibit "C"? 20

A. The valuation?

Q. The valuation, yes. Did you see that valuation prior to the board meeting of 6th August to which reference has already been made? A. I saw it either prior to or at the board meeting.

Q. And, for your part, in relation to the motion approving the loan, did you rely on that valuation? A. I did.

Q. There is one mechanical matter you might clear up. In F19, which is the agenda of the notice of meeting of board of directors, under 149 appears this note, "Group Unity Securities Pty. Limited to note an offer of \$160,000 for three years at 9.75 per cent per annum has been accepted. The offer varies from minutes of 6th August as proposed offer of \$190,000 of 10.5 per cent per annum was not approved of by I.C.I. Australia Limited". You can take it that is on the agenda. Now would you have a look at F20 under item 149. The reference to recommendation would appear to be an inaccurate recording of the material considered at the meeting? A. Well, the recommendation had already been made, yes. 30 40

Q. If I can go back to F5, at the meeting of 6th August it is said it was suggested that Richardson & Wrench should clarify the zoning position. Did you yourself take any part in any clarification of the zoning position? A. No.

CROSS-EXAMINATION:

MR. MORLING: Q. Mr. Satchwell, what was your commercial background as at the early part of 1972? For instance, were you by training an accountant or what? A. By training, I am a chemical engineer. But for many years past I have been involved in things commercial, and I am required, in the discharge of my responsibilities, to understand accounting procedures.

MR. MORLING: Q. You were well able, for instance, to examine balance sheets and profit and loss accounts with a view to forming a judgment about the stability of the company which produced such documents to you? A. I could understand the figures of balance sheets of companies, it is often difficult to interpret balance sheets because of lack of depth of knowledge of a company's activity. 10

Q. What was Mr. Simpson's professional training, if any, as at 1972, do you know? A. Mr. Simpson is a qualified accountant.

Q. And Mr. Mink's position then and training? A. Mr. Mink is an economics graduate; I understand that he had some accounting training, he may have been a fully qualified accountant, I am not sure. 20

Q. He is referred to in some of the Kooragang records as a financial analyst, is he not? A. Yes.

Q. Was that his position in A.F.L? A. Yes.

Q. And his responsibilities then went far outside analysing financial propositions put up to Kooragang? A. Yes.

Q. Would it be true to say that the bulk of his time would have been spent on A.F.L.'s business affairs? A. The bulk of his time was spent on doing or analysing financial figures and making assessments of profitability of different organisations but he was not involved in anything other than that type of work. 30

Q. Have you yourself made any attempts to find Mr. Bourke or have you been responsible for directing any inquiries to ascertain his whereabouts? A. I have not personally been responsible but the organisation has taken steps to ascertain where Mr. Bourke is and we have certainly been interested in proceedings that have occurred which involved Mr. Bourke between the matter under consideration here and this time.

Q. You are unaware whether he is presently carrying on business in the city of Sydney, are you? A. I am not aware that he is. 40

Q. The company, that is to say Kooragang, acquired a money lending licence, did it not, on 3rd February, 1972. I ask you to accept that as being stated by the company? A. Early in

1972, probably on the 3rd, I would accept that.

Q. And the company was new in the money lending field, was it not? A. The company had just been formed, yes.

Q. For how long had Kooragang been incorporated as at February 1972? A. Well, I cannot answer that precisely but a matter of a month or two.

Q. It perhaps does not matter but may I suggest that your recollection may be wrong that in fact the company had been carrying on business as a chemical company and you changed its name to Kooragang shortly before February 1972? A. It was known as Central Queensland Acids, it had not been trading, it had never traded and we simply took over the company structure and renamed it Kooragang Investments to establish a company which would trade. 10

Q. And the position was that at that time A.F.L. or I.C.I. had about \$2 million worth of excess funds which it wished to lend, is that right? A. It had more than that.

Q. Well, it was decided, was it not, initially that perhaps \$2 million would be put out to loan through the Kooragang company? A. My recollection is that the authorisation from the A.F.L. board was that up to \$2 million could be lent against first mortgage security. The rest of the funds would be lent on the intercompany market. 20

Q. At that time A.F.L. company had had a long standing relationship with Richardson & Wrench Limited? A. Very long standing relationship.

Q. I suppose from time to time over the years it had called on Richardson & Wrench to do work for it? A. It had.

Q. You of course appreciated that Richardson and Wrench had many clients other than A.F.L.? A. Yes. 30

Q. And at a board meeting of directors of the plaintiff on 9th February, 1972, item 43 reads as follows, it is headed "Basis of Property Valuations": "it was agreed that the manager would provide a statement showing 'guidelines' to be followed in the processing of applications for loans on properties. This statement will be finalised after consultation with the director of valuations from the company's valuers, Richardson & Wrench Limited". You remember being present at the meeting at which that was noted in the minutes? A. Yes. 40

Q. At that stage you anticipated that from time to time you would give instructions to Richardson & Wrench to furnish Kooragang with opinions as to the values of properties offered

as security for loans by persons seeking mortgage monies from Kooragang? A. Yes, we intended to use the services of the company in that area.

Q. On 16th February, 1972 at a board meeting held on that date it is stated under item 43, "Basis of property valuations" that "the manager submitted a memorandum and appendices covering guidelines for handling applications for loans covered by first mortgage over properties which was discussed at length", and at the same meeting under item 45 there is reference to a property being offered as security by Associated Management Pty. Limited. Do you recall that property? A. No I do not.

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Q. (Approaching.) I think you were the chairman of that meeting, were you not? A. Yes.

Q. Would you read the note under 45 just to yourself for a moment? (Witness complied.) Would you agree with me that at that time you regarded Richardson & Wrench as being the company's valuers who would be independent of the mortgagor's valuers? A. No, I cannot agree with that necessarily.

Q. Let me ask you this, in that note there is a reference to a valuation having been prepared by L.J. Hooker Limited, is that right? A. Would you repeat that?

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Q. In that note there is a reference to a valuation of the property being offered for security by Associated Managements Pty. Limited as having been valued by L.J. Hooker Limited? A. Yes.

Q. You knew that company to be a well known real estate and valuing company in this city as at 1972? A. Yes.

Q. But it was of course the valuer for the mortgagor, was it not? A. Well, Richardson & Wrench in all cases, if you put it that way, have acted for the mortgagor -

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Q. Just a moment -? A. I'm sorry, I do not understand the question.

Q. You were minuting the fact that an application for loan had been made by Associated Managements Pty. Limited, is that right? A. Yes.

Q. On the security of property owned by that company, right? A. Associated Managements - I am not sure whether they were mortgage brokers or the owners of the property.

Q. Well, it doesn't matter, does it, your company was being offered a deal whereby your company would advance money on the security of a property at 66 Alexander Street, Crows Nest? A. That is correct.

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Q. And it was being asserted to your company that that property had been valued by L.J. Hooker Limited? A. Yes.

Q. And you took that valuation to be a valuation obtained by or on behalf of the mortgagor? A. Yes.

Q. And having noted that you went on to note that the property had been inspected "by the company's valuers, Richardson & Wrench Limited", didn't you? A. Yes.

Q. And you meant to convey by that note that Richardson & Wrench Limited were your valuers and not the mortgagor's valuers? 10
A. It is not correct to say that that was implied. This was the company's valuers. If I had been asked "Who are your valuers?" I would have answered "Richardson & Wrench" because I think the term has been used to explain a long standing relationship between Richardson & Wrench and A.F.L.

Q. If a year before Kooragang had been formed your company had been - the A.F.L. company - had been thinking of buying a parcel of land and paying a price for it and the vendor to your company had said, "Here is a valuation of Richardson & Wrench Limited which we have obtained", you would not have regarded 20
Richardson & Wrench Limited as your valuers in that situation, would you? A. No.

Q. And the reason that you regarded Richardson & Wrench Limited as your valuers before the company was formed, that is to say, A.F.L.'s valuers, was that from time to time you gave them instructions in particular matters? A. Yes.

Q. And the reason that you regarded them as your valuers after Kooragang was formed, that is to say, Kooragang's valuers, was that from time to time you gave them instructions, isn't it? 30
A. Yes.

Q. You will agree with me that at no stage did you give the defendant instructions in respect of the McMahon's Point property or the Glebe Point Road property? A. No.

Q. You won't agree with that? A. I am saying no we did not give instructions. I am not disagreeing, I'm sorry.

Q. So that you were aware when you say you relied on the two valuations the subject of this litigation that the valuations had been prepared by Richardson & Wrench Limited as you thought acting not as your valuers but as the mortgagor's valuers? 40
A. Yes, we accepted them as being valuations prepared by a reputable company, a company whom we regarded highly.

(Last question read back by court reporter.)

HIS HONOUR: The burden of the question really is that at the

time when you placed reliance on that valuation you knew that that had been prepared at the instructions not of your company but the intending mortgagors, the intending borrowers.

MR. MORLING: Q. Indeed, in respect of the McMahon's Point property you knew that it had been prepared not on behalf of the mortgagor who was approaching you but of a company called Cobden Pty. Limited, didn't you? A. I am not aware of that at this stage.

Q. Did you read the document before you relied upon it? 10
A. I did read it. The main thing of moment in the document would be who was the valuer.

Q. Didn't it cross your mind that the loan proposition had apparently been put to another mortgagee and rejected? A. It possibly did at the time, I cannot recall now.

Q. At the meeting of the directors of Kooragang on 16th February you noted that certain guidelines had been established by the company, is that so?

HIS HONOUR: Mr. Satchwell, nobody expects you to remember these things. If you wish to see a document at any stage please say so. 20

MR. MORLING: Q. Can I show you a document numbered G3 (shown). Is that three page document a set of guidelines referred to in the minutes of the directors' meeting on 16th February, 1972? Would you agree that is it? It has been produced by your solicitors, I imagine it is right? A. It is not produced by our solicitors, that has been produced by Mr. Simpson for consideration by Kooragang Investments.

Q. Do you recognise that as being the guidelines which your board adopted some time in early 1972? A. I recognise it as a statement made to the board and it was discussed in some detail and guidelines were agreed on the loan applications. 30

Q. If I can assist your recollection by taking you back to document G6 which is the copy of the minutes. There is a reference to the guidelines being adopted with the addition of some words. Does that help you to recognise the document now?
A. Yes.

Q. Will you agree with me that the reason why Kooragang adopted guidelines for the processing of applications for loans was that there would be an initial approach from your company to Richardson & Wrench Limited for an expression of opinion about the security being offered? A. No, I do not agree. The guidelines were drawn up after discussion with Richardson & Wrench regarding the procedure which should be followed if we 40

wished Richardson & Wrench to make a valuation on a property at a mortgagor's expense. It was realised that valuations are expensive documents to obtain and rather than call for a valuation to be submitted with an application we arranged a procedure whereby if there was not a satisfactory valuation available we could ask Richardson & Wrench to make what was termed a sighting valuation at a cost of \$25. This in no way bound Richardson & Wrench at all, in fact it was understood that such a valuation would be somewhat superficial and the cost of course was small. However, it did serve the purpose of indicating whether the value of the property would be adequate to provide a loan of the amount requested assuming that we did not advance more than 65 per cent of the value of the property. If it looked workable we would then call for a valuation of the property at the prospective mortgagor's expense. 10

Q. So that the position was this, initially if there was to be this \$25 exercise done by Richardson & Wrench, Kooragang would get in touch with Richardson & Wrench and pass on the relevant request? A. Yes. 20

Q. If the matter proceeded beyond that stage a more formal and complete valuation was required, Kooragang would again get in touch with Richardson & Wrench and inform them that such a valuation would be sought from them at the mortgagor's expense? A. Yes, we would advise Richardson & Wrench that the prospective mortgagor would request a valuation.

Q. Will you agree with me that in all other cases in which your company relied upon valuations of Richardson & Wrench you, in writing or orally, had direct communication with them telling them that one or other of the two types of valuations would be required of them? A. I would agree with that but may I make a comment? 30

Q. Please, if you desire to. A. I think it is correct that with other loan applications there was no satisfactory - whenever we contacted Richardson & Wrench in other cases there was no satisfactory valuation available to support the application.

Q. Do you mean by the words "no satisfactory valuation being available" a satisfactory valuation obtained by the mortgagor himself and furnished to you from another valuer? A. I mean a valuation prepared by a valuer approved by Kooragang Investments. 40

Q. So I get this clear, if a mortgagor came to Kooragang with a valuation by an approved valuer are you saying you were prepared to act upon that? A. Yes.

Q. Are you sure of that? A. Yes.

Q. Who were the approved valuers? A. Richardson & Wrench, L.J. Hooker and one other company.

Q. Stanley Thompson? A. No.

Q. Jones Lang Wootton? A. No, we did not have a list of approved valuers but rather if a valuation was submitted we would decide whether we would accept that valuation. There was another company apart from L.J. Hooker who we accepted. I would have to get that information for you. From memory it was something Stanton.

Q. Richard Stanton, is that right? A. Could be, I couldn't be sure.

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HIS HONOUR: Q. It is always difficult to do this when one is talking about an event a long time ago, but when you say that these were the approved valuers are you speaking of the period as at February 1972 or are you speaking of a more recent date?
A. No, I was talking of the period subsequent to February 1972.

Q. So these other firms may have become approved at a later stage after February 1972? A. Yes.

MR. MORLING: Q. I am sure you are doing the best you can to be accurate in your answers and I appreciate it is now eight years but I want to suggest to you that many of the company's files show that what you say is incorrect and I want to demonstrate it to you if I can by the very first transaction which your company engaged in after it became entitled to lend money as a money lender and I am referring you to the minutes of the meeting of 16th February, 1972 at which the company had before it an application for a loan in respect of a property at number 66 Alexander Street, Crows Nest, follow me? A. Yes.

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Q. And the Board of directors were aware as the minutes disclose that that property had indeed been valued at \$210,000 by L.J. Hooker Limited, were they not? A. Yes.

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Q. At that time you were not prepared to take the valuation of L.J. Hooker Limited if furnished by a mortgagor, were you?

A. In that particular case my understanding is that we obtained a sighting valuation from Richardson & Wrench and then accepted the L.J. Hooker valuation.

Q. When you say you obtained a sighting valuation do you mean that you asked Richardson & Wrench on your behalf to confirm the value which had been placed upon the land by Hookers?

A. Richardson & Wrench were not prepared to do that in terms of a sighting valuation, they simply went ahead and gave us a valuation without - in good faith but not necessarily to have the status of a valuation; in other words, it was simply an advisory service Richardson & Wrench were offering, quite different from the service that they would provide by means of a formal valuation.

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Q. But whatever form it took in respect of that transaction when you were furnished with a valuation prepared by a reputable company on behalf of the intending mortgagor you insisted on getting independent advice about the valuation of the property from Richardson & Wrench Limited, did you not? A. We sought Richardson & Wrench's advice, yes. That was the first transaction.

Q. You will agree with me that in respect of the two valuations the subject of this case you did not seek any confirmation of value from a valuer independent of the mortgagor's valuer, did you? A. In the two cases we had valuations which we understood were Richardson and Wrench valuations. 10

Q. Prepared for the mortgagor? A. Yes.

Q. Would Hookers valuation have been prepared for the mortgagor? A. Yes.

Q. In the guidelines, which are document G3, under the heading "Consideration of Application" this appears, "(3) A favourable report from the valuer would lead to a full review of the loan proposal by the manager and the completion of a standard form (see appendix B) for submission to the board for consideration. At this stage a Dunn and Bradstreet report on the applicant would be obtained and the applicant informed that bank guarantees will be required in respect of the loan". Was it your company's then intention to seek Dunn and Bradstreet credit reports on any applicant for a loan before agreeing to make the loan? A. It would have been the intention at that time, yes. 20

Q. Did the company almost invariably before making a loan seek a Dunn and Bradstreet report on the applicant or its directors? A. I cannot answer that really. I would not know but I know that in all cases a Dunn and Bradstreet report was not submitted to the board. It was not submitted in all cases, put it that way. 30

Q. It certainly was not sought in respect of the two loans the subject of this case? If you do not know and somebody else can deal with it I won't press you? A. I do not think it was sought but certainly action was taken to check the financial standing of the company concerned.

Q. Do you know, and if you do not know say so, whether any steps were taken in these two cases to obtain bank references in respect of the intending mortgagors? A. I do not think that action was taken. We were concerned that we should have adequate security and that the income from the premises concerned should be adequate to service the interest payments on the loan. In other words, we took action to try to ensure that our position would be protected if we became mortgagee in possession. 40

Q. The company adopted a standard form of letter which it sent to Richardson & Wrench when it expected a full valuation of any property to be furnished, did it not? A. Yes.

Q. And that letter was sent on the basis that the mortgagor would have to pay the valuation fee for the valuation but that the valuation was being prepared as protection for Kooragang by a valuer independent of the mortgagor, do you agree?

A. I would have to look at the text of the letter.

Q. Without looking at the text of the letter, it was your understanding that if you got past the \$25 off the cuff expression of opinion and wanted a full valuation the position would be that the mortgagor would have to pay for it but the full valuation was being obtained for your benefit so your board of directors would have independent advice as to what the security offered was worth, you would agree? (Objected to; allowed.)

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A. No, I do not agree with that. The purpose of obtaining a valuation was to get an indication of a fair market price of the property and I think the valuations were worded in that way.

Q. But what about if another valuer provided a fair market price, the other valuer being retained by the mortgagor, you were not prepared to accept that, were you? A. If he was competent and reputable we would accept that valuation to be a fair market price.

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Q. Can you point his Honour to any resolution or document which is in Kooragang's records showing the adoption of a list of approved valuers? Do you know of any such list having been approved at any time by the board during your time? A. There was no list approved as such, no. I understand we accepted valuations from two companies other than Richardson & Wrench but Richardson & Wrench were certainly an approved valuer.

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Q. (Exhibit G9 shown.) You will agree with me that on 21st February, 1972 a letter was sent to Richardson & Wrench in the terms of the document G9 I am showing you? A. Yes.

Q. Of course, you will agree that no letter was sent to the defendant by your company in respect of Glebe Point Road and McMahon's Point valuations? A. In those cases we were not requesting the defendant to make valuations.

Q. At the meeting of directors held on 25th February, 1972 there is a reference under item 49 that Kooragang was authorised to lend amounts being not less than \$10,000. Do you recall that? A. Yes.

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Q. Was this the position that your company was prepared to lend 65 per cent of whatever was a proper valuation of the Glebe Point Road land and a proper valuation of the McMahon's Point land? A. The company was prepared to lend up to 65 per cent

and in these cases agreed on lending the maximum percentage.

Q. But if I may put this as an example to you, if you had been told that the proper valuation of the McMahon's Point land was \$180,000, not \$250,000, then the company would have loaned \$120,000 being 66 and two thirds per cent or thereabouts, of \$180,000? A. Slightly less than 120.

Q. I do not want to trouble you about matters of detail which may be best answered by somebody else but are you aware whether on 28th February, 1972 the company contacted its own bankers, the Bank of New South Wales, with a view to the best modus operandi for obtaining bank references in respect of intending mortgagors? A. Yes. 10

Q. I suppose in your commercial experience the obtaining of a bank reference was a very usual check on the credit worthiness of an applicant to a loan, was it not? A. My experience has shown that bank references are often singularly unhelpful in indicating the credit worthiness.

Q. It was the company's view in 1972 that they were worthwhile, wasn't it? A. They can be worthwhile in the fact that a bank may refuse to give a reference but generally speaking if a bank gives a reference it does not spell out the credit worthiness of the client in any detail at all. 20

Q. I omitted to ask you a few moments ago the same question in respect of the Glebe Point land as I asked you in respect of the McMahon's Point land, that is to say, if the proper valuation of the Glebe Point Road land had been furnished to you as being let's say \$120,000 you again would have loaned 65 per cent of that \$120,000 if it had been given to you as a proper valuation? A. If such a figure were a proper valuation, yes. 30

Q. Did you yourself examine the material which Donald G. Cameron and Associates sent to Kooragang under cover of its letter of 28th June, 1973, which is document E2, I am referring you to a number of sheets of figures. I am not asking you whether you can now recall the detail of them but I am asking you whether you yourself at the time considered them? A. Yes I did.

Q. You saw I suppose that the figures were not verified by anybody and in particular that no accountant had put his name to the documents as having been prepared by him, did you? A. No, that is correct, they are not certified. 40

HIS HONOUR: I think the question was did you note that at the time.

MR. MORLING: Q. Did you note that they were not certified by

any accountant? A. Yes, well my understanding is yes, I would have noted them.

Q. Did you notice that there was no profit and loss account or balance sheet in respect of any of the companies mentioned?

A. Yes.

Q. Did that cross your mind as being an odd circumstance?

A. We certainly felt that additional financial information should be obtained. It was not necessarily an odd circumstance but it was not sufficient information for us to act upon. 10

Q. For instance, did you check to see what shares this Mr. Bourke owned in any of the companies which were said to have substantial assets? A. I did not personally check that but certainly about that time or possibly a little later I learned that he was a very substantial shareholder in all those companies and on that basis we accepted him as a sole guarantor; we did not seek the personal guarantees of other directors.

Q. The schedules which accompanied the letter from Donald G. Cameron and Associates of 28th June, 1973, were dated various dates in 1972, were they not? A. I cannot recall. 20

Q. (Approaching.) You may assume that is correct. I think some are November and I think some July 1972. I do not want to mislead you, the copy which his Honour has may well only have 27th November, 1972 and 12th July, 1972 - am I right, your Honour?

HIS HONOUR: I seem to have a different date, 30th October, 1972 and 12th July, 1972.

MR. MORLING: Q. In any event, it was clear to you that they had been prepared at various dates in the preceding year, is that right? A. They had been, I cannot recall whether I noticed that at the time. 30

Q. I do not want to press you about any matters of small detail but did it not occur to you they might be out of date as at the time you were thinking of making a loan? A. I took it to be recent information; it certainly was not up to date in the sense that it was within the last week or so.

Q. I suppose out of the mass of material which was there the one thing which did impress itself on you was that the land in respect of which you were thinking of advancing monies by way of mortgage was listed as having a certain value - I am referring to the Glebe Point Road land - is that so? A. Yes. 40

Q. So was this the position at that time, you had in front of you a photostat copy of a valuation which was said to have emanated from Richardson & Wrench's office, is that correct?

A. Yes, it had on it "Richardson & Wrench".

Q. But it was not even an original document which you had, was it? A. It was a photocopy.

Q. And indeed it was not even a carbon copy, was it? A. No, it was a photocopy.

Q. It had on it a valuation of \$160,000, did it not? A. That is correct.

Q. And it was little more than a page and a half in length, wasn't it? A. Approximately two pages.

Q. And it did not contain, for instance, material as to the income and expenditure which might be earned or incurred in respect of the property, did it? A. No, but that information was sought subsequently. 10

Q. That was sought because you were not prepared to rely upon the valuation, were you? A. I beg your pardon?

Q. That information was sought because you simply were not prepared to rely upon the valuation? A. We relied upon the valuation the information we sought was the detail of rentals received and outgoings on the property so that we could determine the net income to see whether the loan could be serviced by using the net income from the property. 20

Q. And the critical factor which influenced your board in deciding whether or not to make loans was whether the income from the property could service the repayments of interest? A. No, the security was the important thing, the property itself.

Q. Do you know now what values were shown as being applicable to any part of the Glebe Point Road properties in the material furnished by Cameron to your board on 28th June, 1973? A. From memory the valuation referred to the land and improvements at an address covering three numbers in Glebe Point Road. 30

Q. Did you go through - I am not asking you the exact detail - did you go through this mental exercise, "well, in this document it looks as though the value of the land is X dollars, Richardson & Wrench say it is \$160,000, should we perhaps check with Richardson & Wrench to see the reason for any discrepancy"? A. No, we accepted the Richardson & Wrench valuation.

Q. Did you yourself inspect the premises? A. Yes.

Q. Well then, it was immediately apparent to you that the valuer had misdescribed the premises in his valuation, wasn't it? A. In what manner? 40

Q. Well, was not at the date of your inspection, part of the property used as a butcher's shop? A. Yes.

Q. Could I show you a copy of the valuation? (Shown). Would you not have expected if part of the property were in fact a butcher's shop that such a factor would have been noted in the words which follow "on the land" at the foot of p.1 of the valuation and going over to the word "repair" on the next page?

A. When I inspected the property I did not enter it, I simply drove down the road, looked at it from the car, satisfied myself that there was a building of similar nature at that address, but I was not competent to determine what it was worth in dollars. So I think that all I could say is that I sighted the property, I did not inspect it in the sense of examining it in detail.

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Q. Mr. Satchwell, the premises were almost hard up against a hotel and were trading as to part as a butcher's shop on part of the street frontage, there is a butcher's shop there? A. Yes, but I was not carrying out the valuation, I had simply read the valuation beforehand and went out and inspected the premises. Simply for my own edification really to see what area it was, whether it was what I might term a desirable area and, as I say, it was not an inspection of any great significance.

20

Q. Here you have a valuation which had been obtained in a manner different from your settled procedure with Richardson & Wrench, that is so, isn't it? A. Yes, we had not requested Richardson & Wrench to do a valuation.

Q. Would you agree with me that even to your untrained eye - and I use that expression with all due respect to your expertise as a business man - that it seemed to be a fairly slapdash affair for as short as it was and had that sort of description of the premises? A. Well, I perhaps should say that I went out more out of curiosity than anything else. It was one of the first transactions being conducted by the company of this nature. I went out to satisfy myself of the general area in which the premises were situated.

30

Q. Mr. Little made a written report that number 237 was presently a butcher's shop, did he not? A. Yes.

Q. And a copy of that was sent to you? A. Yes.

Q. At the meeting of directors held on 27th July, 1973, it was resolved under item 144 to seek confirmation of the statement of assets and liabilities of the borrower, would you agree?

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A. Yes.

Q. Was that because you as a business man were not prepared to accept the unsigned list of assets which had been forwarded as annexures to Mr. Cameron's letter of 28th June, 1973? A. We did not necessarily reject that information.

Q. I did not suggest that. You required confirmation of it?

A. We were prepared to accept it but we wanted further substantiation.

HIS HONOUR: Q. Mr. Satchwell, I am trying to fit into this time frame your inspection of the premises. At what stage did you drive out and have this cursory inspection? Was it before this meeting in July or after? Was it before the approval of the loan or after? A. It would be before the approval of the loan, your Honour, and I think subsequent to the meeting - yes, subsequent to the meeting in which we considered a report submitted by Mr. Little on the premises; he had inspected them and reported to the board.

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MR. MORLING: Q. Once again without troubling you with minor matters of detail, on 28th June, Donald G. Cameron and Associates had sent you a list of the assets and liabilities of a company known as Group Unit Securities, do you agree? A. Yes.

MR. MORLING: Your Honour, this is a list headed 30th October, 1972.

Q. It was said at the foot of that list that there was an excess of assets over liabilities of \$117,717 and I am hesitating to put that figure to you because so poor was the copy which we had we had to fill in some ink figures and I ask my friend to correct me - is that right? A. Yes, I think that figure has been calculated by Mr. Little, actually it was not on the original statement. He simply subtracted the liability shown from the assets.

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Q. So here you were on 28th June, 1973, being furnished with a statement in support of an application for loan which said a company known as Group Unit Securities had assets of the order of \$120,000 after allowing for liabilities, is that right?

30

A. Yes.

Q. What did you think when you got Messrs. Bentley, Wheeler and Cartledge and Cos. letters of 1st August, 1973, which set out the equity of Group Unit Securities in its various properties, did you work out whether there was any difference and in particular that the figure might have jumped from about \$120,000 to nearly \$700,000 in a matter of months? Can I assist you by telling you that there is a number of letters from Bentley Wheeler Cartledge & Co., each letter appears to refer to a different company in the Bourke group and one letter to which I am now referring you is the letter referable to the assets of Group Unit Securities Pty. Limited whose net worth was stated as at 30th October to be \$117,717, do you see what I am putting to you?

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A. Yes.

Q. Did you yourself read and absorb that letter of 1st August,

1973 from Bentley Wheeler Cartledge & Co., dealing with Group Unit Securities Pty. Limited? A. I did, yes.

Q. Can you recall now what you thought as to the assets of that company when you read that document? A. The second document was prepared by a firm of chartered accountants, if my memory is correct, whereas the previous document had been supplied by a mortgage broker. The second document was accepted as a statement by accountants who stated they had seen Richardson & Wrench valuations for various properties. We accepted that the net worth of that company as judged against the net equity in the properties was of the order of \$600,000. 10

Q. Well, you are correct when you say the second letter was from the accountants but it purports to be no more than a recitation of current valuations of the company's properties by Richardson & Wrench Limited with a statement of mortgage debts in respect of each property, that is so, isn't it? A. Yes.

Q. And so far as the alleged Richardson & Wrench valuations were concerned they were said to value in all the company's properties at over \$3 million, were they not? \$3,099,000, do you follow me? A. I take it that that is the total, yes. 20

Q. It is said, it was being put to you that Richardson & Wrench Limited have produced current valuations totalling over \$3 million, is that right? A. For that company.

Q. In respect of properties which you would have expected to have been owned by that company for the most part as at the previous October, is that right? A. Owned by the company as at the date of that statement, possibly more; I would assume that the company could own more property at a later date.

Q. It did not occur to you at any stage, notwithstanding your relationship with Richardson & Wrench, to ring up and ask whether this valuation which had been obtained out of the ordinary course of your dealings with them was one which they stood by? A. No. 30

Q. That did not occur to you? A. No, we thought it was a genuine valuation.

HIS HONOUR: Q. Mr. Satchwell, just so that you can think about this over the lunch hour because I cannot work this out for myself, could you let Mr. Satchwell have your junior's copy of G11, for a moment, Mr. Clarke? I do not know if in the ultimate this will have any importance but Mr. Morling was asking you questions about approved valuers and if you look at G11 on the second page under the heading "Short term loans" you will see that what is reproduced there is really an extract from the A.F.L. board minute. Now item 2, Kooragang Investments "We authorise to lend funds on certain bases", and then (c) "The 40

amount of the loan not exceeding 65 per cent of valuation of the sworn valuer approved by A.F.L.", and then if you go over the page, item 40 "Messrs. Richardson & Wrench do approve", and I interpolate there "approved by A.F.L.", so that it really was not a question of Kooragang approving valuers at all, it seemed to be A.F.L. It may be that that situation changed later or something happened but perhaps you might just reflect over that during the lunch hour and if there is something you wish to say after lunch please do so.

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(Luncheon adjournment.)

ON RESUMPTION:

HIS HONOUR: Q. Have you had a chance to think further about the matter I called your attention to? A. Yes your Honour. Thank you for drawing my attention to it. The minute does clearly state that valuations should be approved by A.F.L., which is the parent company of Kooragang Investments. The A.F.L. board was familiar with the valuations considered in making loans and in getting approval from the chairman. We always quoted the origin of the valuations. I was incorrect in suggesting that it was the Kooragang Investment board that approved valuers. In fact we did select valuations on which to make our recommendations and they were never queried.

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MR. MORLING: Q. Well then can you recall any instance in which you or your board selected a valuer other than Richardson & Wrench to make a valuation for mortgage purposes? A. No. We had never requested any other valuer to make a valuation. We accepted valuation from two other valuers that were in existence when applications were made.

Q. You accepted valuations which were in existence? A. Yes, to have a satisfactory valuation in the sense that if approved valuation was not in existence we would engage or arrange for Richardson & Wrench to prepare a valuation at the mortgagor's expense.

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Q. Are you telling his Honour that if a valuation prepared on behalf of a mortgagor by the mortgagees, if a valuation was furnished to Kooragang, Kooragang were prepared to act upon that? A. At our discretion subject to approval by A.F.L.

Q. And can you give his Honour one example where such a valuation of that kind was approved? A. In the case of the first loan on the property at Crows Nest.

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Q. We will come to those in more detail later. Mr. Satchwell, I take it that you yourself were not a token member of the board, you took an active part in the company's affairs? A. I am sorry?

Q. You yourself took an active part in the company's affairs in 1972 and 1973? A. Yes but I did not hear the reference to the title.

HIS HONOUR: Q. I think what Mr. Morling said to you in the first place was that you were not a token member? A. Yes.

MR. MORLING: Q. And in 1972 and 1973 you were active in the company's affairs? A. Yes.

Q. And I suppose, more than anybody else, took responsibility for its decisions, being the chairman? A. Always accepted responsibility, I accepted the responsibility of being chairman. 10

Q. If a report were made by the financial analyst would such a report come to you, amongst others, for consideration? A. Yes it did in the case of Kooragang Investments.

Q. If I could take you back to the financial statements which were furnished to Kooragang by Donald G. Cameron and Associates of 28th June, 1973 (copy containing correspondence handed to witness). I am not sure whether this file has an exhibit number -

HIS HONOUR: I will clear that up. Mr. Clarke, is it intended that the file you gave me this morning should become Ex. A-? 20

MR. CLARKE: No your Honour.

HIS HONOUR: Ultimately this will be Exhibit A. If you refer to the documents internally within it.

MR. MORLING: Q. Mr. Satchwell, the letter of 28th June contained information which you desired to have before deciding whether or not you would agree to lend moneys on the security of the Glebe Point property, is that right? A. It contained information we wished to have but not necessarily all information.

Q. It was not necessarily all the information but it was part of it? A. Yes. 30

Q. Can you recall whether there had been any discussion between you or anybody on your behalf and Cameron and Associates before the letter of June 28th was written? A. I can't. I am not aware of discussions but there was contact between Mr. Minks and Donald Cameron and Associates and no doubt Mr. Minks had some discussion before this letter.

Q. Included with that letter was a list of assets and liabilities of the intending mortgagor company, Giles Bourke Holdings Pty. Limited. Do you agree with that? A. Yes. 40

Q. And that list was dated 12th July, 1972? A. Is that on p.E5?

Q. Yes it is? A. Yes.

Q. And when you received the letter which is dated 3rd August, 1973, from Bentley Wheeler Cartledge & Co. you took that letter to refer, as its face indicates, to be referring to the assets and liabilities of the company, Giles Bourke Holdings Pty. Limited? A. Yes.

Q. Now of course, at that stage your sole interest in all this material, voluminous as it was, was related to the lending of money by your company on properties 232-237 Glebe Point Road? A. Yes. 10

Q. Will go please to E5 the 12th July list of assets. You see that the first property under "assets" is 37 Glebe Point Road, Glebe? A. Yes.

Q. If you go back to the accompanying letter you will see that this appears at the end of the third last paragraph, "It is emphasized that the values of the properties and companies shown are based on valuations and not on a cost basis". Do you see that? A. Yes. 20

Q. So when you came to read the document 12th July, 1972, you knew that it was being asserted that the valuation of 37 Glebe Point Road, Glebe was \$67,000? A. Yes.

Q. When you got the letter of 3rd August, 1973, I suppose you saw that it was being asserted that Richardson and Wrench had valued that very same property at \$120,000. Did you see that, two-thirds the way down the letter of Bentley Wheeler Cartledge & Co.?

HIS HONOUR: Q. The question is not do you see it now, but at the time? A. I can't recall. 30

MR MORLING: Q. You had sought the information contained in Bentley Wheeler's letters so as to satisfy your mind that you could safely make the loan? A. But I don't think I considered that valuation. It is not the valuation of the subject property. It is 37 Glebe Point Road. I thought the number was 237.

Q. If you were only concerned with the valuation of Glebe Point Road you would not have sought this information at all, would you, because this information was to do with the general financial position of Mr. Bourke and his companies, was it not? That is right, is it not? A. Yes, I am sorry, I thought you were questioning me about the valuation of the properties 40

that were covered by the Richardson & Wrench valuation.

Q. Mr. Satchwell, so that I am not leaving you in the dark as to the purpose of my questions I am putting to you, that having received a photostat copy of a valuation, and having received that out of the ordinary course of your doings at Richardson & Wrench, that you would have been put on notice that there might be something irregular about it by the information you contemporaneously received from or on behalf of the mortgagor. That is the purpose of my questions, I am putting to you; for instance, if you had taken the trouble to read the first line of the Giles Bourke Holdings list of assets and liabilities of 27th July, 1972, you could have, by checking that value in the later document, seen that it had been raised or was said to have been raised by Richardson & Wrench to \$120,000. You did not do that?

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A. I was concerned about the valuation we received from Richardson & Wrench referring to properties described as 233, 235 and 237 Glebe Point Road. I am sorry, Mr. Morling, I thought you were questioning me about a property number 37.

Q. Do I take it you simply were not concerned to make any check at all as to the, either authenticity, or the accuracy of the photostat copy document which you received, is that right?

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A. I think there is a misunderstanding, Mr. Morling. What is the number of the property you are referring to?

HIS HONOUR: I think, Mr. Satchwell, you may take it Mr. Morling was asking about a property other than the one the subject of the proposed mortgage. Accepting that, would you please answer the question which is put to you (Previous question read)? A. No.

MR. MORLING: Q. So that you had no concern about that at all?

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A. Yes I did have a concern.

Q. If you were concerned why did you not lift the telephone and ask to speak to somebody at Richardson & Wrench about the valuation? A. The concern that I had was that the valuation that we received, described as a Richardson & Wrench valuation, referred to the properties that we were going to accept, or were considering for acceptance as first mortgage security.

Q. Mr. Satchwell, the valuation had a window box on the front for the valuer's initials. Did you see that? A. I see it now, yes.

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Q. And you saw it at the time, 1973? A. I don't recall seeing it.

Q. So you were acting on the faith of a photostat document which was signed in the corporate name of the defendant without any indication, as to which, if any, of the defendant's valuers

was responsible for the document, that was right, was it not?

A. I can't answer that yes or no. I accepted the document as being a document which had been provided by Richardson & Wrench.

Q. You knew at the time that you were acting on the faith of a photostat copy of a document signed only in the corporate name of the defendant and bearing no indication of the author of it, you knew that, did you not? A. No. I did not know it.

Q. It was the fact, was it not? A. It is the fact that there is no initial given, but I don't normally look at a document for initials on it. 10

Q. If I could go back and see if I can put to you what I am seeking to put to you. Did you read the list of assets which was furnished to you and which was represented as being that of Giles Bourke Holdings Pty. Ltd? A. These are the list of assets attached to Donald Cameron's -

Q. Yes, you read that? A. Yes.

Q. And you were not prepared to accept it without some verification, were you. And hence you sought the information from the accountants, is that not right? A. That is correct. 20

Q. So that, having got the allegedly confirmatory material, I suppose you read that? A. Yes.

Q. And if you read it you would have seen that it not merely confirmed the value of the company's assets, but stated them to have, in many cases, values vastly in excess of those which they were said to have had 12 months before.

HIS HONOUR: Is that really right, the way you put the question? If you had read it you would have seen something - it would have required something more than reading it, it would require comparison. 30

MR. MORLING: Q. I was putting, when you got the document you were checking it to see it confirmed the material you had previously received? A. I think I said this morning, having received the statement from the chartered accountants, we thought that had more substance to it than the attachment to Donald Cameron's letter and that received consideration from that point onwards.

Q. Do I take it you did not concern yourself to see whether the material furnished to your company after 28th June, 1973, confirmed in your eyes the assets and liabilities as listed 40

in Mr. Cameron's letter? A. The comparison that I made in my mind was that the net equity, if you measure equity from the value of the assets less liability, in Giles Bourke Holdings properties, it had increased almost six-fold over a period, which was not unusual in the property boom.

Q. Six-fold in a period of 12 months, is that what you say?
A. Yes.

Q. And you mean to convey by that it was not unusual for properties to have their values increased six times in 12 months? 10
A. No, the net assets of the owner of the property to increase by that. After all, to increase the total value of the assets shown in the chartered accountant's return as something like \$3 million, if the property appreciated in value by 15 per cent, it would produce that effect if there were no further borrowings - 15 to 20 per cent - I am sorry. I was explaining looking at the net equity - you take a total value of the proposed loan, the borrowings, so if a man had not borrowed against those properties over a period and he had \$3 million worth of property and it increased in value by 15 per cent 20 to 20 per cent, his net worth would increase by \$4 million or \$5 million, which is the sort of order of the increase shown here.

Q. Would you agree with me if you had taken the trouble to check the second item on the July list of Giles Bourke Holdings against the Richardson & Wrench stated valuation in Bentley Wheeler Cartledge & Co.'s letter of 3rd August, being item 5, you would have seen that it was being asserted that Richardson & Wrench had valued that property at \$150,000 and not the earlier figure of \$75,000. You would agree you would have ascertained that? A. I am sorry, I have not made the comparison. 30

HIS HONOUR: Q. But I think the question is had you looked at the time? A. I am sorry, I did not check the figures.

MR. MORLING: Q. The one thing you did check was the property you were going to lend money on. I suppose that is right, is it not? A. Yes.

Q. I suppose therefore the one thing you did look for was the entry in relation to 233, 235, 237 Glébe Point Road, is that not right? A. I don't know but I went through this in detail, I would have, certainly looked at what was happening to the net equity as to the detailed comparison, as chief executive of a fairly large company I did not make them, to be quite honest, but I was guided by the valuation we have on the property, that seemed to be the key document to me, for my purpose. 40

Q. There is no point in my asking you questions as to what you did to check the valuations of the subject properties as disclosed in the documents which came in subsequently to Cameron's letter because you just did not do that, you just did not check them? A. I accepted the valuation as provided with Cameron's letter.

HIS HONOUR: Q. Mr. Satchwell, I think counsel is asking you, you carried out no comparison between the document of 12th July which came with Cameron's letter and the document of 4th August which emanated from Bentley Wheeler Cartledge & Co.? A. No. I did not personally do that, no detailed comparison. 10

MR. MORLING: Q. Was there any discussion about it at the board meeting? A. I can't recall the discussion. Certainly - the document would have been discussed, yes.

Q. At the board meeting of 27th July, document E8 in this file and item 144. It is said, inter alia, "It was resolved to obtain profitability figures to support the....interest commitment". It is about three pages over from the 12th July list of assets? A. Yes. 20

HIS HONOUR: Q. Your attention is being called to item 144? A. Thank you your Honour.

MR. MORLING: Q. The reason that you resolved to seek profitability figures was that they were not contained in a valuation, that is so, is it not? A. That is correct.

Q. And you needed them before you decided to advance the money, that is so, is it not? A. Yes.

Q. And you were not prepared to act on a valuation, were you at that point of time? A. We were prepared to act on the valuation as an indication of the fair market value of the property but we thought it was prudent to see whether - if we were to become mortgagee in possession - and we hoped that would never happen - that the income generated from the property would be enough to service the loan. 30

Q. It is a fairly unattractive procedure for a mortgagee to have to sell up a security, is it not? A. It is, yes.

Q. And that is the view your company took in 1973? A. That is right, that would be the situation, yes.

Q. And in particular you would not have entertained the thought of advancing money on a security of real estate which was leased unless you satisfied yourself that the rents, net rents, were sufficient to service the loan, that is so, is it not? A. Yes. We wanted information. 40

Q. And you got that information before you made the loan, did you not? A. I would think we had got that information but I honestly can't say that I can recall how it was provided.

Q. You got it, can I draw your attention to letter E14 and suggest you got it from the solicitor for the mortgagor - no, I am sorry - you got it from the solicitor for the mortgagor under cover of a letter of 21st August, 1973, Ex. 15, which apparently has an annexure, another letter giving details of the rentals? A. Yes.

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Q. And that was the document which you were waiting for before you would make the advance, was it not? A. Yes.

Q. And you thought you were acting with reasonable prudence in relying upon those rental figures furnished to you? A. Acting with prudence. The key thing, of course, is the value of the security.

Q. If you would just answer my question, Mr. Satchwell. You thought you were acting with reasonable prudence in acting on those rental figures furnished to you and put on your own file? A. Yes, excuse me, may I modify that answer, acting with reasonable prudence with additional prudence - we were seeking additional information. 20

Q. Of course you knew that the mortgagor occupied all or some of the premises? A. I did not know that.

Q. That was the address the mortgagor gave in its letterhead, was it not? A. Yes, that is true.

HIS HONOUR: Q. Mr. Satchwell, I would remind you that document E13, if you look at the last - have you got that in the bundle, it is the telex? A. Yes your Honour.

Q. If you look at the last item in that about halfway through, "Premises used as head office of owner". It is very difficult for you to remember what is in all these documents but you may care to look at that before you answer that question? A. That telex was written by myself and I must have known at the time that that was the head office of the owner but I must say I have not been through these documents - I have not been over the documents and am relying on my memory back several years. I answered that question in all sincerity. 30

MR MORLING: Q. It would be correct to say that at this time in the company's affairs, it was anxious to attract more business from mortgagors, is that right? A. We were - yes, we were intending to lend more money, if possible, if we could find suitable properties. 40

Q. And such was your anxiety you were prepared to go to 75 per cent of the value of the securities offered, were you not?

A. No - Kooragang - may I answer that as Kooragang Investments, not me personally.

Q. The company was but you were not? A. I am a member of the A.F.L. board but I accepted the recommendation of the directors.

Q. Was Mr. Simpson one of those anxious to go to 75 per cent?

A. I could not say.

10

Q. Could I draw your attention to document E.12 headed "Future meeting" in which there is a reference - I shall not read it - that the present policy of lending up to 65 per cent was conservative and you could possibly raise it to 75 per cent to attract more interest? A. Yes.

Q. Is that right? A. Yes.

Q. On reflection do you not now recall that you were anxious to get money out about August 1973.

HIS HONOUR: Q. Are you speaking of the witness personally? (Question withdrawn).

20

MR MORLING: Q. Would you not agree with me there was a view held on the board, which you perhaps did not share, that you should go after more opportunities of lending money, even up to 75 per cent of values? A. At higher interest rates.

Q. Yes. A. The object was to increase the income of the company by increasing the rates.

Q. Mr. Satchwell, there is no reference in that minute as to any dissent from you on that view, going to a higher percentage of value? A. No there is not. I would accept because I was party to all these decisions, unless I dissented, if I recorded my dissent, but that has not been recorded, it is a matter of reaching a consensus of opinion and there can be a range of views brought together.

30

Q. When the letter E16 was sent to Cameron & Associates advising of the company's decision to make the loan it was said in the second paragraph to be, "Subject to personal guarantees.... satisfactory bank reference". E16, the letter of 22nd August, 1973, the second paragraph. Perhaps you could read it. In fact guarantees from all directors were not obtained, were they? A. No.

40

Q. And a satisfactory bank reference was not sought? A. I don't know whether it was sought but certainly I did not see a bank reference.

Q. If I could take you back for a moment to the minutes of the meeting held on 6th August, 1973, which are E12. It is stated under item 149 in respect of the East Crescent property - and I am referring to the penultimate paragraph on that page, it was suggested that Richardson & Wrench should clarify the zoning position. Do you see that? A. Yes.

MR. MORLING: You will agree with me that to your knowledge Richardson and Wrench were not contacted about the zoning position or anything at all in relation to that property, were they? A. No. 10

Q. At that time? A. No, there were not.

Q. Indeed, it was not until after the mortgagor defaulted that there was any discussion between you at all about the property? A. That's correct.

Q. And that notwithstanding the fact that, I suppose, on a fairly regularly basis there was contact between Kooragang and Richardson & Wrench in respect of valuations for other properties. That is so, isn't it? A. Requests were put to Richardson & Wrench. This wasn't necessarily in the form - it wasn't necessarily a discussion that occurred. Simply a letter would be sent to inform Richardson & Wrench of what was happening. 20

Q. What I am putting to you is this - and in a while we will come to a large number of files which will indicate what I will call legitimate Richardson & Wrench valuations as to which they accept responsibility and I am putting to you that whilst you were making the Giles Bourke loan on Glebe Point Road and I think the Group Unity Securities on East Crescent, McMahon's Point, you were, not contemporaneously but in the same broad time span, in contact with them, both by telephone and in writing, about valuations which you were asking them either to make or to check. That is right, isn't it? A. I don't think we - we don't necessarily ask Richardson & Wrench to check a valuation. We certainly asked them to make a valuation, make valuations. 30

Q. We will come to that later. If you could clear one thing up before we leave Glebe - would you look at E17. Under item 144 there was a statement that "the statement of assets and liabilities of the above company was received and was considered satisfactory". I know it is difficult, but so far as one can see from this file there was no additional material relating to assets and liabilities of the company received after 6th August, was there? May I help you by saying that all the material either from the mortgage brokers or from Bentley Wheeler seems to be dated prior to 6th August. 40

HIS HONOUR: That is not right.

MR. MORLING: Q. I withdraw that. Indeed, it had been decided, had it not, by the A.F.L. Board - and may I refer you to E17, if you would look at that - on 19th July 1973 that Kooragang could increase its lending by an additional \$1 million, is that so? A. \$1.5 million.

Q. \$1 million up to a total of \$3 million and to authorise the lending of an additional \$500,000 as short-term loans over twelve months, is that right? A. I'm sorry - ?

HIS HONOUR: It is item 140? A. It is on E17?

10

Q. If you look under item 140? A. Yes, that's correct, yes.

MR. MORLING: Q. That is so, is it not? A. Yes.

Q. Really, the position was that you were pretty anxious to get funds out. The company was anxious to get funds out on loan after it received the authority of the A.F.L. Board on 19th July 1973? A. The money was out on loan continuously. It was a matter of placing it and there was no question of anxiety on the part of the Kooragang Board. The money was always on loan. It was a question of whether it was lent on the short-term market or as secured lending on first mortgage.

20

Q. But didn't you have a sudden influx of funds from your parent at this time? A. We were lending money which was surplus to requirements in the parent company, but there was no money sitting in deposit at the bank. Money was always on loan. It was a question of whether it was on call on the short-term money market or fixed for periods on the short-term money market or put out for longer lengths of time as first mortgage loans.

Q. As far as Kooragang was concerned, the funds available to it for lending were suddenly increased as a result of the A.F.L. Board meeting on 19th July 1973, were they not? A. No, they were not. The amount, the total amount was the same. It was a question of disposition of lending.

30

HIS HONOUR: Q. I think what Mr. Morling is saying to you is best illustrated in the second paragraph of that item. In point of fact, the Kooragang Board "desired the A.F.L. Board to make further moneys available to take it up to \$5 million on first mortgage security"? A. Yes. The Kooragang Board was keen to increase its income by lending at a higher rate of interest as was available under first mortgage loans than in the inter-company market.

40

MR. MORLING: Can I ask you to look at the file in respect of the McMahon's Point land. When you got this valuation you saw that it was expressed to be for and on behalf of a company known as Cobden Pty. Limited? A. I indicated this morning that I

didn't recall that.

Q. That didn't register, is that right? A. No, it registered but I can't recall that. I don't remember who it was produced for.

HIS HONOUR: Q. You cannot now recall whether at the time you noticed that it had been produced for someone else, is that right? A. That's correct.

MR. MORLING: Q. Can you recall whether, when you read p.3 of the item "basis of valuation" that that matter registered as being a matter of importance with you? A. Yes, it certainly was of importance. 10

Q. Indeed, one can see from the file you went to some trouble to ascertain what the income and expenditure on the property was - and I refer you to document F6? A. Yes.

Q. If you will turn back to p.F4, Mr. Little, the commercial services manager, described the property as being "good letting propositions". You agree? A. Yes.

Q. Your company was aware, was it not, that this property was being purchased by the intending mortgagor at the time you were considering making the loan? A. I cannot recall whether he had purchased it or was in the course of purchasing it. 20

Q. Can you recall that you knew - that is to say you personally knew - that the property was either in the course of being purchased or had very recently been purchased? A. I think I was under the impression it had been purchased recently at the time, but I couldn't be more explicit than that.

Q. Back in those days can you recall this: Were you, as a director of the company, concerned to know what a mortgagor was paying for a property if he was seeking a loan from your company to finance the purchase? A. Really, I think we were concerned with what we would term the fair market value. 30

Q. Would you answer my question? A. The answer, in view of that, would be No.

Q. If you had known that the mortgage which you were being asked to grant was to finance the purchase, you would have sought confirmation of the value from the valuer whose valuation you were acting on if his valuation was a sum significantly in excess of the purchase price? A. If we had known that, yes, it could have been a case for raising it with the valuer. 40

HIS HONOUR: Q. Is it "it could have been" or "would have been" the case? A. Could have been the case.

K. Satchwell, xx

Q. What would it have depended on? A. I'm sorry?

Q. What would it have depended on? A. The information wasn't known to me but I am -

Q. Assuming that to have been the case, what would have governed your decision as to whether or not you would have sought confirmation? A. I think it would have been the question of the magnitude of the difference.

(File for 65 Alexander Street; file 72, Associated Management Pty. Limited; file 77, Supreme Garages Pty. Limited; file 78C, Lepad Pty. Limited; file 73, Parks Development; file 78A, Whitehall Convalescent Home; file 78B, N. Andrews; file 80E, Selby Nominees; file 80A, Pevsner called for. Files 78A to F and 80A to F produced.) 10

MR. MORLING: Q. It is your experience that two valuers may value the same property and come up some times with quite significantly different valuations, is it not? A. Significantly different I find hard to - they can come up with different valuations but they should not be highly significantly different. 20

Q. Indeed, you heard Mr. Clarke open your company's case this morning, did you not? A. Yes.

Q. No doubt he accurately opened it when he informed his Honour that there may well be evidence from a valuer to be called that the East Crescent land was said to be worth \$180,000 as at the time your company advanced money on the security of it; is that so? A. Yes.

Q. Your company, I think, has discovered a valuation from Hardie & Gorman on that same land at the same date at \$117,000, has it not? You have seen a valuation of that land made quite some time ago by a reputable valuer, in whom your company places trust, at \$117,000, have you not? A. Yes. 30

Q. Indeed, the main reason why you from time to time sought expressions of opinion on value from Richardson & Wrench was so you, that is to say your company, could have the benefit of a valuer's view expressed to you independently of the mortgagor, wasn't it? A. My own view has been that - I think there is an expression used in the A.F.L. Minutes sworn valuation which is my wording, because I put the recommendation to the Board and they adopted it. But as an engineer I believe that you can value assets quite precisely. Now, assets can be sold under distressed conditions at below a fair market price but I believe that if competent valuers value a property on the basis of fair 40

market price, based on sale being determined between a willing seller and a willing buyer then there should not be a large range in values. But I may say that as a professional man and as an ignoramus in these things, but that is my belief.

* Q. Whatever your belief was, it was your company's belief that it ought only to act on valuations obtained from Richardson & Wrench independently of the mortgagors when lending money, and that is why you had the arrangement with them, wasn't it?

A. I think from what I have said that it is important that you have trust in the valuer and if valuers are competent and reputable then I believe that they should give you a figure which lies within a relatively narrow range. But if they can't do that there is no point in looking at a valuation. 10

Q. Do you still have difficulty in answering my question?

A. We regarded Richardson & Wrench as being competent and trustworthy valuers.

(Question marked * read)

WITNESS: It was the company's belief that we should act on valuations from Richardson & Wrench. We didn't believe that Richardson & Wrench's valuations would vary depending on who they were valuing for. In other words, it didn't matter whether it was requested by the intending mortgagee or requested by the mortgagor. 20

MR. MORLING: Q. It certainly was not a matter of the valuations coming through a solicitor. You did not look on the solicitor as giving the valuation any greater or less credence? A. The solicitor was of no moment. The important thing was the valuer.

Q. (Approaching) I appreciate the detail of these files will escape you until you refresh your recollection, but I think 65 Alexander Street, Crows Nest, was a property which was offered to your company early in 1972 - A. Yes, I recall - 30

Q. - as security for loan? A. Yes.

Q. When it was offered to you the intending mortgagor furnished to you the original of the valuation by L.J. Hooker Limited, signed by a gentleman who was said to be Mr. K.J. Parks, A.C.I.V., dated 2nd September 1971? A. Yes.

Q. You would agree with me that you knew the letters A.C.I.V. to refer to associated membership of the Commonwealth Institute of Valuers? A. I knew it was a professional qualification. 40

Q. You knew Hookers to be in a very large way of business in this city in the way, inter alia, of valuing real estate? A. Yes.

Q. You will agree with me that there was submitted to your company in aid of the application for loan a balance sheet and profit and loss account of the intending mortgagor, Associated Management Pty. Limited? A. Yes.

Q. You will agree with me that your company sought from Dun & Bradstreet a confidential report on the credit worthiness of the applicant mortgagor? A. Yes.

Q. You will agree with me that you asked the Bank of New South Wales to check with the Commercial Banking Co of Sydney the credit-worthiness of the applicant mortgagor? A. Yes.

Q. Notwithstanding the fact that you had had a valuation from the mortgagor, you gave instructions to Richardson & Wrench to value the land, would you agree? A. I'm not sure of the nature of the instructions given to Richardson & Wrench.

Q. A reasonable comment. May I draw your attention to a letter of 28th February 1972, in which you said, inter alia, your company's been asked to consider an advance. "No action is required of you unless instructed by the applicant to make a valuation, the cost of which is to be borne by him. If so instructed will you kindly value 'for and on behalf of intending mortgagor' and also include the value of the land as distinct from the value of improvements" and referring to a discussion which apparently, Mr. D. Minks had already had with Mr. Hodgson. Do you recognise that? A. That isn't a discussion. It says that Mr. Minks had made a preliminary inspection.

20

Q. With Mr - A. With Richardson & Wrench.

Q. So that what happened in that case was that there was apparently a joint inspection by the financial analyst of Kooragang with Mr. Hodgson of Richardson & Wrench, is that right? A. Yes. Well, I'm not sure whether it was with Mr. Hodgson. Certainly somebody from Richardson & Wrench.

30

Q. You will agree with me that subsequent to the letter from Kooragang to the defendant on 28th February a reply dated 6th March 1972 came to Kooragang from Richardson & Wrench? A. Yes.

Q. So that in the first case in which an intending mortgagor had furnished to your company, Kooragang, a valuation from a qualified valuer employed by a reputable company you were not prepared to act on that but sought directly from Richardson & Wrench its opinion as to the value? A. In that first case, yes.

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(Plaintiff's file relating to 65 Alexander Street,

Crow's Nest, No. 72, tendered without objection and marked Ex.1)

(His Honour indicated he would give Mr. Clarke liberty to speak to Mr. Satchwell after his cross-examination had finished for the purpose of re-examination)

(Mr. Clarke submitted most of the material went to the plea on which Mr. Morling bore the onus and which in normal circumstances he would seek to meet in his case in reply. He sought leave to re-examine at this stage without it being suggested he was splitting his case. Mr. Morling had no objection)

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Q. (Approaching) If I could now approach you with file 77, which I suggest to you is your company's file in respect of the property known as 288 Maroubra Road, the intending mortgagor being Supreme Garages Pty. Limited. I will not give dates and so on because the files will speak for themselves. You will agree you were furnished initially with a valuation dated 2nd December 1970 by Stanley Thompson, Real Estate Pty. Limited? A. Yes.

20

Q. You were approached during 1972 - and the file speaks for itself - for a mortgage on behalf of the company and at that time you were furnished with a valuation dated 4th May 1972 by A. Norton Pty. Limited. On 28th July 1972 you wrote to Richardson & Wrench advising them that the company had been asked to consider an advance - and the letter will speak for itself. You in due course received a valuation from Richardson & Wrench dated 8th August 1972, with a valuer's initials in the window-box on the first page, and it appears to be the original valuation, you will agree? A. Yes.

30

Q. Thereafter I think you made a loan to the mortgagor, would you agree? A. Yes.

(Plaintiff's file relating to 288 Maroubra Road tendered without objection and marked Ex.2)

Q. (Approaching) I approach you with file 73, which I suggest to you is your company's file in respect of a property known as Glebe Road and Mary Street, Glebe and owned by Parks Developments Pty. Limited. A. Correct.

40

Q. An application for a loan was received on 5th May 1972. Your company wrote to Richardson & Wrench giving them certain details of the property which said, "We have asked you to view". You obtained apparently a Dun & Bradstreet credit report on the company, you will agree? A. Yes.

Q. In due course you received a valuation dated 25th July 1972 with a valuer's initials noted on the front of the valuation, and it was an original valuation? A. Yes.

Q. Thereafter your company advanced money on the security of the land? A. Yes.

MR. MORLING: Q. You were also furnished with the balance sheet and profit and loss accounts of Parkes Development Pty. Limited and its subsidiary companies? A. Yes.

Q. And they were said to have been prepared by a very well known large Sydney firm of public accountants, you will agree - Charles J. Berg & Partners? A. It is a well known firm. 10

(Plaintiff's file relating to property Glebe Road, Elizabeth Road, Glebe, tendered without objection and marked Exhibit 3")

Q. If I could just have that file back again for a moment; I suggest to you that on 5th May, 1972, in your letter of that date to Richardson & Wrench, after setting out some details as to the building, in the letter Mr. Minks said, "I believe Jones, Lang Wootten valued this property at \$680,000 in August 1971", is that right? A. Yes. 20

Q. And that letter was written on 5th May, 1972, then referring to a valuation apparently made by Jones Lang Wootten in August 1971, do you agree? A. Yes.

MR. CLARKE: Your Honour, could I say this, that I am not opposing these documents going in as perhaps shortcutting lengthy cross-examination. What is concerning me a bit is that it is building up voluminously the documentation in the matter, and I do not know whether it might be better to have the time spent in cross-examination. 30

HIS HONOUR: I do not want to stop Mr. Morling. He no doubt considered what would be the most convenient way of doing this.

MR. CLARKE: Well, either way the material comes out.

MR. MORLING: Your Honour, I would be quite content to take a little more time, and not tender the files.

HIS HONOUR: I am in your hands, Mr. Morling.

MR. MORLING: Your Honour, perhaps I will be a little slower and try to avoid the tenure of some documents.

Q. Before I leave that, you would agree that Jones Lang Wootten held a high reputation in this city in 1972 as, inter alia, valuers of real estate? A. Yes. 40

HIS HONOUR: Mr. Morling, another course that may be available is, I would be prepared to give you leave to administer another set of interrogatories to the plaintiff on these files, if you think that would be a way of dealing with the matter.

MR. MORLING: Your Honour, I would think I would finish in half an hour. Speaking for myself, we have only seen these files in the last three or four days.

Q. Mr. Satchwell, if I could ask you now to look at file 78B, (approaches witness) which is part of a large bundle of files marked 78A to 78F. I want to suggest to you that this was a file in respect of an applicant for a loan over property 161 and 163 Military Road, Neutral Bay, and that your company had furnished to it by the mortgagor a copy valuation by Richard Stanton & Sons, which states that the property was inspected on 22nd November 1972 and that notwithstanding that that valuation was furnished to you, you obtained a valuation or you required the mortgagor to obtain a valuation from Richardson & Wrench, the original of which is in your file; would you agree with that? 10
A. Yes. 20

Q. The valuation has on the front of it the valuer's initials, do you agree? A. Yes.

HIS HONOUR: What is the date of it?

MR. MORLING: The date of the valuation is 1st February 1973. Your Honour, may I do this at this late hour: I will not tender that vast file. I will consider overnight whether I cannot furnish to my learned friend a schedule, and note on the schedule any information which I want and he wants from the file. He can consider at leisure whether he wants to add anything to the schedule. I have a handwritten schedule here; maybe between the two of us we can work out a joint one. 30

HIS HONOUR: Q. Can I contribute my mite by asking you this: Who made the decision as to whether or not a valuation should be sought from Richardson & Wrench; or whether you would accept some documents admitted on behalf of the mortgagor - was it you or someone else? A. It was the board which would make that decision, your Honour.

MR. MORLING: Q. Mr. Satchwell, what I want to put to you - if you say you cannot answer because you cannot remember the details - is this, that the fact of the matter is that your company did not act on a mortgagor's valuation in other cases; but when it had valuation, as it frequently did, from reputable valuers in this city, it went to its own advisers, Richardson & Wrench, and either sought a formal valuation or sought some oral confirmation that the valuations upon which they were asked to rely could 40

safely be relied upon. Does your knowledge of the files enable you to agree with that? A. My knowledge would indicate that the company would accept a Richardson & Wrench valuation and that became known amongst the mortgage brokers.

Q. Well, I wonder whether you tried to answer my question, which was nothing like that, Mr. Satchwell. May I put it to you again: I want to suggest to you that an examination of your files, your company's files, will reveal that from time to time it had furnished to it valuations by valuers of repute in this city, and such valuations being furnished by the mortgagor - do you follow me - and on occasions such as that, when it did receive mortgagor's valuations, it nevertheless sought from its own valuers, either a formal valuation or at least an oral confirmation, that it would be safe to rely upon the mortgagor's valuation. Does your knowledge of the files enable you to agree that that is the way that your company acted, in respect of mortgagor's valuations? 10

HIS HONOUR: For the purposes of this question, assume that Mr. Morling is talking about valuations prepared by someone other than Richardson & Wrench on behalf of the mortgagor. 20

WITNESS: Thank you your Honour. Yes, in that case, yes, by someone other than Richardson & Wrench, on behalf of the mortgagor, yes.

HIS HONOUR: Q. Has there been any case other than the one we are concerned with, where, on behalf of the mortgagor, valuations purporting to be or being by Richardson & Wrench have been submitted - do you follow? A. Not to my knowledge, your Honour.

MR. CLARKE: Your Honour, I was going to take that up further from the files. 30

MR. MORLING: Q. Well, can I show you just one such case, (approaches witness). I draw your attention to file 80A in relation to property 228 Headland Road, Brookvale, and a request for a mortgage by a Mr. Pevsner. You will observe that on 6th December 1973 Donald G. Cameron & Associates wrote to your company re Mr. Michael Reginald Pevsner, and setting out the details of a loan with Mr. Pevsner was seeking - right? A. Yes.

Q. Your company replied on 13th December, 1973, to Cameron Associates saying, in a letter, you "would be prepared to consider lending 65 per cent of our Richardson & Wrench Limited valuation" - right? A. Yes. 40

Q. And going on to state in general terms what the terms of a loan would be, and saying in the third paragraph, "This is subject to an independent valuation by Richardson & Wrench, the

cost of which to be to your client's account, and which should be paid prior to submitting the valuation to us. In requesting the valuations, the company is not committed to granting a loan". - Right? A. Yes.

Q. And then your company wrote a letter of 30th December, 1973 - I am sorry there are two Pevsner files; I apologise, Mr. Satchwell. Can I draw your attention to what is indeed file 80A, also in respect of Mr. Pevsner. Can I draw your attention to a letter dated 28th February, 1973, in which Donald G. Cameron & Associates 10 wrote to your company, seeking on behalf of Mr. Pevsner your attitude to the lending of some money on property, being 228 Headland Road, Brookvale? A. Yes.

Q. In the body of the letter, which is of some length, there is a reference to a valuation of \$250,000 placed on the property by Richardson & Wrench. Annexed to the letter is a copy of a valuation dated 9th May, 1973 by Richardson & Wrench Limited? A. Yes.

Q. So this was a case in which a mortgagor was coming to you, already having obtained a valuation from Richardson & Wrench, 20 was it not? A. Yes.

HIS HONOUR: How much was he seeking, Mr. Morling?

MR. MORLING: I think \$130,000, your Honour.

HIS HONOUR: So that would have been within the limit of 65 per cent of the \$250,000?

MR. MORLING: Yes your Honour.

Q. Then there is some of your company's documentation which refers to the property and says that the first mortgage acquired was \$130,000, and refers to an existing second mortgage of \$40,000 to be retained. Now can I draw your attention to what appears 30 to be a copy of a telex dated 20th March, 1973, to Mr. A.W. Hamer from yourself, and it reads, "Re query on loan to M.R. Pevsner, Richardson & Wrench had already valued this property in Brookvale in May 1972, for \$250,000. They confirmed that this valuation would be increased if valued again in March 1973. They therefore consider that the property was a good mortgage prospect, especially as Kooragang is lending only 56 per cent of a 1972 valuation"; do you follow that? A. Yes.

Q. What I am suggesting to you is this: that in a case in which prior to coming to your company for mortgage accommodation, 40 a mortgagor had obtained a valuation from Richardson & Wrench, and in a case in which the mortgagor, having obtained a valuation himself, submitted it to you, that your company got in touch with Richardson & Wrench and got them to confirm that it would be in order for the plaintiff to lend on the faith of the valuation.

K. Satchwell, xx

That is so, isn't it? A. I can't recall. Obviously Mr. Hamer has queried something there and that matter could have been checked after a query from him.

Q. Well, you may reasonably ask the opportunity of ascertaining that overnight. But you will agree with me that the course of action which your company took in that case in which a mortgagor had obtained, independently of you, a valuation, was to check with the valuer, won't you? A. We did apparently check with the valuer. I am not sure when we made that check, but the telex indicated we did. 10

(Plaintiff's file 80A relating to premises, 228 Headland Road, Brookvale, tendered and marked exhibit "4")

(Further hearing adjourned to 10 a.m. on Tuesday 3rd June, 1980)

IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION
COMMERCIAL LIST

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No. 3568 of 1976

CORAM: ROGERS, J.

KOORAGANG INVESTMENTS PTY. LIMITED

V.

RICHARDSON & WRENCH LIMITED

SECOND DAY: TUESDAY, 3RD JUNE, 1980.

MR MORLING: There are just one or two matters in the transcript. 10
At p.14, about .6, "and the company was now in the moneylending
field"; it should be "new in the moneylending field".

HIS HONOUR: Yes, that is right; replace the word "now" with
the word "new".

MR CLARKE: On the same page, sixth last line, it is not "Central
Queensland Assets", it is "Acids".

HIS HONOUR: What I would like the parties to do is to agree to
a list of amendments to the transcript. But we can correct it
now, Mr. Morling, if there is anything.

MR MORLING: On p.18, first line, "If the matter proceeded beyond 20
that stage a more formal and complete valuation was obtained";
it should be "a more formal and complete valuation was required".

HIS HONOUR: Yes; replace the word "obtained" with "required".

MR MORLING: Page 19, mid-page, I think it should be "would
Hooker's valuation have been prepared for the mortgagor".

HIS HONOUR: Yes; insert the word "valuation" between "Hooker's"
and "have been".

MR MORLING: Page 23 .3, "Mr. Satchwell, the premises were almost
hard up against a hotel and were trading as to part as a butcher
shop as part of the street frontage"; the word "as" should be "on".30

HIS HONOUR: Yes; replace the word "as" with the word "on".

MR MORLING: Page 27, fifth line, it should be the "Glebe Point
property", not the "Glebe Street property".

HIS HONOUR: Yes.

MR MORLING: Next page, 28, about line 8, "Having received a photostat copy of a valuation, and having received that out of the ordinary course of your doings" - it should be "dealings".

HIS HONOUR: Yes; replace the words "doings at with "dealings with".

MR MORLING: Page 31, about the fifth question, "And you thought you were acting for reasonable prudence"; it should be "with reasonable prudence".

HIS HONOUR: Replace the word "for" with the word "with". 10

MR MORLING: And the same about two questions down: "You thought you were acting with reasonable prudence"; and about two questions down: "of course you knew that the mortgagor occupied all or some of your premises"; it should be "the premises".

HIS HONOUR: Yes.

MR MORLING: In the fifth last line on the same page "Could I draw your attention to a document E12 headed 'Future meeting'"; it should be "future lending".

HIS HONOUR: Replace "meeting" with "lending".

MR MORLING: On page 40, last question, "Then there is some of your company's documentation which refers to the property and says that the first mortgage acquired"; that should be "required". 20

HIS HONOUR: Yes, replace the word "acquired" with "required".

HIS HONOUR: Anything from you, Mr. Clarke?

MR CLARKE: No, there is nothing. I am just not sure about that last one, your Honour.

HIS HONOUR: If you have any doubts, you can mention it again.

MR CLARKE: Your Honour, could I hand up a bundle of documents, which will form Ex.A.

KEITH SATCHWELL 30
On former oath:

CROSS-EXAMINATION Cont'd

HIS HONOUR: Mr. Satchwell, you are bound by your former oath.

MR MORLING: I wonder if I could indicate to your Honour a little homework which I have done very quickly overnight, in an effort to shorten the cross-examination, although I think it will not be possible to avoid the tender of at least a number of files which can be talked about in address. It was only typed minutes before I came to court, and I have given a copy to my friend and if I could hand it up. I do not of course claim any evidentiary value for it.

HIS HONOUR: No. Thank you very much.

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MR MORLING: If I may, for a moment, hand a copy to the witness, because he may be assisted in my explaining to your Honour. Firstly, there are bound to be a few I think fairly irrelevant typographical errors. The file number is the file on documents discovered to us. There are some queries because whilst I am not suggesting that all the files were not produced, I simply was not able to identify all the file numbers completely this morning.

HIS HONOUR: I follow the format.

MR MORLING: The next two columns speak for themselves. Under "mortgagor's valuation" I have listed, and I relied on my notes only, not an inspection of the files overnight, cases in which there has been a valuation in the plaintiff's file, either of another valuer or, to take the second case, I have got "R. & W.". That was not a case I put to the witness yesterday; I will put it to him today. But there are one or two cases in which - the first one on the second page is 228 Headland Road, Brookvale, where there is in fact an R. & W. valuation which seems to have been commissioned independently of any interest of the plaintiff. Then the dates of valuation are shown.

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HIS HONOUR: Which ones are they, the mortgagor's valuation?

MR MORLING: Yes, where dates of valuation are shown, they are dates of Richardson and Wrench valuations, and if my friend is about to say there is no evidence of these - -

MR CLARKE: No, I was not going to say that.

MR MORLING: I was going to say that almost without exception the dates which I have taken from my notes are dates which are discoverable from valuations which are in the files; and our own records indicate the same dates.

HIS HONOUR: Mr. Morling, may I make a suggestion, that the document would become even clearer if one inserted somewhere the dates of the valuations of the mortgagors.

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MR MORLING: Yes your Honour, I agree with that. I myself would have to have access to the files to do that. I am not for one moment saying this is a complete picture of the files. Then the exercise stops at this stage for two reasons. If I could make the document even more explicable, by asking your Honour to go to annexure A to the plaintiff's answers to interrogatories, because there is set out in a very compendious form there the list of advances made by the plaintiff. If your Honour sees, there is a two-page annexure, right at the end of the answers. The order of properties on the list which I have partially prepared is the same order as on that list annexed to the interrogatories. Your Honour will see that there is a number not yet on it. However, your Honour sees the next one after Bakas is the Glebe Point Road one, and then all the other ones are after the events which we are talking about here. So that although we may well wish to complete the list, I apprehend the list which I will now be inviting the witness to look at gives a picture of the plaintiff's actions up until the time they completed the loan on Glebe Point Road.

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MR CLARKE: Your Honour, before Mr Morling starts with the witness, there were produced on subpoenas files for the defendant relating to those matters. I have not seen them, but I understand they are in court. I wonder if they could be handed down.

HIS HONOUR: Yes.

MR MORLING: Q. (Approaches witness) Mr. Satchwell, I will have to ask you for the moment to assume that the entries on the document which I have now placed in front of you are correct so far as they go, and all my questions will be asked on the assumption that your company's files will verify the entries which are on the list.

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(Schedule prepared by defendants, of certain loans made by plaintiffs, tendered and marked Ex.5.)

MR CLARKE: Your Honour, that is on the basis my friend has indicated, that it has no primary evidentiary value, I perhaps will agree with it later when I have had a chance to check it.

HIS HONOUR: Yes, I would expect that would be so.

MR MORLING: Q. Mr. Satchwell, the plaintiff company obtained its moneylending licence I think on 3rd February, 1972; that is so, isn't it? You may accept that as being correct? A. Yes.

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Q. If that is correct, it would not be correct to regard the two loans which are the subject of these proceedings as being some of the first loans made by Kooragang, would it?

A. I can't - they were early loans made by Kooragang; I am not sure how many were made before then.

Q. At P.23 of the transcript yesterday, in relation to your inspection of the Glebe Point Road loan, you said this at about mid-page, "Well, I perhaps should say that I went out more out of curiosity than anything else. It was one of the first transactions being conducted by the company of this nature". Now you would agree that that was not so? A. Well, I think that I have just said in response that "first" can mean "early" in this sense. 10

Q. Well, the fact is that I think the company ceased lending money altogether in 1974, didn't it? A. Yes, about 1974.

Q. And the actual advance made by your company on the security of the Glebe Point Road land was made, according to the answer you gave to the interrogatories, on 18th January, 1974; if I can refresh your recollection by showing you the schedule which was furnished on your interrogatories, (approaches witness) the last loan being made in respect of the property at Chatswood on 19th October, 1974. That is so, isn't it? A. Yes. 20

Q. So that in fact, whilst there had been correspondence with the mortgagor and his representatives in 1973 relating to the making of an advance on the Glebe Point Road land, the actual advance was made more than half way through your company's history of lending activities, was it not? A. The actual loan was made then; of course the transaction commenced somewhat earlier. 30

Q. I think your file will reveal, and you are quite correct, that I think possibly by August the previous year you had offered the loan to the intending mortgagor, but that was 18 months after you had commenced in the moneylending business, wasn't it? A. Yes, approximately.

Q. So you would agree that the statement you gave yesterday was incorrect - I do not suggest intentionally? A. Well, perhaps I could explain it this way: I would be happy to indicate what properties I had inspected and which I had not, and I think that it would be shown that I did not inspect many but I inspected all the initial transactions. To me, this company was going to be involved in this field for quite a long time, but as it happened the final loan was made in 1974 as you indicate. 40

Q. If you would just come back to the list which is now Ex.5, the first one on the list is 65 Alexander Street, Crows Nest?
A. Yes.

Q. And as we saw yesterday, the valuation of that property had been made by L.J. Hookers - right? A. Yes.

Q. And that valuation had been made before Associated Management approached you - when I say "you", I mean Kooragang- and was furnished to Kooragang by or on behalf of the intending mortgagor? A. That is my recollection.

HIS HONOUR: Mr. Morling, with your agreement, I will add Ex.1 to the extreme left hand side of your schedule.

MR MORLING: Thank you your Honour. If I can just explain, the reason why I have got "?valuation obtained from R.&W." is that I was not, in the short time available to me, able to be certain that what might be called a full valuation was obtained from R. & W. The file would indicate whether it was or was not; I am fairly confident that it was. 10

Q. But in any event, Mr. Satchwell, on 6th March Kooragang was informed by Richardson and Wrench of its opinion of the value of the land being offered as security - you may accept that? A. Yes.

Q. And your company made an advance on 24th March, did it not? 20
A. I accept that this is correct.

Q. But whether Richardson and Wrench were an approved valuer or not, you had a valuation from a large and reputable firm of real estate agents, and a valuation made only a few months before a mortgagor had come to you seeking a loan, didn't you?

HIS HONOUR: Well, with all due respect, Mr. Morling, I think you should put the dates to him. The date of the valuation was 2nd September, 1971. What do you put as the date of the application for loan? I do not think he would know that.

MR MORLING: Your Honour, I was assuming it must have been before March 1972. 30

HIS HONOUR: I think you would probably be right to put it to the witness. By reference to the documents it would seem to be February 1972, and you might perhaps show him Ex.1.

Q. Mr. Satchwell, the dates seem to be: the date of valuation, September 1971; and the document, part of Ex.1, which Mr. Morling will show you, would indicate that the application was in February 1972. In the light of that, counsel is saying to you, you had a valuation made only a few months before. A. Yes.

MR MORLING: Q. Well that is, with substantial accuracy, correct, 40 is it not? A. That is correct, but Kooragang Investments were operating in terms of a minute from the A.F.L. Board which approved of Richardson and Wrench as valuers. There were no other approved valuers at the time. So we made no judgement on the Hooker valuation at all.

Q. There is a big difference between the lapse of time between the valuations which you obtained in respect of East Crescent and the date of loan in that case, if I can remind you - and again I am referring to the schedule to the interrogatories; the second last entry on p.1 shows the date of the loan as 5th October, 1973, and the evidence is that the valuation was dated 14th June, 1973.

MR CLARKE: Your Honour, could I say here - my friend used the date of loan, but it is perhaps unfair to the witness not to look at the date when the offer was made and accepted. 10

HIS HONOUR: Yes, in some instances that may be so. I think in the present context it would probably be preferable, Mr. Morling to look at the date when he was really considering making the loan.

MR MORLING: Q. Mr. Satchwell, if you had discovered in any case that the value of the security had fallen, before the time when you actually advanced the money pursuant to a loan, you would have sought to have withdrawn from the loan arrangement or to have reduced the amount of your loan, would you not?

MR CLARKE: Your Honour, I have difficulty with that, because it is arguably a matter of binding contract. There was an offer made on certain terms, but it does not seem to be a condition of any case here of any right to withdraw if value has dropped. 20

MR MORLING: That may be so, your Honour, but it is a very tedious exercise to go through every file.

HIS HONOUR: Whilst you are being interrupted, Mr. Morling - you may strike out the question mark on Ex.5 in relation to Crows Nest. I looked through the file, and indubitably there was a valuation obtained from Richardson and Wrench. 30

MR MORLING: Q. Can I take you to Glebe Point Road. You had a valuation there which bore a date I think 28th March, 1973, did you not? A. I don't know the date on that valuation.

Q. And that was a period of 18 days, you will agree? A. Yes.

Q. I suppose you would agree that if you are going to rely upon a valuation, it needs to be made as at a date quite proximate to the date of your advance? A. Not necessarily.

Q. Well, ordinarily? A. Preferably, but not necessarily.

Q. You would know, for instance, that the zoning of land might change, I suppose, would you? A. Yes. 40

Q. Premises might be altered or damaged by storm, wind or tempest or whatever, might they not? A. Yes.

Q. When you said you would not necessarily need to have a valuation which was proximate in point of time to the date of your advance, were you meaning to say that it would be all right to have an old valuation, provided you checked up on it before you made the advance? A. No. I meant to imply that the valuation need not be made immediately before the transaction. You have pointed out that zoning of land could change, and that certainly would be important if the valuation were based on some new use for the land. If the valuation is based on existing use, then that matter would not be of great moment. The important thing is what might have happened to the property market in the meantime, in my view. 10

Q. Values might go up or down? A. Yes, and particularly if there was some suggestion that it was going down, well, then, someone lending money should seek to have a new valuation made, to ensure that the previous valuation was not higher than the present market. 20

Q. In any event, you will agree that there were only eighteen days between the date of your loan and the date of the valuation of Richardson and Wrench, in that case? A. We called for the valuation, and acted almost immediately.

HIS HONOUR: Would it help you, Mr. Morling, if we inserted the date 2nd September, 1971, under L.J. Hooker.

MR MORLING: It would you Honour, yes.

HIS HONOUR: I am inserting that, Mr. Clarke. Just so the transcript is intelligible, that insertion is on Ex.5.

MR MORLING: Q. Mr. Satchwell, did I understand you before to say that you really had not made many physical inspections of properties, as at the time you inspected Glebe Point Road? A. Yes, that is correct. 30

Q. Then you will agree with me that you would have made quite a number before you inspected Glebe Point Road? A. I may have made perhaps - I am guessing now - perhaps 12: in terms of time spent, six hours.

Q. You were of the view that there had been no fall in values between September 1971 and March 1972, in respect of land at Crows Nest, weren't you? A. I am sorry, could you repeat the question? 40

Q. You had no cause for concern that property values in Crows Nest may have fallen between the date of the Hooker valuation, which you may take to be 2nd September, 1971, and the date when you obtained valuation advice from Richardson and Wrench, which you may take to be 6th March, 1972? A. I had no concern.

Q. No; your concern to get a valuation from Richardson and Wrench was that you thought it to be the only prudent thing to do - that is to say, to get independent valuation advice?

A. The reason why we sought a Richardson and Wrench valuation was that Richardson and Wrench were an approved valuer, and we had respect for the standard of their valuation.

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Q. That was the fact, you may assume. Do you know when your company agreed to make an advance to the mortgagor in that case? A. Some time in 1973; I don't know the exact date.

Q. You know in fact they did not advance money until some time in January 1974, don't you? A. I am aware there was time delay in making the advance.

Q. You will agree that a period of five or six months elapsed before you agreed to grant the loan in respect of the Glebe Point Road property? A. The file would show the time. I can't - -

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Q. I think on 27th August there was a board meeting at which the board said it was satisfied with the information which had been furnished to it, you may recall from yesterday's evidence? A. Yes.

Q. So that the period of six months elapsed, after you received this photostat copy of a valuation, bearing nobody's initials, before you relied on that in the sense of agreeing to advance the loan, you would agree? A. There was a time delay, yes.

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Q. And I think the file indicates that the mortgagor was unable to give title to the land in that case. Are you sufficiently familiar with the file to agree with that? A. I recall there was a hold up because we could not get clear title.

Q. And is it your present belief that you could have withdrawn from that transaction at any time in 1973? (Objected to, withdrawn).

Q. Are you able, from your present recollection, to tell me whether it was your view in 1973 that you could withdraw from the loan at any time during 1973? A. I would need to - there was no suggestion that we would withdraw from any loan if an offer had been made and accepted, if matters were being dealt with expeditiously from that point of time onwards. Whether

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we had a legal right to withdraw, I could not comment on, but my recollection was that all offers were made by the company in quite definite terms and were firm offers. So we may not have had the right to withdraw unless the potential mortgagor was not complying with the terms of the offer.

Q. Let me come to the second case; in that case you may assume that there was a valuation of I think of some age from Stanley Thompson Real Estate in respect of properties known as 1 to 9 The Corso, part of which had been disposed of before the applicant for the mortgage came to your company for a loan; and I suggest to you that in that case there, a valuation had been prepared by Richardson and Wrench shortly before your company got its moneylender's licence, and certainly before your company had commenced to lend money; you will agree - that is 2nd February, 1972? A. Yes. 10

Q. And that was a valuation made by a valuing company with which A.F.L. had had a long standing association? A. You are referring to Richardson and Wrench?

Q. Yes. A. Yes. 20

Q. And yet you checked with Richardson and Wrench before agreeing to make the loan in that case. I suggest to you one reason why you checked was that the valuation was at a point of time somewhat earlier than you were making the loan? A. Yes, and probably before we were even in the business area.

Q. But it was some form of reputable valuers which made the valuation?

MR CLARKE: Your Honour, I know that there are assumptions, but if it is a quite wrong assumption - I have had a quick look, but I cannot find a valuation of Richardson and Wrench. I might be quite wrong, it might be here. 30

MR MORLING: The valuation is dated 2nd February, 1972, under instructions from W.T. Merriman of, the word should be "Talmitsa" not "Talmita".

HIS HONOUR: Mr. Clarke, I do not think that it makes much difference to the point of Mr. Morling's question; if in fact there was a check made after 2nd February, then what he says still has validity. That is really the crucial question.

MR CLARKE: Yes, your Honour, that is the point I do not see.

HIS HONOUR: There is nothing on the file to indicate a check subsequently to 2nd February. 40

MR CLARKE: All I can see on the file is a request that the mortgagor get a valuation from Richardson and Wrench.

HIS HONOUR: And there is one then on 2nd February.

MR CLARKE: I do not think that it is clear, but there certainly was one done, yes.

MR MORLING: Your Honour, I would be very surprised if, either in the file which my friend has discovered, or which I am instructed we have discovered, that does not --

HIS HONOUR: I am sure that you did not conceive this in the middle of the night out of nothing. 10

MR MORLING: No your Honour. And if I can tell my friend that in some of these matters there is not always a total correspondence between his files and ours. For instance, I have occasionally seen, say, an original letter in one file, a copy of which is not in the other.

HIS HONOUR: Mr. Morling, the course I suggest we take is this: Mr. Austin can search through the material that we have, and you can proceed to another example, and then Mr. Austin or Mr. Rolfe can satisfy Mr. Clarke or Mr. Burns as to where the material is. 20

* MR MORLING: Q. The third case, 288 Maroubra Bay Road, I asked you some questions about yesterday; and in that case you obtained a valuation from Richardson and Wrench as some sort of check on the valuations obtained at some prior point of time by the mortgagor?

HIS HONOUR: 2nd December, 1970.

MR MORLING: That is Stanley Thompson, your Honour?

HIS HONOUR: Yes.

MR MORLING: There are two; there is one from Norton Real Estate somewhere in the file. 30

(Above question marked with asterisk repeated.)

Q. Do you agree with that? A. We obtained a valuation from Richardson and Wrench to consider, not as a check on prior valuations. We were seeking a valuation from Richardson and Wrench.

Q. The loan which you made, according to the answer to interrogatories was made 23 days after having received Richardson and Wrench's valuation? A. Yes.

Q. And you would regard that as a fairly normal sort of delay, in the way you conducted the company's affairs? A. That is a fairly short delay, considering the time required for - what is the legal term - conveyancing.

Q. All right. If you go to the next case, there was no mortgagor's valuation.

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HIS HONOUR: Before you pass on, you can add the Norton valuation was 4th May, 1972, Mr. Morling.

MR MORLING: Q. If we go to the next one, which has the mortgagor's valuation shown, it is 451/465 Glebe Point Road, the valuation which you obtained in that case from Richardson and Wrench was dated 25th July, 1972, and the date of loan is shown as being 19th September, 1972, a period of about seven weeks. Does that strike you as being a fairly normal period which your company found was elapsing between Richardson and Wrench's valuations and the making of your loan? A. Well, with deference, 20 I think the important thing is the date at which an offer was made and when the date of the loan was made. It so happens that with Richardson and Wrench valuations which were received, we probably had a meeting immediately the valuation was received and then made an offer. So in these cases where the valuation has come in, we had previously considered it, and subject to the valuation being satisfactory, we would proceed to make an offer. But if we take the date of the decision to make the offer as being approximately the date of valuation, there is nothing unusual about that length of time.

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Q. I think you commenced that answer by saying something like this, didn't you, that when a Richardson and Wrench valuation came in, you usually made an offer straight away. Am I misquoting what you said? A. No. In many cases, you see, we had what was termed a sighting offer from Richardson and Wrench, and we considered the application on that basis. Then we were not prepared to make a definite decision until we had what Richardson and Wrench regarded as an official valuation, which was a much more expensive document to obtain. But we would have considered the application and virtually decided that we were proceeding with the loan, subject to the valuation being acceptable to us.

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Q. Well, you did not have sighting valuations or offers from Richardson and Wrench in either of the two subject cases, did you? A. I could not say, but I am saying --

Q. Well, don't you know that? A. No, I can't recall them.

Q. And insofar as you obtained written valuations, you did not treat those in the same way and then treat them as being confirmatory, because you sought much additional information from the mortgagors after you had obtained these photostat copies, didn't you, of the two subject properties? A. We obtained whatever additional information we required, yes.

Q. So that you treated these two cases differently from the other cases in which you had Richardson and Wrench valuations?

A. Not necessarily. I can't recall the exact detail of every transaction we entered into.

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Q. Can we just take this same property. Certainly the date when Kooragang agreed to make the loan to Parkes must have been either on or some time after prior to 19th September, 1972?

A. Yes.

Q. So there was a gap of either seven weeks or something less?

A. Yes.

Q. Between the date of the defendant's valuation and the date of your agreeing to make the loan? A. Yes.

Q. The next one in which, according to my imperfect researches, there is a mortgagor's valuation is 161-163 Military Road, and I do not know whether your Honour can find the date of that or not.

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HIS HONOUR: In the Parkes one the date was 31st August, 1971 - that is 451-461 Glebe Point Road - and I put Ex.3 against it in the left hand margin there.

MR MORLING: Can your Honour refresh my recollection as to whether the file for 161-163 Military Road was tendered?

HIS HONOUR: No, it was not. You extracted certain information from it.

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MR MORLING: I have that file.

MR CLARKE: We have it, it is file number 78B

MR MORLING: The valuation of Richard Stanton is 22nd November, 1972.

HIS HONOUR: Yes, I will add that.

MR MORLING: Q. (Approaches witness) Mr. Satchwell, I want to suggest to you that, not in every case but in most cases, when one talks of a valuation of Richardson and Wrench, one talks of a document in which there is, on the front page, mostly of the original valuation, a reference to the initials of some person. Would you agree with that? A. On most, yes.

Q. I am just putting that one to you at random? A. Yes.

Q. Is it your recollection that on most occasions when you had valuations from Richardson and Wrench, they were originals with initials on them? A. On most occasions, yes. 10

Q. And on occasions when you did not have the originals, did you have carbon copies, can you recall - I am not putting it to you affirmatively, because I am not able to say it? A. They certainly had photocopies, but there could have been carbons.

Q. Can you recall any other cases than the two we are talking about in this trial?

HIS HONOUR: Yes, Ex.4, Mr. Morling - Mr. Pevsner, 228 Headland Road, Brookvale. It is the top of p.2 of your exhibit, file 80A. Actually, it is a funny file, in that it keeps making a reference to a valuation by Richardson and Wrench, which is not there. 20

MR MORLING: Q. (Approaches witness) In the case in which you appear to have received only a photostat copy, that valuation had the valuer's initials on it, you would agree? A. "G.R." - is that the valuer?

Q. Well, it has somebody's initials on it? A. Yes.

Q. And that was the case in which you confirmed the valuation with Richardson and Wrench, as it appears from the telex which bears your name, which you sent to Mr. Hamer in Melbourne on 20th March, 1973, isn't it? A. Yes, there was some question of the mortgage broker commenting on that valuation as possibly being higher, I think. That is why we confirmed it. 30

Q. But I suppose it seemed to you to be the least that you could do when you did that, if that was the copy you had and that was all you had, that you should have some communication with Richardson and Wrench? A. We would have accepted that valuation, but in that particular case the mortgage broker queried whether the valuation was not high, I think, because the income was not in line with what he would expect from a property of that valuation. On that ground, we sought confirmation from Richardson and Wrench that it was a sound valuation. 40

Q. Are you sure it was the mortgage broker who queried the valuation? A. Yes.

Q. Who was the broker? A. Probably Donald Cameron.

Q. And what query did he raise again? A. I think he said he thought the valuation was too high. He referred to it in the letter covering the valuation; when he forwarded the valuation there was some comment made regarding that particular Richardson and Wrench valuation. He possibly thought it was high, because the income from the property was low relative to the valuation.

Q. Then you thought then that if there were any circumstances which might indicate that something needed to be checked, the prudent thing to do would be to check it with Richardson and Wrench? A. We checked it with Richardson and Wrench and they confirmed that -- 10

Q. That is what you thought in that case - you thought that as there was something which gave an indication to you that something might require checking, you thought that the prudent thing to do would be to check with the valuation company?

A. We thought it was surprising that the mortgage broker had queried a Richardson and Wrench valuation. We checked with Richardson and Wrench and they confirmed it was correct. 20

HIS HONOUR: I will put Ex.4 in the left hand margin. I will put 9th May, 1972, underneath R. & W. in the mortgagor's valuer.

MR MORLING: And underneath that date of valuation put "telex, 20th March, 1973"; that is the only way to identify that.

HIS HONOUR: Mr. Morling, I cannot help feeling, reading that file that there may have been something more from Richardson and Wrench, because there are clear references there to a Richardson and Wrench valuation, subsequent to a 1972 one, but there just is not a copy of it there. Whether it was purely an oral confirmation or not, I cannot say. 30

MR CLARKE: Your Honour, I propose to call for Richardson and Wrench documents relating to this.

MR MORLING: I understand they are in court. If they exist, I will certainly produce them without any problems.

Q. That is the one we have just dealt with. It looks as though in that case, Mr. Satchwell, the date of the loan was of the order of six or seven weeks after Richardson and Wrench had confirmed the value, and I suppose the date when you agreed to make the loan would have been somewhat shorter than that, would it not? A. Some time after Richardson and Wrench had confirmed the value, yes. 40

Q. Don't all these transactions cause you to agree that a period of one or two months was the ordinary sort of gap which elapsed between you getting valuation advice from Richardson & Wrench, valuation advice of one kind or another, and you acting on that advice. Wasn't that the usual thing?

A. We normally acted on advice almost immediately. The period of when the loan was made was dependent on the time spent in attending to conveyancing matters, generally speaking.

MR MORLING: Your Honour, I will have to look at the next two files before I can ask any intelligent questions about those at the moment. If I can drop down to 40 Coogee Bay Road, and ask my friend to let me have the volume with 80 in it - Ex.4. I am sorry. I am having a problem here, too.

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HIS HONOUR: I want to ask Mr. Satchwell something.

Q. I am afraid I am in a state of confusion now, and I want to be sure that I understand what you say. Do you say that you were getting the valuations from Richardson & Wrench, whether they be confirmatory and one of their own previous valuations or of somebody else's earlier valuations, simply because the instructions from the Australian Fertilizers directed you to use Richardson and Wrench or for some other reason? A. Primarily because the directive from Australian Fertilizers was to use Richardson and Wrench. Since there was a substantial cost incurred to the mortgagor in getting another valuation, if one was already in existence we had arranged for Richardson and Wrench to make these so-called sighting valuations, which were not binding on Richardson and Wrench in any way but were a check for the known assessment of what the order of the value might be; so that we could decide whether we could process this and the request for the loan looked sensible relative to the valuation. We would then ask Richardson and Wrench or indicate to the mortgagor that he should arrange for a valuation to be sought or made by Richardson and Wrench, and we indicated to Richardson and Wrench normally that we were taking that action.

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Q. I follow that. But yesterday you seemed to be disposed to say that you were prepared to accept valuations produced by mortgagors made by other than Richardson and Wrench, and then you remember sequentially I reminded you of the text of that resolution by the A.F.L. board. Is the situation that what you said in the first place about your preparedness to accept other valuations, was an error in recollection? A. Not entirely, your Honour. In fact we did move towards approving other valuations.

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Q. Well, that is where I cannot understand the situation. If you were bound by the resolution of the A.F.L. board, you were bound? A. No, we were bound, but we would make a recommendation to the A.F.L. board, and with this in mind, we did approach Richardson and Wrench for advice, and based on their advice, the advice was that they would consider valuations from two other companies as being soundly prepared.

Q. What you say is that really it was not your own notion that you would accept other valuers but a suggestion from Richardson and Wrench? A. No, we sought Richardson and Wrench's advice but we were not bound to do that. But we could not accept other valuations without first obtaining the approval of A.F.L. In fact, - - 10

Q. And you never ever got that? A. I don't think we have made formal application for that.

Q. Then the situation is that throughout the working life of this company as a moneylender, it invariably required either a sighting valuation from Richardson and Wrench to confirm perhaps an earlier valuation by somebody else, or alternatively a complete and full valuation? A. We required a complete valuation from Richardson and Wrench, or by Richardson and Wrench. 20

MR MORLING: Q. Mr. Satchwell, I suggest to you that the files will reveal, and I cannot give you exact properties, but that on one or possibly two occasions you were furnished with up-to-date valuations by valuers other than Richardson and Wrench, and that you adopted those valuations after you had asked Richardson and Wrench to express an informal or brief opinion as to whether it would be safe to act on the other valuation. Can you recall any such occasions as that? A. Well, I see one on this schedule which was handed to me, Mr. Morling. It is Norman Street, Peakhurst. Apparently, according to this information, we accepted a valuation from L.J. Hooker. 30

MR MORLING: I think that was the one I had in mind. I cannot presently identify the file number, your Honour. I would like, if I could, to check that over the short adjournment. In respect of 40 Coogee Bay Road, the valuations of Stanley Thompson Real Estate is dated 23rd July, 1973; it might be useful to put that against the second entry on p.2.

(Short adjournment)

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MR MORLING: Q. In respect of the second last entry on p.2 of Ex.5, which is the list you have in front of you, the date of the Richardson and Wrench valuation is said to be 11th September, 1973, and again the loan was made in 6 or 7 weeks thereafter, you will agree? A. Yes.

Q. Now the last one on that page is property 43 to 49 Norman Street, Peakhurst. I wonder whether I could just approach you with that file. (Approaching). It is 79(a). May I draw your attention to a valuation of L.J. Hooker Ltd, dated either 13th or 18th August, 1973. A. Yes. 10

Q. And there is a letter on your file dated 6th December, 1973 from the defendant which is short and perhaps I should read it, "re 43/49 Norman Street, Peakhurst: In accordance with your instructions an inspection of the above property has been carried out and it is considered that the property is an eligible security for the advancement of funds by way of first mortgage to amount of \$140,000. It is further considered that the valuation of the property mentioned by you in the amount of \$225,000 approximates its present market value". You agree you received that letter and is it for the attention of Mr.A.Little? A. Yes. 20

Q. On a quick look of the file there does not appear to be any reference to any formal instructions given by Mr. Little to the defendant but will you agree that you sent a telex on 6th December to Mr Guttridge at I.C.I. Melbourne and again it is short and I will read it, "Approval requested for Kooragang Investments to submit offer of loan on 1st mortgage security of \$140,000 for two years at 12 percent per annum on factory building 43 Norman Street, Peakhurst. L.J.Hooker have provided a valuation of \$225,000 and Richardson & Wrench have confirmed this value. Vaughan family owned the property and have other assets of \$140,000", and it goes on. Do you agree with that? A. Yes. 30

Q. Can you recall other cases or another case in which a property which was offered as security had been the subject of a very recent purchase and you in that case sought from the defendant an expression of opinion as to value as distinct from the full valuation? If you cannot recall say so? A. No.

Q. You cannot recall? A. No. 40

Q. Just to conclude the question, I want to ask you, I do not have in front of me your company's file in respect of the Fyshwick Property but are you able to agree that in that case Kooragang wrote direct to Richardson and Wrench on 8th August, 1973, saying that the company had been asked to consider an advance on the security of a property being block 37 section 25 Wollongong Street, Fyshwick, advising Richardson and Wrench that a valuation might be required and asking for a separate submission to be made to Kooragang? We will no doubt find the file later and get the original. Do you agree such a letter was sent? A. The letter in effect is advising that a valuation could be required. 10

Q. And in due course a full valuation was prepared and dated 24th August, 1973 in the sum of \$200,000? I show you file 78(d) and a valuation in the sum of \$200,000 was in due course prepared by Richardson and Wrench? A. Yes.

Q. The valuation of course has somebody's initials on the front page? A. Yes.

Q. I want to ask you some questions about all the valuations except the two the subject of this case which your company received from Richardson and Wrench in 1973. Now will you agree that more often than not your company itself had possession of the original valuations? A. Yes. 20

Q. Will you agree that more often than not and probably in every case the original valuations had somebody's initials on the front? A. Yes - well, I couldn't say whether every one did, but it was more often than not the majority of cases.

Q. Will you agree that there was some written or oral contact between somebody from Kooragang and somebody at Richardson and Wrench in respect of such valuations? A. Yes. 30

Q. Will you agree that more often than not Kooragang obtained a Dun and Bradstreet report on the intending mortgagor? A. Yes, they were generally obtained if available but in many cases they were not available.

Q. Would you agree that in a minority of cases you obtained a bank reference in respect of the intending mortgagor? A. Yes.

Q. Do you agree that no Dun and Bradstreet report was sought in respect of either applicant/mortgagor in respect of the Glebe Point Road and McMahon's Point lands? A. To my knowledge or to my recollection none was submitted to the Board. I could not say definitely whether they were sought or not. 40

Q. Well, you do not know? A. I do not know.

Q. Will you agree that in respect of the loans other than the two we are talking about in this case that where the applicant mortgagor was a company you more often than not asked to see the company's balance sheet, and profit and loss accounts?

A. More often than not?

Q. Yes. A. I don't know. Frequently we did but whether it was more often than not I don't know.

Q. For what purpose did you make an inspection of the Glebe Point Road Property? A. The company had decided initially that as we were new to the field directors - not necessarily all directors, some directors - should inspect each property and satisfy themselves that the property existed and it appeared to be in a reasonable area but we did not think that directors were competent to make valuations of properties. I felt as chairman I should also inspect some properties since I was inexperienced in this field and accordingly I did so. 10

Q. Was it one of the purposes of the inspections to ascertain the general state of repair of the property? A. Appearance, yes. 20

Q. The general state of repair? A. Well, we normally did not have access to the inside of the properties so we could only judge the external state of repair.

Q. Then you would not agree with a statement that "the purpose of the inspection was to physically site the property, its situation and general state of repair"? A. External state of repair I said - well, no, the directors had no access to these properties normally. It is not possible.

Q. What was Mr. Cook's position with the company in 1973?

A. Mr. Cook was the secretary. 30

Q. Was he the secretary of the company on 16th August last year? A. Yes.

Q. Did you yourself inspect McMahon's Point? A. Yes, without going into the property, I inspected it from the footpath.

Q. Yesterday afternoon, reference appears in the middle of page 18, you gave this evidence; I asked you the question, "So I get this clear, if a mortgagor came to Kooragang with a valuation by an approved valuer are you saying you were prepared to act upon that?"

A. Yes. Q. Are you sure of that? A. Yes. Q. Who were the approved valuers? A. Richardson & Wrench, L.J.Hooker and one other company. Q. Stanley Thompson? A. No. ". Then you went on to say it was not Jones Lang, Wootton, it could be but you were not sure; it might have been Richard Stanton. That evidence is erroneous, is it? A. Well, on reflection it is not - if erroneous means misleading it is not misleading.

HIS HONOUR: Q. Don't worry about that, it is incorrect?

A. It is incorrect, yes. I could correct it if you wish me to. 10

HIS HONOUR: I think you have in effect.

WITNESS: The correct evidence would be that we accepted a valuation from Richardson & Wrench as the approved valuers. There were no other approved valuers.

RE-EXAMINATION

MR CLARKE: Q. (Approaching) I want to show you part of what is now Ex.A, a document which his Honour referred you to yesterday. It is Numbered G11 and it is the minutes of 25th February 1972. I am referring to page 2, Item 2C under 49 where it is stated "the amount of loan not exceeding 65% of valuation of a sworn valuer approved by A.F.L. without special reference to the Board" - that is without special reference to the Board of A.F.L., is that right? A. That is correct. 20

Q. Then Item No.4 is "Messrs Richardson and Wrench be approved as valuers of real estate for Kooragang Investments Pty Ltd", do you see that? A. Yes.

Q. Now if I then take you to G.17 and you will recall that the minute we were dealing with then is 25th February 1972, if I can then take you to a minute of the Board of Kooragang of 4th April 1973, which is G.17, there is a minute relating to valuations without setting it out at length, "the possibility of acceptance by Richardson and Wrench of valuations prepared by Registered valuers", do you see it is just mooted the question of possibility? A. Yes. 30

Q. Then in G.18 the manager - do you remember who the manager was who is referred to there? If you don't tell us. A. The manager would have been - well, Mr. Little probably would have been the manager.

Q. See there is discussions with Richardson and Wrench about the company being able to accept valuations by Stanton and Hardie & Gorman without reference to them, do you see that in the last sentence? A. Yes. 40

Q. When you were talking yesterday about the other approved valuers was this the area of discussion which you had in mind?
A. Yes.

Q. But did it ever advance beyond the minute that I showed you, the minute of 9th May 1973? A. No it did not. Those companies were not appointed approved valuers.

Q. Then one other thing relating back to that early minute, the one of February 1972, did the company to your knowledge ever lend more than 65% of a Richardson & Wrench valuation or a Richardson & Wrench cheque? A. No. 10

Q. You were asked some questions about accepting the guarantee only of Mr. Bourke - your Honour, this is document F23 in Ex.A - would you have a look at F23 part of Ex.A, that is a handwritten note bearing the date "20/8" (shown). Can you recall any of the circumstances in which Bourke was accepted as the sole guarantor? A. Bourke had very substantial interest in the company which was the proposed mortgagor, so substantial that it was thought that it was only necessary to accept a personal guarantee from him and not bind the other directors. 20

Q. Now on page 28 of the transcript you were asked questions about the fact that the Glebe and McMahons Point valuations were signed in your corporate name Richardson & Wrench Limited, up to that time, really until the end of 1973 did you ever receive valuations signed with other than the corporate signature Richardson & Wrench Limited? A. From Richardson & Wrench?

Q. From Richardson & Wrench? A. No we did not, they were all signed with the corporate signature.

Q. You were asked on p.36, you received the valuation report from Richardson and Wrench Limited, dated 14th June, 1973, in respect of McMahons Point from Mr. Gridiger, do you understand that? A. Yes. 30

Q. I think you said yesterday that you had no reason to doubt the authenticity of that valuation report? A. That is correct.

Q. Did the source, the person from whom it came, have any bearing on your acceptance of its credibility? (Objected to as having been answered yesterday; disallowed).

Q. You referred in answer to Mr. Morling to some comments by the mortgage broker, and I want to show you the letter of 28th February 1973 which was from Donald G. Cameron and Associates and forwarded a copy of the Richardson & Wrench report of May 9 1972, do you see that? A. Yes. 40

Q. And then there is some discussion about figures and at page 2 in the third paragraph the reference, without detailing it, to the valuation of \$250,000 placed on the property by Richardson & Wrench would appear to be inflated, is that the passage to which you were referring when you were giving your evidence in cross examination? A. Yes, I said it appeared to be too high. I did not use the exact term "inflation."

Q. If one looks at the telex of 20th March 1973, there is a confirmation of valuation referred to, do you see that? 10
A. Yes.

Q. And that is your telex and then on the following page in the file a letter signed by Mr. Simpson as manager, dated 20th March, 1973 "We have now received a valuation on the above property". What I want to ask you is, are you able to say whether you received only a confirmation or whether you received a new valuation? There is no valuation on the file? A. I cannot say definitely but the telex to Mr Hamer would indicate it was a confirmation. I think I have used that word in the telex.

(Mr. Clarke called for the defendant's documents in relation to the matter he had been questioning the witness. Mr. Morling stated they are not in court, but that if they can be found they will be produced informally during the lunch hour or after 4 p.m.) 20

MR CLARKE: Q. I wanted to ask you about 78(f). The proposal of 9th February 1973, addressed to Duke Minks, received from Barclays Aust. Ltd., together with documents of the proposition, which had financial records with the letter. Do you see those? 30
A. Yes.

Q. There appears next on the file a photostat copy valuation of Richardson & Wrench of 27th March 1973, and then the offer is made on 10th April 1973 of a loan. Do you see that? A. Yes.

Q. And the acceptance is endorsed on 17th April, 1973. Do you see that? A. Yes.

Q. 26th April, 1973, copy of your letter to Minter, Simpson & Co?
A. Yes.

Q. And a letter of 28th March 1973, from Barclays enclosing photocopy of the Richardson and Wrench valuation? A. Yes. 40

Q. And a memo of 2nd April from Mr. Little recording his inspection? A. Yes.

Q. There does not appear to be any indication on the file of any contact between you and Richardson and Wrench after 28th March 1973. To your knowledge was there any attempt made to ring Richardson and Wrench to confirm that photostat valuation or not? A. I do not know.

HIS HONOUR: As a matter of procedure, when an application came in from anybody to whom did it go in your organisation?
A. Initially it went to Mr. Minks. After he left the organisation it would have been referred to Mr. Little, the manager.

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Q. At some stage prior to a Board meeting or at a Board meeting, was there presented to each member of the Board the relevant information concerning an application? That would have meant a number of copies of documents had to be prepared so that each member of the Board would have the file, would it not? A. No. There was a summary of information prepared which was sent out with the Board papers. At the actual Board meeting all information would be tabled.

Q. Did each member of the Board have a look at the file which contained all the information, or did you rely on the summaries? A. Certainly at the commencement of lending each director inspected all material. The valuation would have been sighted and perused by each director.

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Q. So the situation is that the only document which came to Kooragang was a photocopy of the valuation, and each director would have been aware of the fact it was a photocopy only that had been received and not an original? A. Yes.

MR CLARKE: Q. On the matter of Tolmitmer Pty Ltd, on which you were asked some questions by Mr. Morling, there appears in the file a letter of 20th December, 1971, from Minter, Simpson & Co to Australian Fertilizers Ltd, in which the solicitors were acting for their client, Tolmitmer Pty Ltd, and there was an enclosed valuation by Stanley Thompson of 4th May, 1971, with that letter of 20th December 1971. Do you see that? A. Yes.

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Q. There are some other financial documents in the file behind that letter, are there not? A. Yes.

Q. A letter addressed to Mr. Hamer from yourself, and a letter of 24th December, 1971, which states that you require an independent valuation to be carried out on the property and to nominate R. W Wrench as "Our Valuer"? A. Yes.

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Q. There is a copy mortgage application form which has "cancelled" endorsed on it. Do you see that? A. Yes.

Q. On 3rd February, "We enclose for your perusal new valuation completed by Richardson & Wrench". Do you see that? A. Yes.

Q. From Minter, Simpson & Co? A. Yes.

Q. And it is again addressed to Australian Fertilizers Ltd?

A. Yes.

Q. Your memo of 17th February refers to the valuation of Richardson and Wrench, and then there is a letter to the general manager of A.F.L. from Mr. Cook, the secretary of Kooragang, dated 16th February, referring to a resolution approving the loan to Tolmitmar. Do you see that? A. Yes.

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Q. And a further copy letter by you stating that the approval was given to the loan? A. Yes.

Q. Is there to your knowledge any other valuation by Richardson and Wrench other than the valuation of 2nd February referred to? -

MR MORLING: I was not suggesting there was.

HIS HONOUR: To be consistent one should strike out the words under the heading "Mortgagor's valuation", "R & W" and leave in "Stanley Thompson", and insert 4th May, 1971", and in the last column it should be "Thompson valuation not used".

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MR MORLING: That would be right.

(File No.71 relating to Tolmitmar, including letter from Richardson & Wrench dated 2nd February 1972, and copy valuation of 2nd February 1972 tendered and marked Ex.D)

MR CLARKE: Q. The lending started in February 1972, and at that time Dun and Bradstreet reports were invariably asked for, were they not? A. Yes.

Q. Was there any problem encountered over the ensuing twelve months relevant to obtaining Dun and Bradstreet reports? A. With smaller companies they generally were not available, and could only be obtained by Dun & Bradstreet initiating special investigation.

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Q. Did you engage them to initiate a special investigation? A. No.

Q. By 1973 what was the practice in relation to smaller companies? A. We did not bother about Dun & Bradstreet.

Q. There has been reference to the gap between the date of valuation and date of loan. We have seen in relation to the Glebe and McMahon's Point properties the form of approval which appears to be the same, and the acceptance endorsed thereon by a borrower. Have you seen those? A. I cannot recollect having seen them.

Q. The form of approval. Was that a stereo typed form which you virtually always used? Was there a form of offer to lend, a stereo typed form? A. Yes, a standard type letter was sent. 10

Q. You have seen the valuations made in relation to the Glebe and McMahons Point properties with which this case is concerned, have you not? A. I have seen them some time in the past. All offers made by Kooragang Investments were in the normal form.

Q. Once an approval had been received was it the practice to send the matter to your solicitors, particularly Mr. Johnson, to process the conveyancing? A. That is correct.

Q. The difference in time between the date of valuation and the date of the loan would be in part how long it took to make a valuation and how long it was before it was accepted, and how long the actual transaction took, is that right? A. Yes, with one possible exception. I think a borrower in one instance indicated he did not want the money before a certain date. 20

Q. Once a valuation was made by you and accepted, and the matter transferred to your solicitor, did you concern yourself with making any further checks about the matter? A. No. 30

Q. Did you leave the conveyancing of title and matters such as that to your solicitor? A. Yes.

(Witness retired)

(File No.74 tendered and marked Exhibit E)

(File No.75 tendered and marked Exhibit F)

(File No.76 tendered and marked Exhibit G)

(File No.78(a) - (f) tendered and marked Exhibit H)

(File No.79(a) - (c) tendered and marked Exhibit J)

(File No.80(b) - (f) tendered and marked Exhibit K)

(File No.81 tendered and marked Exhibit L) 40

ANDREW SIMPSON
Sworn and Examined

MR CLARKE: Q. What is your full name? A. Andrew Simpson.

Q. Where do you reside? A. 61 Curban Street, Balgowlah.

Q. Are you presently in the employ of Australian Fertilizers Limited? A. Yes.

Q. What is your position? A. Assistant general manager.

Q. In 1972 and 1973 were you in the employ of Australian Fertilizers Limited? A. Yes.

Q. When Kooragang started operations were you on the Board of Kooragang? A. Yes.

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Q. From time to time have you accepted the role of manager, or described yourself as manager? A. Yes.

Q. I show you Ex.A, section G, item 43 on the minutes of Kooragang of 9th February, 1972. There is reference to the manager there. Was that you? A. That would be me.

Q. There is reference to a consultation with the director on valuations from the company's valuers, Richardson & Wrench, Mr. Hodgson. Do you see that? A. Yes.

Q. On 9th February there is a reference to a conference in a letter addressed for your attention. Do you see that? A. Yes.

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Q. Did you have a discussion with Mr. Hodgson in relation to setting up the scheme for lending of the company's moneys on first mortgage security? A. Yes.

Q. G.3 is a memorandum that you prepared, described as "guidelines", is it not? A. Yes, that is correct.

Q. On p.2 there is a handwritten note under item C described as "Situation". Was that note there when you prepared the memorandum originally, or added later? A. That has been added in my writing.

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Q. Apart from Mr Hodgson did you consult with anyone else for the purpose of coming to conclusions as how to best operate this lending function? A. Are you asking the question outside of Richardson and Wrench?

Q. Yes. A. Yes, I consulted with the late Ken Johnson, of Minter Simpson, but I did this after I made what I considered to be guidelines from my own experience in business, and from the discussion with Mr. Hodgson, and referred these to Mr. Johnson, and they were amended again, and I think we came up with a basis upon which to operate.

Q. Those guidelines are dated 14th February, 1972. G.3. There is a memo of the same date to other members of the Board and to the secretary of the company. That was your memo also, was it? A. Yes. 10

Q. And the memo of 15th February, 1972, is in the handwriting of Mr. Worrell, the legal officer for A.F.L., is that right? A. At that time he would be Manager, Legal & Personnel.

Q. In G.6 there is reference to the addition under item G.6, which is the handwritten addition made by you, is that right? A. Yes.

Q. And also item 44 refers to the Tolmitmer Pty Ltd loan. A. Yes.

Q. And item 49 talks about an approach being made to A.F.L. for an increased 65% of valuation? A. Yes. 20

Q. There is a letter of 16th February, 1972, addressed for your attention, and that enclosed the prototype forms for an application, a letter to solicitors, a letter to the valuer re valuation, and an altered, apparently, form used by some other organisation at some stage. In relation to those forms, the first one in item G.8 is the form of offer to be made to a person who had been approved as a borrower, is that right? A. Yes.

Q. Was that broadly speaking the form used in all transactions, or was it amended? A. I would have to look at other letters to be sure of that. 30

Q. Coming to the draft letter which is appendix D to Richardson & Wrench with additions proposed on occasions, was that form of letter used, particularly the second paragraph? A. Yes, that was the general approach to the letters.

Q. There was a request for valuation of the land as distinct from valuation of the improvements, was there not? A. Yes.

Q. Then your letter of 21st February, 1972, setting out what Kooragang considered was an appropriate approach, a letter to Mr. Hodgson and calls on the last page for consideration of the request for additional information and for further discussions? A. Yes. 40

Q. And G.11 is the Board meeting of 25th February, 1972, when first of all appendices were adopted and memorandum approved that previous meetings be used as guidelines, and item 44 was a reference to Tolmitmer, approval of grant of a loan, and item 49 was reference to a resolution of the Board of A.F.L?
A. Yes.

Q. And I refer you particularly to items 2C and 4. Do you see those? A. Yes.

(Luncheon adjournment)

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Q. I was asking you before lunch about G.11. I show you G.17, item No.130, valuations and G.18, minutes of meeting of 9th May. There is a statement, "The manager reported", were you the manager? A. Yes.

Q. And you had discussions with Mr. Hodgson which were recorded in that minute of the meeting of 9th May 1973? A. I would say so, yes.

Q. Prior to 9th May 1973, had any other valuer apart from Richardson & Wrench been approved as valuer for Kooragang?
A. No.

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Q. After May 1973 was any other valuer approved as a valuer?
A. No.

Q. Do you recall in July 1973 Mr. Minks resigned from Kooragang? A. Yes.

Q. And Mr. Little conducted inspections and did a deal of the work in relation to loan applications? A. Yes.

Q. Do you recall yourself seeing item E.2 in Ex.A, which is a letter from Donald G. Cameron & Associates, which included a number of annexures, including photostat copy of a valuation purporting to be from Richardson & Wrench, of 26th March 1973? A. Relating to which property?

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Q. Relating to Glebe. I hand you E.1 - 6. Do you remember seeing those documents? A. Yes.

Q. Had your company had prior dealings with Donald Cameron & Associates? A. Yes.

Q. Had you taken part in those prior dealings? A. I would say from time to time I had spoken with people from Donald Cameron about loan applications.

Q. Look at Ex.4, the letter of 28th February, 1973. Do you recall that transaction? A. Yes.

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Q. That was an earlier one in which Camerons had dealings with your company? Had you transmitted to Camerons details of your requirements on loan applications? A. I would say I had not done it personally, but Mr.Minks ... (Objected to).

Q. That is all I wish on that. In relation to Cameron and Associates and your company's dealings with them prior to the receipt of the letter of 28th June 1973, have you formed any view as to their reliability as mortgage brokers or otherwise?

A. From my knowledge of mortgage brokers, they were satisfactory as far as Kooragang Investments were concerned. 10

Q. When you received the valuation of 26th March 1973, did you doubt its authenticity? A. No.

Q. Did you see any reason to doubt its authenticity? A. No.

Q. Did the source it came from, Donald Cameron, affect its credence or otherwise? A. I do not think it changed its position. It was a valuation of Richardson & Wrench as we saw it.

HIS HONOUR: Q. In what circumstances did you personally receive it? A. I am not sure who the letter was addressed to. 20

Q. It is addressed to the manager, Kooragang Investments, attention Mr.Minks? A. Normally the letter would go to Mr. Minks who worked for me, and Mr.Minks would look at it and refer it to me, so I would have seen it through Mr.Minks.

MR CLARKE: Q. In relation to that transaction, which is the report of Mr.Little relating to an inspection he carried out on 23rd July, 1973, and a copy is directed to go to you - look at E.7 from Ex.A. Did you see that report? A. Yes.

Q. There is reference to No.237 being a butcher's shop. Do you see that? A. Yes. 30

Q. Did you yourself have an inspection and look at the site? A. I did.

Q. Was that a correct information, that 237 was a butcher's shop? A. At that time I do not think I would have really known. I went to the property and looked at the back and front. There was a butcher's shop there, that is all I can remember. I can't remember where the numbers on the shops were.

Q. There was a butcher's shop in one of the blocks, or close by? A. Yes. 40

Q. What was the purpose of your inspection? A. The directors of Kooragang ... (interrupted).

Q. Yourself? A. Just to see that the property did exist.

Q. How long did you spend out there? A. No more than a quarter of an hour.

Q. Returning to the photostat copy valuation we have been talking about, in voting the offer of loans to Giles Bourke Holdings Pty Ltd did you rely on that copy valuation? A. We would have relied on that copy valuation.

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Q. Coming to the McMahon's Point property, did you see the letter from Mr. Gridiger which is F.2 on Ex.A, together with the photostat copy of valuation he forwarded with that letter? A. I would like to see it. (shown) A. Yes, I saw that.

Q. Do you see that the copy came from Mr. Gridiger, who appears to be a solicitor? A. Yes.

Q. And it was received a month or so after the previous application in respect of Giles Bourke, although this was Group Unity? A. Yes.

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Q. Did the source of the photostat copy valuation, being sent from a solicitor, have any effect on you as to the authenticity or otherwise of the copy report? A. No.

Q. You ultimately voted to make an offer to lend the moneys, being \$160,000 to Group Unity Securities. Did you in so acting rely at all on the copy valuation? A. Yes.

Q. In the minute which is F.5 in Ex.A, the minute of 6th August, 1973, under column 149 relating to the McMahon's Point property it says, "It was agreed these properties should be inspected as a valuation had already been obtained from Richardson & Wrench," and it is noted it was suggested that Richardson and Wrench should clarify the zoning position, and that the financial position of the borrower be investigated prior to proceeding with this loan". Did you do anything about clarification of the zoning position? A. No.

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Q. From the point of view of Kooragang were you primarily concerned when the question of default arose and there was a need to get possession of the Glebe property, and ultimately both properties were sold. A. Would you repeat that?

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Q. There were court proceedings to cover possession of the Glebe property from people who purported to be tenants, and you were primarily involved from the point of view of Kooragang in those proceedings, were you not? A. Primarily involved, yes.

Q. The Glebe property, it was initially through Richardson & Wrench put up for auction in March 1975 when possession had been obtained, is that right? A. Yes.

Q. And it was not sold at auction? A. No.

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Q. And it was sold subsequently to Mr. White, who was in fact the butcher, and the sale was completed in March 1976? A. Yes.

MR CLARKE: Q. Are you able to tell me without looking at the documents what the reserve price on the auction was? A. No.

HIS HONOUR: Is that a live issue, Mr. Morling?

MR MORLING: No, your Honour. We do not suggest that the price of obtained was unduly low.

MR CLARKE: I am not going into detail on it, but there might be some sort of valuation issue.

Q. You know now, do you not, that the butcher who bought 233-237 was the butcher from the adjoining premises? A. In the first place?

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Q. Yes. A. Yes.

Q. And you said at the time you did not know whether he was part of the premises or not, but you subsequently found out that his premises adjoined 233-237? A. Yes.

Q. In relation to McMahon's Point, the management and collection of the rents of that property was, I think, handled by the Crows Nest branch of Richardson and Wrench? A. Yes.

Q. And ultimately that was sold, the sale being consummated in 1979? A. Yes.

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Q. Did Richardson and Wrench handle it right up till the date of the sale? A. Yes.

CROSS-EXAMINATION:

MR MORLING: Q. Are you now able to recall when you first became aware that Richardson and Wrench were asserting that some valuation written on their letterhead were not the responsibility of the company? A. I don't quite understand what you are saying. Would you mind repeating it for me.

Q. Well, at some stage of the proceedings, your company, or somebody on its behalf, took up with the defendant the question of the valuations in respect of Glebe Point Road and McMahan's Point? A. Yes. 10

Q. Was it some time in the latter part of 1974, can you recall? A. I can't recall.

Q. So far as your company was concerned, were you the person who raised that matter with the defendant or was it somebody else? A. I would say it was not me.

Q. For how long had you yourself had knowledge of the mortgage brokers, Cameron and Associates, before June 1973? A. Specifically I cannot say. It is a little hard to tie dates and times at this stage. 20

Q. Was it some months before then? A. It could have been.

Q. Pardon? A. It could have been months.

Q. You have no recollection at all now? A. A recollection of how long I had known?

Q. Before June 1973 you had had business contacts with them? A. No, I can't remember that far back.

Q. In any event, as at June, 1973, you had come to place trust in them as mortgage brokers? A. The word "trust" - I said before they were satisfactory as mortgage brokers.

Q. What would a mortgage broker have to do to be satisfactory to you? A. A mortgage broker first would assess a proposition put to the mortgage broker. We would expect that that application coming to us would be one that we would be interested in, and Donald Cameron and others were aware of the criteria we required for lending purposes. 30

Q. When you said that the mortgage broker would have to assess the proposition which was going to be put to you, did you mean by that they would have to consider the amount of the loan which was to be requested and the value of the security to be offered? A. Yes.

Q. So that you took the view that if Donald Cameron and Associates put a proposition to Kooragang on behalf of an intending mortgagor, the question of security would have been looked at by the mortgage broker? A. Well, not always. 10

Q. If he was doing his job satisfactorily, he would have done that? A. At times they did do a valuation from another valuer, which would have given them an idea of the property and they knew this would not be accepted. They could say to us on the telephone details of a possible loan. If they got to putting it in a letter, it was probably a more definite prospect.

Q. If a broker said to you in a formal way by way of submission on behalf of his client that a company applicant for a mortgage had certain assets, you assumed back in those days that that statement had some basis? A. Yes. 20

Q. For instance, when on 28th June, 1973 Donald Cameron and Associates furnished to Kooragang the information contained in the enclosures to their letter of that date, you assumed that they had checked out the authenticity of the enclosures? A. Can you tell me what the enclosures were?

Q. Yes. The financial details of the Bourke companies, which are covered in two or three pages - would you have a look at those (Sheets E1 to E5 of Ex.A shown to witness). A. Yes.

Q. Later, when Mr. Gridiger, solicitor, sent to you the document E9, being the letter of 6th August, 1973, with a number of letters from Bentley, Wheeler, Cartledge & Company, which you may care to look at, you also took the view that you could rely on the authenticity of what had been sent to you by the solicitors? A. As an accountant I would be more concerned with the statement of Bentley, Wheeler and Cartledge, and by Mr. Wheeler who signed it as a partner in that firm. 30

Q. So it was what Wheeler was saying to you which was important to you in the Bentley, Wheeler and Cartledge letter? A. Yes.

Q. You would not suggest for a moment that you were relying upon the Richardson & Wrench valuations, some 40 or 50, I think, referred to in the letter of 1st August, from Bentley, Wheeler, Cartledge & Co., in relation to Group United Securities Pty. Ltd.? A. Well, the letter states in the beginning that they have sighted the current valuations of the company's properties by Richardson & Wrench Limited.

Q. What you were doing was relying upon what Mr. P.R. Wheeler was saying. A. That's right. 10

HIS HONOUR: Q. Let us be clear about this. You were relying on the accuracy of the statement by Mr. Wheeler that he had sighted those valuations? A. Yes.

Q. That in itself did not get you very far - that he had seen valuations. Did you ascribe any effect to the figures that appeared in those valuations? A. Yes. Firstly, a firm of chartered accountants who sent a statement by letter to that effect would carry some substance with me as an accountant and secondly, we did look at the quality and the value of those properties and did some sums ourselves to see what equity Giles Bourke had in the properties. 20

MR MORLING: Q. Did you compare the valuations with any other information which you had about values of any of the properties listed in the valuations? A. No.

Q. You never saw the valuations? A. No.

Q. Can I go back to Ex.A, that part which is lettered G? Would you look at part G(2), which is a letter from Richardson & Wrench to Australian Fertilizers? That letter was marked for your attention, was it not? A. Yes.

Q. And it followed a conference or discussion which you had had with Mr. Keith Hodgson? A. Yes. 30

Q. Would you agree with me that Mr Hodgson called at your office and had a discussion with you? A. Yes.

Q. And did Mr. Hodgson suggest to you that he would recommend that you adopt a procedure of having a preliminary inspection made on behalf of Kooragang in cases in which Kooragang thought it might be interested in lending money? A. Yes.

Q. And he said that his company would be prepared to express a preliminary view about the suitability of property for mortgage purposes for a fee of \$25, per inspection? A. Yes. 40

Q. And he said to you that if, having received the report pursuant to such a preliminary inspection, Kooragang decided to proceed with the matter, then you could get in touch with him and ask for a more formal valuation? A. We did not get in touch with him. He wrote to the - -

Q. He said that if, having received the report of a preliminary inspection, you decided to proceed further with a particular mortgage transaction, your company could write to Richardson and Wrench advising them that they would be required to give a complete valuation? A. I think it is a little different to that. We wrote to the person who wanted the loan. 10

Q. I am asking you now if you can recall just what Mr. Hodgson said your company might do if you decided to proceed with a matter after you received the report of a preliminary inspection? A. We didn't always receive preliminary inspections.

HIS HONOUR: Q. What Mr. Morling is saying to you - don't worry what the actual or ultimate procedure was; he is concentrating on the discussion between the two of you. In the course of that discussion did Mr. Hodgson make the suggestion Mr. Morling put to you? 20

(Last question by Mr. Morling read by court reporter)

Q. Did you make any suggestion as to the course that you might follow after the preliminary inspection? A. Your Honour, at this time when this letter was written, Mr. Hodgson and I had this discussion and others, some in his office, some on the telephone, in trying to work out a way to get this started. All I am saying is that there was no arrangement that we would have to have a preliminary inspection on any loan. Where we did have preliminary inspections on the loan we still followed the same procedure, and it was up to the person borrowing the money to approach Richardson & Wrench and we suggested to them that they do that. We then, out of courtesy to Richardson & Wrench wrote a letter to them and told them they may receive a request for a valuation. There was no requirement at all. 30

MR MORLING: Q. I am not suggesting that Mr. Hodgson was seeking to impose any requirement on your company at all. I am suggesting that he did say to you that if you were intending to proceed with a mortgage transaction you should get in touch with him and inform him that Richardson & Wrench would be approached by the intending mortgagor to make a valuation? A. You are still putting it differently to the way it happened. 40

Q. Well, in fact what happened was that in almost every case you wrote a letter to Richardson & Wrench, direct to that company, saying that they might well be approached by an intending mortgagor? A. Yes.

Q. And, indeed, as the minutes disclose, you even laid down a procedure which Richardson & Wrench were to follow in making a valuation pursuant to such a request, didn't you?

A. We had a form of valuation we would have liked, but it did not always come that way.

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Q. Will you look at the letter of 9th February, 1972, which is G(2)? Will you agree with me that Mr. Hodgson invited you to contact him or a valuer in the department in respect of properties on which you were lending funds? A. Yes. That is there in the letter.

Q. And I suppose you realised, when you from time to time obtained valuations with initials on the front page, that that was the obvious way for you to know who the valuer was so that you could take up that invitation from Mr Hodgson?

A. The only person I dealt with at Richardson & Wrench was Mr. Hodgson, as far as valuations were concerned. I did not know the name of other valuers.

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Q. But you knew that Mr. Hodgson did not do all the valuations himself, didn't you? A. Yes.

Q. In fact, you knew that he did very little other than litigious work himself, didn't you? A. Yes.

HIS HONOUR: In the discussion with Mr. Hodgson, did it ever occur to either of you that there might be a situation in which an applicant for a loan might already have a valuation from Richardson & Wrench? A. I would say no, we did not discuss that, your Honour.

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MR MORLING: Q. But you did from time to time see valuations with initials on the front? A. Initials were of no consequence to me.

Q. Did you see such valuations? A. I can't remember.

Q. You can't remember? A. No.

Q. You can't remember ever thinking who the valuer was who was making valuations upon which you were acting? A. No.

Q. Did you ever ring any valuer up to discuss a valuation with him? A. To my knowledge I only ever rang Mr. Hodgson or maybe Mr. Wilkins.

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Q. You never rang up a valuer to give him any information about a property? A. No.

Q. Did Mr. Minks, to your knowledge? A. To my knowledge, no.

Q. If you look at G(3) of Ex.A, it can be seen that it was your company's function to ask Richardson & Wrench to carry out a preliminary inspection if a property was offered to your company as security for a loan? A. Yes.

Q. And in due course you wrote, on 20th February, a letter, which is G(9) if you care to turn the page? A. Yes.

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Q. And you signed that letter? A. Yes.

Q. And in the fourth paragraph you said, "We will advise you by letter when the applicant may seek a valuation on a property"? A. Yes.

Q. And you did that, did you not? A. Yes.

Q. When an applicant sought a valuation on a property? A.Yes.

Q. Have you compared the material contained in the valuation dated 26th March in respect of Glebe Point Road with the requirements which you had indicated to Mr. Hodgson you would wish to have included in valuations? A. No, I did not specifically check it against that, no.

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Q. One thing you did check was the description of the property because you went to inspect it, didn't you? A. I saw the property, yes.

Q. And you saw that it was not as described in the valuation? A. I went to see the property. I did not have the valuation when I went to see the property.

Q. Can you recall now when you saw the property? A. I can't recall the specific date. I went one lunch hour and saw it.

Q. When you say you did not have the valuation - - A. I did not carry it personally.

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Q. You did not carry it with you? A. That is right.

Q. It was quite obvious that part of the premises were being used as a butcher's shop? A. There was a butcher's shop and there was Peter Craig, real estate, from my memory of it.

A. Simpson xx

Q. Also it was very obvious that part of the premises were being used as a butcher's shop? A. The way the building looked, from memory, at that time, it would appear that the butcher's shop was part of the one property.

Q. Part of the property which was being offered as security? A. That is how I saw it initially.

Q. You knew that the intending mortgagor's address was at the property being offered for mortgage purposes? A. I can't recall at that time whether I knew that.

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Q. Well, before you decided to advance the loan, you or somebody in the company, sent a Telex to Melbourne informing Melbourne that the premises were being used as the head office of the mortgagor? A. Well, I did after that.

Q. So you were well aware of that before you decided to grant the loan. A. Yes.

Q. And the valuation which you obtained contained no details of any income or expenditure in respect of the property being offered as security? A. I can't recall.

Q. Did you not see the valuation and consider it before this case? A. Have I not seen?

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Q. Have you not considered the valuation before you got in the witness box today? A. I have seen the valuation. I can't recall everything that is in it.

Q. I suppose you read it when you received it, did you, back in 1973? A. I would say so, yes.

Q. And you saw then that it contained no information about income and expenditure which was being gained or incurred in respect of the property? A. I am not sure personally whether that should have been part of the valuation at that time. They often came in other forms - the income and expenditure of properties.

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Q. But you noticed at the time, in 1973, that the information was not there? A. I cannot say that now. I do not know what is in the valuation at the moment.

Q. Did you appreciate in 1973 that opinions about the value of property might well vary as between valuers? A. No.

Q. Not at all? Did you feel that if you asked six valuers to value a property they would come up with the same figure? A. I didn't mean it that way; I meant they would be reasonably close to one another.

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Q. But you were on a limitation of 65% of market value, weren't you, so far as your lending policy was concerned?

A. No; they were on 65% of the Richardson & Wrench valuation.

Q. And when you say the Richardson & Wrench valuation, you mean a valuation obtained pursuant to your guidelines? A. I mean a Richardson & Wrench valuation, on a letterhead, stating an amount of money the property was worth.

Q. Supposing a valuation had been obtained for, say, the vendor of the property, who was selling it to your mortgagor, that would not have carried much weight with you, would it? A Richardson & Wrench valuation, on Richardson & Wrench letterhead had been produced for that purpose, so that the vendor could show it to your intending mortgagor with a view to persuading him to buy it? Supposing a Richardson & Wrench valuation produced for Mr. X, who was selling the property to Giles Bourke Holdings, had been produced, you would not have treated that in the same way as a valuation produced for you for mortgage purposes, would you? A. I don't know. Are there differences in valuations for those reasons? 10 20

Q. What was the purpose of laying down guidelines for Richardson & Wrench in the first place? A. We did not lay down guidelines for Richardson & Wrench; we laid them down for ourselves.

Q. What was the purpose of laying them down for yourselves? A. Because we had never been in this business and we needed some guidelines.

Q. Did you think you needed guidelines if you were going to lend prudently? A. If you set out guidelines for something you don't know to do, you get the best professional advice you can. 30

Q. You wanted to have valuations which were produced to you by the company's valuers, didn't you? A. We wanted a valuation from Richardson & Wrench, who were the company's valuers.

Q. You wanted valuations from a valuer whom you could rely upon as being the company's valuers, didn't you? A. That's right.

Q. Would you go back to G(1). You referred in the minutes of the Board meeting of 9th February - I presume the first Board meeting - under item 43, to a consultation with the director of valuations from the company's valuers, Richardson & Wrench Limited? A. Right. 40

MR MORLING: Q. And you knew Richardson and Wrench had more clients that your company, didn't you? A. Yes.

Q. So from time to time they would be acting as the company's valuers, and from time to time not as the company's valuers; you knew that, didn't you? A. I find this a little confusing actually.

Q. Mr. Simpson, you knew that from time to time Richardson and Wrench would be acting as the company's valuers, didn't you? A. Yes.

Q. And you knew that from time to time Richardson and Wrench would not be acting as the company's valuers? A. They would be valuing for someone else. 10

Q. Yes. And what you wanted and what you were prepared to rely upon was a valuation prepared by Richardson and Wrench as the company's valuers.

HIS HONOUR: I reject that question, Mr. Morling; it is a double bared question. I think it is important that you should get the witness to assent to these propositions in the form of a proper question.

MR MORLING: Q. I am not intending to cavill at your Honour's ruling. What you were prepared to lend on was a valuation furnished to you by a valuer who you could claim to be the company's valuer? A. Yes. 20

Q. Can you tell me whether, when you went to inspect the Glebe Road property, you went inside the premises? A. I may have walked in the front of Peter Craig Real Estate; that is all I would have done; and I walked around the back.

Q. Did you inspect the McMahon's Point property? A. I went on the McMahon's Point property and inside the two buildings.

Q. I think you told Mr. Clarke, did you not, that you did not yourself check the zoning of the McMahon's Point property? A. That is right. 30

Q. Are you able to say, of your own knowledge, whether anybody at your direction did that? A. I believe Mr. Little checked with the North Sydney Council.

Q. When you received the McMahon's Point valuation, I take it you read that? A. Yes.

Q. And you read that it was expressed to be for and on behalf of Cobden Pty Limited? A. Yes.

Q. And on behalf of that company as mortgagee? A. Yes.

Q. Did you think that was of any significance? A. At the time no. 40

Q. Did it occur to you that perhaps the property had been offered as security to Cobden Pty Limited before it had been offered to your company as security? A. I didn't consider that, no. I wouldn't - no, I just say no.

Q. Did you consider it at all? A. I don't think so.

HIS HONOUR: I am sorry - when you say "it", you mean that particular factor?

MR MORLING: Yes

Q. Did you consider the reference to Cobden Pty Limited as mortgagee at all, and your answer is "I don't think so"? A. I think from memory if I could see the document, there is a reference to something else on there which ties back into the Wheeler statement. I might be wrong. 10

Q. I am showing you that? A. I think there is something here - it is under instructions from Wheeler.

Q. You are pointing to the words "under instructions from Group Unity Securities Pty Limited"? A. Yes. I am not sure whether Cobden is not mentioned in that Wheeler letter, that Wheeler statement of Richardson and Wrench valuations, which was seen by Wheeler. 20

Q. Did you note what was said as being the basis of valuation on p.3 of the McMahons Point valuation - - I am reading to you, "Our valuation hereunder has been made having regard to the earning capacity of the property in its existing use and its future potential for multi-storey redevelopment"? A. Yes, I had read that.

* Q. It did not appear strange to you that a valuation of a property which was being valued having regard to the earning capacity of the property, and its future potential for redevelopment, would not contain any information as to what the earning capacity was? A. We established the rents of all of those flats from a source that I don't know now. 30

Q. I fully accept that? A. I visited the property and I could see where it was in the street, and its position, and that seemed to tie in with the multi-storey development. We had not checked the zoning at that stage.

HIS HONOUR: Mr. Simpson, I will have the question read to you again. 40

(Above question marked asterisk read.)

Q. Would you answer that question? A. Can I just ask your Honour something? That refers to whether or not it should be in the valuation, is that the question?

Q. The question is, did it not seem strange to you that it was not in the valuation? Do you wish to see the valuation?

A. I could only say no, it did not surprise me it was not in the valuation, but we would have gone looking for the information, at a time. Could I add one further comment - I don't really know what ought to be in a valuation, on all of these things. 10
It is a long time ago since we looked at these things.

Q. Well, do you wish to look at it again? A. No, Mr. Morling showed it to me.

MR MORLING: Q. But you recall that when you had your discussions with a Mr. Hodgson, back in the early part of 1972, there had been reference by you then to your wish to receive information about income and outgoings on properties being offered as securities? A. Yes, but I also said earlier that we did not always get valuations in that form.

Q. And when you got the McMahon's Point valuation, you were not satisfied that the valuation gave you sufficient information about the zoning of the property, were you? 20
A. That is right.

Q. Do you know whose suggestion it was that Richardson and Wrench should clarify the zoning position, as is referred to in par.149 of the board minutes of 6th August? A. Not specifically, no.

Q. Were you the person who was in charge of the day-to-day management of the Kooragang company's affairs in July/August 1973? A. Not the actual day-to-day. 30

Q. Who was? A. Mr. Little, I would say, at that time.

Q. What was your own commercial training, Mr. Simpson. I am a Member of the Australian Society of Accountants and a Member of the Chartered Institute of Secretaries and Administrators.

Q. You were aware, were you not, that the McMahon's Point property was being purchased by Group Unity Securities at the time that the loan was being sought from Kooragang?
A. Yes.

Q. And indeed you were aware that it was being purchased for a price of \$185,000? A. I am sorry, I misunderstood the question. If I can ask you to ask the first question again? 40

Q. Yes. You were aware, were you not, that the McMahon's Point property was being purchased by the mortgagor at the

time a loan was being sought from you, in respect of the property, by the mortgagor? A. Not without looking at documents, no, I don't remember.

Q. Was it your usual practice to ask an intending mortgagor the reason why he was seeking a loan? A. I can't recall.

Q. What file was brought into existence in respect of the McMahon's Point property? A. The normal file for each loan transaction being looked at by Kooragang Investments.

Q. I do not wish to gain any advantage from this, but was it a green backed folder like the other files, many of them, or what was it? A. I just can't remember the detail, but I think papers were kept together until something was finalised on whether we were going to offer a loan, and once correspondence was started, it was probably set up in a separate folder, but the papers would be kept with Mr. Minks, or later with Mr. Little. 10

Q. I want to suggest to you this, that the actual letter of 1st August which seems to be the first letter when the request was made for the mortgage, does not state the purpose of the loan, but that you would have known from some other source that that was the purpose. Can you recall whether that was the fact, or not? A. No. I can't recall. 20

Q. I suppose you were in contact with Mr. Johnson about any conveyancing matters which he was handling on your company's behalf? A. Not necessarily me; usually Mr. Minks or Mr. Little.

Q. If a loan was being made on the security of a property being purchased by the mortgagor, would Mr. Johnson keep you informed about the progress of the mortgagor's purchase, so that you would be forewarned as to the time when your cheque would be required? A. Mr. Johnson did this on all occasions, whether the property was being purchased or not. 30

Q. Then would you agree with this, that if the fact were that the McMahon's Point property was being purchased, back in August 1973, your solicitors would have informed you of that fact? A. Yes.

Q. And Mr. Johnson in fact, I think, in respect of the Glebe Point Road property, told you that one of the three properties - I think number 237 - was being purchased at the time you were considering making the advance to the mortgagor? A. I can't recall that. 40

Q. Do you not recall that the delay until January 1974 in your company outlaying the money under the mortgage was occasioned by the fact that there was a hold-up in the registration of the transfer to the mortgagor of one of the properties? A. Yes, I can recall that.

Q. Once again, if the facts were, back in those days, that the mortgagor was taking title to all or part of the Glebe Point Road property, it is certain that Mr. Johnson would have kept you informed about that? A. Yes.

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Q. And of course of the price being paid by the mortgagor?
A. Not necessarily.

Q. But probably? A. I don't know.

Q. You would have been concerned to know what the price was, wouldn't you, if you were lending money on the security of a property being purchased. A. We were concerned with the Richardson and Wrench valuation of the property.

Q. You would have been concerned to know the purchase price, wouldn't you, Mr. Simpson? A. Concerned - one must say yes.

Q. At no stage did you make any inquiries as to the extent of Mr. Bourke's shareholding in any of the Bourke group of companies, did you? A. No.

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Q. The fact is, isn't it, that nobody at Kooragang made such an inquiry, to your knowledge? A. I don't know that; I didn't.

Q. Did you give consideration to the answers which Mr. Cook should give on behalf of the company, to the interrogatories?
A. Yes.

Q. And you will agree that it was just assumed by Kooragang that Bourke was the majority shareholder in the companies in the Bourke group? A. I would say so.

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HIS HONOUR: Q. Mr. Simpson, I know that the board considered these applications for loans, but did it come forward with any sort of summary or recommendation for the Board's consideration?
A. I have missed the point of your question.

Q. Approvals to applications for loans were given or refused by the board of Kooragang? A. They could have been refused before they got to the board, your Honour.

Q. In the case of ones that came before the board, did somebody prepare a summary of the situation? A. Yes.

Q. Who was that? A. That would have been Mr. Minks or Mr. Little. That would have been circulated generally to each director.

Q. So what was the position prior to the Board meeting - you got the recommendation and/or summary prior to the meeting, and perhaps some of the supporting documents? A. That is true.

Q. And then any balance of the documents that were available to be inspected by members of the board at the actual meeting? A. Or beforehand, yes. We operated in our normal work situation, and all our offices are very close together and it was a very simple communication. 10

Q. So far as these valuations were concerned, were they circulated prior to the board meeting? A. Generally, yes.

Q. Does that mean that the file went the rounds, or does it mean that the file was reproduced, so far as the valuations were concerned and each of you got a copy? A. No we didn't copy them. I would think generally we would see them, we would all see them. 20

Q. And you were the financial member of the Board, so to speak, were you? A. Yes.

Q. And within reasonable limits, did the other two look to you to guide them in relation to financial aspects? A. Not necessarily. Mr. Minks was a graduate of the London Polytechnic in Economics.

Q. Well, he was not a director? A. I am sorry - yes, as directors. Mr. Little has vast commercial experience as well.

MR MORLING: Q. To your knowledge, was there frequent contact between Mr. Minks and somebody at Richardson and Wrench? A. There would have been contact between Mr. Minks and Richardson and Wrench. To my knowledge it would have been through Mr. Hodgson. It may have been to other people. 30

Q. And when was it that Mr. Minks left Kooragang. A. I think he terminated his services in July 1973.

Q. And you would be confident it would be an everyday occurrence for him to ring up somebody at Richardson and Wrench about a valuation? A. Not every day.

Q. Well, a not infrequent occurrence for him to do that? A. There was a period there where we did not make loans for quite a period. So I would say it was infrequently that he would ring me. 40

HIS HONOUR: Q. Could you, for my benefit, interpret what you mean by "about a valuation"? To ask for one, or to ask concerning one?

MR MORLING: Q. Yes. For instance, there is reference in the company's files to premises, 200 Crown Street, Sydney? A. Yes.

Q. In respect of a transaction like that, would it, to your knowledge be quite usual for Mr. Minks to ring up somebody at Richardson and Wrench, and give him over the telephone details about the property? A. Yes. 10

Q. And did you yourself do any of that sort of thing? A. Yes.

Q. To whom did you speak? A. To my knowledge, I always spoke to Mr. Hodgson, or maybe I spoke to Mr. Walters.

Q. Was Mr. Davies' name ever mentioned by Mr. Minks to you? A. I don't recall. It may have been mentioned by Mr. Minks, I don't know.

Q. Mr. Minks was the financial analyst while he was at Kooragang? A. He was actually employed by Australian Fertilizers and he did his work for Kooragang and he did projects for me at Australian Fertilizers. 20

Q. But in terms of actual checking on the securities being offered, he was more involved in that sort of work than were you? A. Yes.

Q. One last thing, Mr. Simpson - do you remember that one of your mortgagors was a company called Selby Nominees? A. I remember the name.

Q. Was that in respect of the Crown Street property? A. I don't think so.

Q. The Wentworth Avenue property. Your file discloses that you obtained a Dun and Bradstreet report in respect of that loan, and I think the loan was made in the early part of 1973. Would that not tend to indicate to you that Dun and Bradstreet reports were indeed obtainable in 1973 for companies which were not large companies? A. We had tried to get Dun and Bradstreet reports on several people, and found that they were not listed. In the case of Selbys, they were obviously listed; that is the only conclusion I could come to there. Everyone is not with Dun and Bradstreet. 30

Q. Do I understand your last answer to infer that you sought to obtain Dun and Bradstreet reports in respect of the Bourke group of companies? A. No. We started off to. 40

MR MORLING: I am sorry, I misunderstood you.

RE-EXAMINATION:

MR CLARKE: Q. Mr. Simpson, you said that you started off seeking to get valuations from Richardson and Wrench in the format and covering the matters set out in your guidelines; do you remember that? A. Yes.

Q. And indeed, in G9 of Ex.A you set out various proposed requirements to Mr. Hodgson? A. Yes.

Q. It is a letter of 21st February 1972. Now one of the requirements was the separate valuation of land and premises; do you remember that? A. Yes. 10

Q. And in the early stages, did you invariably get those separate valuations of land and premises? A. I can't remember without looking at the valuations.

Q. They will speak for themselves? A. Yes.

Q. From your recollection, did you continue to get separate valuations of land and premises? A. Not always.

Q. Sometimes you got them, sometimes you did not? I would still have to look at them, but we were not always getting them. 20

Q. What I wanted to ask you - by mid-1973 had there been occasions when you got valuations which did not have the separation? A. I would have thought so.

Q. And in respect also of tenancies and outgoings on property which were set out in the letter of 21st February, 1972, did you continue to get those throughout 1972 & 1973 in valuations? I would think not.

Q. Just while I am on it - for McMahon's Point, as we know now, there was an undated contract of sale sent to Mr. Johnson, stipulating the purchase price that Group Unities were paying; did you, at any stage after the matter being placed in Mr. Johnson's hands, know or become aware of the purchase price being paid by Group Unity Securities? A. I could have, but I can't recollect it. 30

Q. In relation to Dun and Bradstreet - but I will come back to Selby Nominees in a minute - by 1973 did you still have the practice of seeking Dun and Bradstreet reports in the case of small companies, or had you by then desisted from seeking them. A. I would say we had desisted from seeking them. 40

Q. Could I have file 80E, Ex.K. (Approaches witness) I wonder if you could help us, Mr. Simpson. The Selby file, which is the Ex.K, has a handwritten note, some financial details about the companies - I am reading from the rear - another handwritten note and then a Dun and Bradstreet report which appears to be dated May 1972, and then a later Dun and Bradstreet report dated 27th December, 1972, and then a valuation of Richardson and Wrench, 1st March, 1973, and a letter from Pacific Property Finance Pty Limited of 5th January, 1973, referring to a telephone conversation with you prior to Christmas, with the outlined proposal for a mortgage, and this appears to be the first formal document relating to an application for loan? 10
A. Yes.

Q. The letter of 25th January, 1973, to Mr. Hodgson and the telex to Mr. Paech is also dated 25th January. Now is there any way you can tell from those whether your company requested the Dun and Bradstreet report or whether it in fact came along with the application? A. No I can't.

MR CLARKE: Q. You told us that originally I think you thought or were not sure whether the butcher's shop was part of the premises in question at Glebe? A. Yes. 20

Q. Would you have a look at this photograph and it is obvious from the "For Sale" sign that is is dated subsequent to your transaction and would appear to be dated about April 1975 or may be taken April 1975. Can you tell me whether the premises appeared like that when you inspected it or whether there was any significant difference? A. No, I cannot tell. It is not as vivid as that, no.

(Photograph of Glebe premises M.f.i.l) 30

Q. Finally, you were asked questions about whether Richardson and Wrench were sometimes your company's valuers and sometimes they did valuations for other people. So far as your company was concerned how did you consider Richardson & Wrench when they did valuations for you and for which your company paid? Did you consider them then to be your company's valuers? A. Is this in relation to properties other than Kooragang Investments?

Q. Yes, this is A.F.L. I am talking about? A. Yes.

Q. In respect of Kooragang apart from what might be described the quickies for which \$25 was paid - you know what I am talking about? A. Yes. 40

Q. All valuations which you required after an application for loan had been received were to be carried out or were to be ordered and paid for by the mortgagor to Richardson & Wrench? A. Yes.

Q. When the mortgagor did that, required Richardson & Wrench to give a valuation, did you still regard Richardson & Wrench as the company's valuers? (Objected to; his Honour requested witness to leave the Courtroom while discussion ensued as to admissibility of question; question allowed; witness returned to Court and question read) A. I am not quite sure how to answer.

10

Q. In 1972 did you consider that Kooragang had valuers who you would describe as the company valuers, the company valuers?
A. Richardson & Wrench were Kooragang Investments' valuers as far as I was concerned.

Q. Did that apply in 1973 also? A. Yes.

HIS HONOUR: Q. Did you regard them in that fashion when the valuation was carried out at the instructions of the borrower or applicant for loan and paid for by the applicant for loan? A. I would have to say yes.

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(Witness retired and excused)

RAYMOND CECIL JAMES LITTLE
Sworn and Examined:

MR CLARKE: Q. What is your full name please? A. Raymond Cecil James Little.

Q. And your address? A. 33A Lindsay Street, Enfield.

Q. And you are now retired and you have been I think for the last four years? A. That is right.

30

Q. You were in 1973 and 1972 the Commercial services manager of A.F.L. were you not? A. That is correct.

Q. That continued to be your major employment in those years?
A. That is correct.

Q. But in September 1972 were you appointed a director of Kooragang? A. Yes, that is correct.

Q. And when Mr. Minks left Kooragang did you start processing applications and attending on inspections? A. That is correct.

Q. Did that continue during 1973? A. Yes.

Q. And in February 1974 I think you were then appointed secretary in place of Mr. Cook? A. That's right.

Q. Prior to July 1973 did you see valuations and loan applications being processed in your capacity as a director of Kooragang? A. Yes.

Q. After July 1973 you became more intimately involved?
A. Yes, I think I processed most of them.

Q. Coming to the first of the subject matters there is a letter E2 part of Ex.A of date 28th June 1973 from Donald G. Cameron & Associates addressed to Kooragang, "Attention Mr. Minks", and if I can assist you to this extent, that there is also an undated report by you stating that you inspected the premises on the 23rd July, 1973, which is just under a month after the date of the letter? A. Could I ask what property we are talking about? 10

Q. The Glebe Point property. (Approaching) I show you Ex.A E1 which is a photostat copy of valuation, E2 which is the letter and then E3, 4 and 5 financial details, E6 a loan application form that is typed out and then memorandum of your inspection E7, inspection of 23rd July, 1973. Now can you tell me from your recollection whether you in essence picked this loan application up from the start in the sense that Mr. Minks had done nothing about it? A. I could not really remember that. All I can remember is when Mr. Minks left there was a number of things had been left unattended and they were simply handed to me and I was asked to process them. 20

Q. Well, you would have been, apart from Mr. Minks, the first person to consider and take steps in relation to this application for a loan? A. As far as I can remember. 30

Q. In relation to the inspection you say that "Number 237 is presently a butcher's shop, but a DA has been approved to renovate No. 237 and combine it as one building with the other two already renovated." Now have you yourself been back to see the premises on other occasions subsequent to that report?
A. Yes, that was a report I wrote after my first inspection, in fact, I think if I remember correctly the renovations had been in fact carried out - -

HIS HONOUR: I think perhaps if you have a look at the report, Mr. Little, it will be clearer to you. There were two lots of renovations, the ones to 233 and 235 and then 237. 40

(Report shown to witness)

MR CLARKE: Q. What I was asking you, did you subsequently have other inspections of the premises? A. Yes I did.

Q. What I wanted to ascertain was that a correct statement that the butcher's shop was part of the premises? A. No it wasn't, I found out this wasn't so. My first inspection was not accurate.

Q. There was, however, a butcher's shop very close by?
A. Yes.

Q. Would you have a look at M.f.i.1? (Shown) That is a photograph taken in about April 1975. When you saw the premises did they appear like that? A. They appeared like that as far as I can remember now. 10

(Photograph of Glebe premises formerly M.f.i.1
tendered without objection and marked Exhibit M)

Q. Would you have a look at E1 on Ex.A? (Shown) That is another photostat copy of a valuation but did you at the time you were processing this loan application and at the time of voting at the Board meeting did you see a photostat copy of a valuation in that form? A. Yes. 20

Q. Did you in any way doubt its authenticity? A. Not under any circumstances.

Q. In voting to approve a loan of \$104,000 did you place any reliance on that photostat copy valuation? A. I would have relied entirely on it.

Q. Then in relation to the McMahons Point property and the letter from Gridiger of 1st August, 1973, which is in section F of Ex.A and is F2, was directed for your attention and did you process this loan application? A. Yes I did.

Q. Would you have a look at that photostat copy valuation which I think is F1? When you played a part in approving the offer to lend \$160,000 did you rely on that photostat copy valuation? A. Yes, entirely. 30

Q. Could I just go back for a moment to the Glebe premises? Would you have a look at E11 of Ex.A? Is that a document in your handwriting? (Shown) A. Yes it is.

Q. Do you recall now what that is a summation of? A. Some financial figures of Giles Bourke's properties; they were supplied by Wheeler somebody.

Q. They are the financial records supplied by Wheeler somebody? A. Yes. As I understood, it was an accountant of Giles Bourke.

Q. If we could go forward to the McMahons Point property again and looking at F3 of Ex.A, that is an application form, is that in your handwriting? A. It is.

Q. Was it quite often your practice to write out application forms in your own handwriting? A. Not very often, depending on who we were dealing with; for instance, Camerons I think got to know the procedure and I think they sent most of them in typed in in the form that the directors required them to be in. 10

Q. I want you to look at Ex.A F5, item 149? (shown) which is the minutes of the meeting on Monday, 6th August at 11 a.m. The same afternoon you inspected the premises and prepared a report which is F4? (Shown) A. Yes.

Q. And then F6 of Ex.A is another memorandum which is dated 8th August relating to the same property and the incomings and outgoing? (shown) A. Yes. 20

Q. In relation to F6, which is the memorandum relating to incomings and outgoing, do you recall from where you obtained that information? A. As far as I can remember in the Glebe --

Q. This is McMahons Point. A. I know it is but in the Glebe property there was a firm of real estate agents who I think were collecting the rents for Group Unity Securities' property at McMahons Point and I fancy I got the information from there but I am not sure. It could have been from Roland Gridiger himself, I'm not sure.

Q. In relation to the minute which is F5 did you take any steps in relation to the zoning that is referred to there? A. I do not remember clarifying with Richardson & Wrench themselves but I do have a hazy recollection of going to the North Sydney Council itself and checking that zoning, whether there had been any zoning changes or not, direct with the council. I would not swear to it because I cannot remember but I have a hazy recollection of having done so. 30

Q. Where were Kooragang's offices at that time? They were in the offices of A.F.L., 213 Miller Street.

Q. North Sydney? A. North Sydney and the council's chambers are within 200 yards of those offices. 40

(Witness stood down)

(Further hearing adjourned to 10a.m. on Wednesday
4th June, 1980)

IN THE SUPREME COURT)
)
OF NEW SOUTH WALES)
) No. 3568 of 1976
COMMON LAW DIVISION)
)
COMMERCIAL LIST)

CORAM: ROGERS, J.

KOORAGANG INVESTMENTS PTY. LIMITED

v.

RICHARDSON & WRENCH LIMITED

THIRD DAY: WEDNESDAY, 4TH JUNE, 1980

RAYMOND CECIL JAMES LITTLE

10

On former oath:

HIS HONOUR: Mr. Little, you are bound by the oath you took yesterday.

WITNESS: I understand that, sir.

MR. CLARKE: Your Honour, I think I had completed or concluded what I wanted to say.

CROSS-EXAMINATION

MR. MORLING:Q. Mr. Little, you said yesterday at p.80.8, "I think if I remember correctly, the renovations had been in fact carried out", and you were referring to the time as at which you made an inspection of the premises back in 1973? A. Yes, the first inspection, yes.

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Q. That was the position, that when you saw the premises, they had in fact been renovated and were set up as business offices?
A. That is correct, yes.

Q. By that I mean that the rear yard as well had been paved and marked out as a car park for the use of persons using the offices? A. That is correct.

Q. And the street frontages of the premises were provided with attractive shop or office fronts, is that so? A. Yes, that is so.

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Q. And quite substantial work had been done to make them appear to be attractive offices? A. Yes. I Didn't actually go in the building itself on my inspection, I simply looked at the building from the outside, and I could see through the glass door

that the whole place looked as though it had been renovated.

Q. If I just recall to you what you said, (approaches witness) in a note which you made and which is E.7, being part of Exhibit A, "These properties were inspected by me on Monday, 23rd July, 1973", and you go on to say, inter alia, "so they are excellently situated, being only two, three and four doors removed from the corner of Bridge Road, and in between the corner hotel and the TAB". Then you say that "233 and 235 have been renovated, both inside and outside"? A. Yes.

10

Q. Then you go on to say that 237 is a butcher's shop? A. Yes.

Q. And you have told us yesterday that you were mistaken when you made the note? A. Yes, that is correct.

Q. I am not challenging you when you say that, but would it then be the case, do you think, that when you said that "233 and 235 had been renovated both inside and outside" and that 237 was a butcher's shop, your error extended to believing that 237 itself had not been renovated? A. Well, certainly from my observations there had been no renovations in the butcher's shop; it was simply a butcher's shop.

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Q. Yes of course. But you were looking at the wrong property when you were looking at the butcher's shop? A. Yes, that is right.

Q. So that the position was that the property over which you in fact loaned money - that is to say, 233, 235 and 237 - had been renovated inside and outside, as at the time of your inspection? A. Well, that was not a property that we loaned money on really, was it?

Q. Well, I thought it was. I am sorry, you may accept as being correct that Kooragang did in fact loan money on nos. 233, 235 and 237, which were, as you told his Honour yesterday, all offices, and no part of which was a butcher's shop - do you follow me? A. Yes.

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Q. And that is correct, is it not? A. Yes that is right.

Q. All I am putting to you is this, that back in 1973 the renovations had been carried out to all the property over which you were lending money, but had not been carried out to the butcher's shop, over which you were not lending money? A. Yes, that is right.

Q. And you were able, though, as your note says, to observe that the premises had been renovated both inside and outside and were as one building. A. Yes, that is correct.

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Q. Most of the properties which you observed in Glebe Point Road were quite old properties? A. Yes.

Q. And I suppose you went round to the rear lane? A. Yes.

Q. And it was quite apparent to you that a good deal of work had been done to the nos. 233, 235 and 237, to upgrade them for office purposes? A. That is right.

Q. (Approaches witness.) I am showing you document E.5, being part of Exhibit A - can I make quite sure your Honour has this, I was uncertain about it. It is a document dated 12th July, 1972. 10

HIS HONOUR: Yes.

MR. MORLING:Q. It was one of several enclosures with Donald Cameron's letter of 28th June, Mr. Little? A. Yes.

Q. I suppose you read that annexure when you saw it? A. I imagine so, yes.

Q. And you would have seen that the properties over which you were asked to advance monies were listed in two places: one under the heading, 233/235 Glebe Point Road, Glebe, \$85,000? A. Yes.

Q. And then, down the page, under the heading, deposits paid on purchase of real estate, 237 Glebe Point Road, Glebe, \$2,350? A. Yes. 20

Q. Then you knew that, as at July the previous year, the Giles Bourke Holdings Company had by that time contracted to purchase that land but had not completed the purchase? A. Yes.

Q. Did you interest yourself much in the values of real estate in the Glebe area in those days, 1973? A. Not at all. I had no reason at all.

Q. Did you assume that the deposit was probably 10 per cent of the purchase price in respect of no. 237 Glebe Point Road? A. I don't think I really made any assumption at all. 30

Q. You were, you will agree, an experienced business man at that time? A. Yes.

Q. You read a document which said that two of the three properties over which you were intending to lend monies were said to be valued at \$85,000? A. I did not assume that at all.

Q. Well, why did you ask for this document? (objected to, withdrawn.)

Q. What importance did you attach to the document? A. The document was simply supplied to the company to indicate the net worth of Giles Bourke Holdings Pty. Limited.

Q. Why did you want to know that? A. I think one of the requirements of the Kooragang board was that the company wanted to be satisfied that if money were loaned, it was being lent to somebody of substance.

Q. You wanted to be satisfied that if you loaned the money you would be repaid? A. Be repaid.

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Q. Yes; and that document and the other enclosures was material which you wanted then and wanted to have investigated before you, for your part, were prepared to agree to lend the money? A. It was looked at in totality really, rather than for us to pass judgment on the value of in fact any one of the properties that might have been listed.

Q. It was looked at in conjunction with other material? A. Yes.

Q. And I suppose when you saw the apparent wealth of the companies in the borrowing group, you were pretty impressed? A. It was not the only factor.

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Q. Will you answer my question - you were pretty impressed? A. Yes.

Q. It made it hardly necessary to make any other inquiry, did it? A. No; one of the other requirements was that we should look at the net return on the property on which money was to be loaned, simply to ensure that the net income from that property was sufficient to at least meet the interest commitment on the money that was being loaned on the property.

Q. I follow that. So you followed that matter up, did you not? A. Yes.

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Q. And you obtained details of the rentals being earned in respect of the property, did you not? A. Yes.

Q. You obtained those details direct from the mortgagor, did you not? A. I could not remember that now, I could not recall that now.

MR. CLARKE: They came through Camerons.

MR. MORLING:Q. You obtained, it would seem, some time towards the end of August 1973 - -

HIS HONOUR: Mr. Morling, have a look at E.14; isn't that the information.

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MR. MORLING:Q. (Approaches witness.) Perhaps I may be able to assist you. Doing the best you can, after looking at these documents, I firstly show you a letter which is dated 10th August from Giles Bourke Holdings to Gridiger & Company, being E.14, which sets out certain details about rentals, and then a document E.15, which is a letter from Gridiger & Company to Cameron & Associates enclosing the letter setting out the income. Would that help you to agree with me that the probability was that those details came to Kooragang on or shortly after 21st August, 1973? A. I think it is probably fair to assume that.

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Q. So that you were replying upon that line of inquiry to ascertain that the income from the property would be sufficient to service the loan? A. That was one of the factors.

Q. It was the only factor you had to go on, so far as the ability of the property itself to service to loan, by way of producing income, was it not? A. I cannot really answer that.

Q. And you agreed with me, I think, it was on 27th August that the board meeting was held on which the loan was approved? A. Yes. 20

Q. At that stage - that is to say, 27th August - you were firmly of the belief that you were dealing firstly with a company which was possessed of very substantial assets, is that so? A. Yes.

Q. And which was offering as security a property which you had been assured by the mortgagor, through his brokers, could produce income sufficient to service the loan? A. Yes, but we were also relying on the supporting valuation.

Q. Well, at that stage what you call the supporting valuation was five months old, wasn't it? A. I think it was dated June, if I remember correctly.

30

Q. I think 6th or 8th March - it was just on five months old? A. That would be right, if that is the date of the valuation.

Q. It was a valuation which did not contain the information which you subsequently obtained about the income potential of the property? A. It did not contain it, but we did not expect the valuations to stipulate an income-earning potential of the property. The valuations were requested on the basis of premises being suitable for the purpose of a mortgage loan, which the Richardson & Wrench valuation in fact states.

Q. Mr. Little, it was at about this time, was it not, that the board, in respect of the East Crescent property, suggested that Richardson & Wrench be contacted about the zoning of the East Crescent property? A. Yes, I remember the minute.

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Q. If I can give you the minute, I will. You may take it that at the meeting of 27th July of the board, item 149, it was suggested that Richardson & Wrench should clarify the zoning position of the East Crescent property. At that stage Mr. Minks had recently left the company's service, is that so? A. Yes, I think he had gone by then.

Q. And he had gone about 13th July, 1973? A. I could not tell you the date.

Q. And he was the person, whilst he was with the company, who would normally have carried out liaison work with Richardson & Wrench? A. I believe that was his responsibility. 10

Q. And after he left and in the month or so after he left, were you the person who did the sort of work that he used to do? A. Yes.

Q. So that the substance, as you understood it, of what the board wanted to have done in respect of the zoning position by Richardson & Wrench was that you yourself would contact Richardson & Wrench and ask them to check it out? A. Yes.

Q. And were you at that time having contact with anybody at Richardson & Wrench about any matters to do with that valuation? A. I would think I - I can't remember specifically but I had been introduced to Mr. Keith Hodgson I think, and I had had some contact on the phone; I am not sure to what extent at that stage. 20

Q. I know it is very difficult indeed after seven years, but is your present recollection that shortly after the time that Mr. Minks left the company, you were quite often in contact with Richardson & Wrench about something to do with valuations? A. Yes.

Q. Looking back now, doesn't it seem unusual to you that you did not raise, with Richardson & Wrench, a matter which you had been specifically asked to raise with them by the board? A. Not necessarily. Being as we were situated, right alongside the North Sydney Council, it was just as simple for me to check that out really with North Sydney Council. 30

Q. I want to suggest to you that by this time you had become so persuaded of the wealth of the Bourke group that you regarded it as not being a matter of really any consequence to check up on valuations of either the East Crescent Road or the Glebe Point Road land? A. No, that is not correct at all.

Q. You had, before the loans in either case were made, letters from Bentley Wheeler & Company, did you not. A. Yes. 40

* Q. And if the contents of the annexures to those letters were correct, I suppose that in your mind then put beyond any question

the financial solidity of the Bourke group? A. The basic requirement - -

Q. No - is that difficult to answer? A. Yes it is.

Q. Well, do your best to answer the questions. (Question marked * repeated.) A. On the face of it they appeared to be financially sound.

Q. You accepted the contents as being correct and not false, did you not, of those Bentley Wheeler letters? A. Yes.

Q. Now if you accepted that they were correct, and they were correct, the fact was that the group was a very financially solid group? A. It appeared so. 10

Q. And in particular, the mortgagor company was possessed of assets vastly in excess of its liabilities? A. Yes.

Q. If you had inspected the zoning records at North Sydney Council, you surely would have made a note of it, wouldn't you? A. Yes, I am surprised that there is not a memorandum, because I think generally the documentation that went with all the loans was fairly good.

Q. And indeed, to be fair, to you, yesterday I think you said that you had a hazy recollection about it? A. I have a hazy recollection of having gone to the Council, myself, to check out the zoning, which is not a very difficult operation to do. 20

Q. So that is the haziness of your recollection based on this, that because the Council offices were so close, you now think you must have gone there and checked it out? A. I can't believe that I would, that we would have gone to the board, when the board specifically asked for the zoning to be checked out, and for other information such as the incomes and outgoings on McMahan's property to be checked. I can't imagine having gone to the board and not having done that. 30

Q. Well, can I suggest to you one reason, and one good reason, why you might not have done that, was that you thought, having regard to the mortgagor company's assets, it was really unnecessary? A. No, I don't agree with that at all.

Q. Wasn't the matter of zoning a matter which you thought to be relevant to the question of value? A. If I remember correctly, a query about zoning was raised at the board meeting because at that particular time there was some discussion going on at North Sydney Council as to whether or not the North Sydney Council would allow further high-rise development of flats; and the question was being asked as to whether, because this particular site was almost essentially I suppose a prospective development site, it

was important to know whether in fact any change in zoning in that area was contemplated by Council.

Q. You believed, back in July and August 1973, that the question of value was wrapped up with the question of zoning? A. Well, I think it applies to everything, every property.

Q. Well, it applied to the East Crescent property? A. Yes.

Q. And your impression of what was discussed at the board meeting was that your co-directors also believed that the question of zoning was wrapped up with the question of valuation? A. It was 10
pertinent to it, yes.

Q. It was the sort of question which might have a bearing on the valuation of the land? A. That is right.

Q. And I suppose that was why you, as a member of the board which met on 27th July, thought it was appropriate that the matter should be referred to the people who had made the valuation? A. Yes, obviously, yes.

Q. Did you know that the McMahon's Point property was being purchased at the time the mortgagor was seeking a mortgage from Kooragang? A. No. 20

Q. At some stage did you become aware of that? A. Not that I can recall.

Q. Mr. Johnson acted for you in respect of that transaction? A. As far as I can remember, yes.

Q. And he kept you up to date with what was happening on the conveyancing side of any transaction in which you were interested as a mortgagee? A. The progress on his part of the processing of loans was the only thing really that he kept us up to date on.

Q. But you did know, did you not, that the mortgagor in respect of the McMahon's Point property was wanting \$195,000 in total 30
on mortgage in respect of that property? A. Yes, I think I can remember that figure, I am not sure.

Q. And were you personally prepared to go that high on the loan, on the security of what was offered? A. I can't really remember that. There was some - -

Q. I want to correct 195 and make it \$190,000? A. There was some alternative proposal I think considered by the board.

Q. But were you personally prepared to go to \$190,000, if the mortgagor had requested it? A. I was a member of the board at

the time I think a decision was made that we would be prepared to lend the whole amount, based on the valuation and the fact that the total amount did not exceed 65 per cent of the Richardson & Wrench valuation.

Q. I suppose the wealth of the borrower would have been a matter which would have affected your mind in deciding to agree to lend more than 65 per cent? A. I don't know to what extent that influenced the situation. I can't remember that it specifically influenced the situation.

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Q. That would have been a matter, looking back, which you would agree would have led you to the view that in that case you could have gone above 65 per cent, if you were dealing with a very wealthy mortgagor? A. No, under no circumstances would we have gone beyond 65 per cent. There were clearly laid down guidelines by the A.F.L. board.

Q. Well, you have no recollection now of entertaining the thought of lending more than \$160,000 on the security of the East Crescent property? A. Could I have that again?

Q. Do you presently have no recollection of ever, in 1973, having considered the question of whether you would be prepared to lend up to \$190,000 on the security of the East Crescent property? A. Well, I am not quite sure on that. As I mentioned earlier, I have a recollection on that that initially the application for it was for 160, and then an alternative proposition was put up that we might increase that to 190; and I think the Kooragang board agreed that we would submit to the A.F.L. chairman a recommendation that we go to 190.

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Q. Well, I think in substance you are quite correct, Mr. Little, and that is what I am putting to you: I am putting to you that back in this particular time in the company's lending policy you yourself were prepared, in respect of this property, to go to more than 65 per cent of a Richardson & Wrench valuation, weren't you? A. Well, was it more than 65 per cent? I don't think it was.

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Q. I am told that \$160,000 is 65 per cent of \$250,000, so, I think you might fairly assume that \$190,000 is something like 75 per cent - indeed it is 76 per cent. (Approaches witness.) I am agreeing that what you are telling his Honour is quite correct.

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HIS HONOUR: The missing factor in Mr. Little's recollection may be at that stage you had a valuation by Richardson & Wrench for \$250,000, you recollect.

MR. MORLING:Q. You had a valuation, dated 14th June, 1973, for

\$250,000, and on 9th August a telex is sent to Melbourne from Kooragang in the terms of document 14, putting forward a proposition of \$190,000 at 10½ per cent, being 76 per cent - right? A. I had forgotten that.

Q. So that at that point of time the notion of having your lending policy geared to a Richardson & Wrench valuation was not present in your mind, if \$190,000 was 76 per cent? A. That was the first occasion that I can recall that there was any suggestion that we should go beyond 65 per cent of R. & W. valuation. 10

Q. Was it the first occasion that you can recall that you ever, yourself, agreed, in the sense of agreed to put to Melbourne, to advance more than 65 per cent? A. Yes.

Q. And the reason was, surely, all this very impressive financial data which you had received in the few weeks following the letter of 20th June from Donald Cameron & Associates? A. It was one of the factors.

HIS HONOUR: Mr. Morling, I do not want to interrupt you, but if you would be kind enough to have a look at F.5, which is the minute of 6th August, I can see the force of what you are putting to the witness. If you would be kind enough to look at 149, and I will not read it out, but the second sentence of the second paragraph, you see the second requirement that there should be an investigation. So really it does not found the proposition that they had a sufficient degree of satisfaction or certainty, I am suggesting to you. 20

MR. MORLING: Yes; thank you, your Honour.

Q. After you had investigated the financial position of the borrower, (approaches witness.) at the meeting held on 6th August, 1973, there was reference to this suggestion that Richardson & Wrench should clarify the zoning position and that the financial position of the borrower should be investigated - do you see that? A. Yes. 30

Q. It would be likely, wouldn't it, that Gridiger's letter, dated 6th August, had not reached the board before the board meeting on 6th August, but probably reached it within a day or so thereafter? A. I could not say that.

Q. But in respect of the East Crescent property, you again, as in the case of the Glebe Point Road property, went to sources other than the valuer to satisfy yourself that the property could generate sufficient income to service the mortgage? A. At no stage did we go to Richardson & Wrench to establish the income-earning status of the properties. 40

Q. When you say "At no stage", you mean at no stage in respect of the Glebe Point Road property or the East Crescent property?
A. That is right.

Q. In other cases you got information, did you not, in respect of those matters? A. Not from R. & W.; they came from people like Camerons, or solicitors.

Q. Then did you regard it as being not any part of the valuer's job to look into the rental position? A. Not at all.

Q. And you satisfied yourself about the rental position at East Crescent? A. That is right. 10

Q. And there is a note in the file which indicates what the result of your inquiries was? A. That is right.

Q. Did you make those inquiries yourself? A. Yes.

Q. From whom did you make them? A. I would not be absolutely sure on this, but the real estate people I mentioned yesterday, who were acting as managers for the property and collecting the rents, were situated in the Glebe Point Road property. I can't recall their names; I am sure it is on the file there. Because they tried to retain possession of the place when we foreclosed on the property. But they were the real estate people who were managing the property on behalf of Group Unity Securities. 20

Q. In respect of the McMahon's Point property I think the company obtained a valuation from Hardie & Gorman, did it not, a valuation as at 14th June, 1973? A. Yes, subsequent to the default, I think, if I remember correctly.

Q. Perhaps you can just identify this document for me. I am showing you a valuation of Hardie & Gorman Pty. Limited, dated 27th September, 1976, and it is of 18-20 East Crescent Street, McMahon's Point, as at 14th June, 1973? A. Yes. 30

(Valuation of Hardie & Gorman Pty. Limited
MFI 2.)

Q. I asked you, in respect of East Crescent, whether you knew the property was being purchased in 1973. In respect of any part of the Glebe Point Road lands, did you have any belief in 1973 as to whether part of that property had recently been purchased? A. No.

Q. There was a delay of several months after the plaintiff agreed to make the loan in respect of Glebe Point Road, before the money was actually advanced, was there not? A. Yes, if I remember correctly, that is so. 40

Q. And Mr. Johnson explained to you the reason for the delay?

A. Yes.

Q. And the reason he gave you was that the mortgagor was still getting his title in order? A. Yes.

Q. In respect of No.237? A. I don't know which one specifically, but I know there was some problem on title.

Q. You understood that the transfer from the previous owner - that is to say, the owner previous to the mortgagor - was being held up in some way or for some reason? A. Yes.

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Q. Then you surely must have known that at some not too far distant point of time the mortgagor had purchased 237? A. No, I am sorry, I was unaware of any particulars other than Mr. Johnson from Minter Simpson had simply said there was a hold-up in the title, securing the clear title.

Q. When you read the McMahon's Point valuation, did you note that it had the name of Cobden Pty. Limited on the front page as being the mortgagee? A. I can't remember particularly, no.

Q. Do you now have no recollection of that at all? A. Of the particular name?

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Q. Yes. A. No.

Q. Are you able to point to any other valuation which your company acted on, which was addressed to a named mortgagee, not being your company? A. I could not name anyone specifically, no.

Q. Well, it was very out of the ordinary, so far as your company's course of business was concerned in 1973, to lend on a valuation which on its front page was said to be for and on behalf of a company you had never heard of - as mortgagee?

A. It might have been unusual, but I can recall valuations coming in that were done by R. & W. - for instance, such as these - that were not specifically done for Kooragang Investments.

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Q. But you cannot recall one valuation which was done for a named company as mortgagee? A. I can't, no.

Q. And that reference did not give you any reason to think that you should ring Richardson & Wrench to ask something about the valuation? A. Not at all.

Q. I think Kooragang agreed to second mortgages being placed over both properties, did it not? A. I can remember a second mortgage in respect of McMahon's Point, but I cannot remember a second mortgage over Glebe Point.

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Q. The Bank of New South Wales - can I assist you by suggesting that to you? A. I was under the impression that the second mortgage with the Bank of New South Wales had been discharged.

Q. Then you have a clear recollection you agreed to a second mortgage over the McMahon's Point property? A. Yes.

Q. And that was because you had no concern at all about the ability of the mortgagor to meet the interest payments on first and second mortgages? A. Well, I don't think we were concerned really about the second mortgagee. We were quite satisfied that in the event that there was a default, based on the valuation of R. & W., that if we had to sell the property we would have recovered our loan.

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Q. What if the second mortgagee had not been paid and sought to execute on his security? A. But he stands behind the first mortgage, surely.

Q. Yes, but you would not have wanted to have the property sold up by a second mortgagee, would you? A. Well, I was under the impression that a second mortgagee could not sell up without the consent of the first mortgagee anyway.

RE-EXAMINATION

MR. CLARKE:Q. Mr. Little, if I could refer you to F.7, would you just have a look at F.7, which is the telex of 9th August. If you direct your attention to the interest rates proposed both for the \$190,000 proposed loan and \$160,000 proposed loan, can you tell me whether that was a factor at all in the suggested loan of the higher amount? A. Yes, I think it was

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(Witness retired and excused.)

MR. CLARKE: Your Honour, we have reached a stage in the proceedings when we are venturing on to valuation material. There is a report from Mr. Gilbert, which was of course discovered, as I have indicated before; but in compliance with your Honour's comments on the first day, yesterday afternoon Mr. Morling gave me access to his valuation of Glebe Point Road, and we gave a list of comparables on which we relied, although we did not know the basis of valuation, which was one thing which attention was not directed to, but perhaps Mr. Morling would need to have a look at it, it would appear so far as Glebe Point Road is concerned, that there would be a live issue on valuation between that; there is quite a divergence between the two.

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But I certainly could lead Mr. Gilbert through evidence in chief, but I am not quite sure that Mr. Morling has been given fair opportunity to cross-examine. But what I wished to say was that in relation to the McMahon's Point property, where the documents have not been exchanged and I do not think there is any suggestion of fault on either side, but it is because of what happened in the past; but we are in a position to exchange documents now. But it may be that there may be some

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prospect of adjustment between the parties and, rather than take a lot of time to go into it, because the valuation is a lengthy part of the case, we have discussed this and we would like to have a bit of time now and see if we can shorten the case in respect of the McMahon's Point valuation, and see whether Mr. Morling is in a position to cross-examine Mr. Gilbert.

HIS HONOUR: The only evidence you have got left in your case is that?

MR. CLARKE: I have got that, your Honour, and I have got two outstanding matters: the questions of the agreed schedule on damages, which will have to come before your Honour, and there are still discussions taking place about the extent to which I will be required to prove the liquidation of the two companies and the position relating to Mr. Giles Bourke. Mr. Morling wanted a bit more material before he would excuse me from the obligation of going through the exercise. So that is the only other material.

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HIS HONOUR: You are not going to call Mr. Dempsey?

MR CLARKE: No, your Honour, I am not going to call Mr. Dempsey. He was at one meeting.

HIS HONOUR: He was at the meeting of 6th August?

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MR. CLARKE: Yes, your Honour.

HIS HONOUR: And really that will be your case?

MR. CLARKE: That will be our case.

HIS HONOUR: Well, assuming the worst, that you cannot agree on anything, how much more time will you need for your case?

MR. CLARKE: Well, this depends on the length of valuation material, but I would expect that probably there will be a day and a half, I suppose, with two valuers.

HIS HONOUR: Yes; and how long do you want now?

MR. CLARKE: I would think about half an hour.

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MR. MORLING: I would think about half an hour, your Honour. It does seem that we will not reach a sufficient measure of agreement about Glebe Point Road. The only reason I mentioned that was this: if your Honour wanted in advance to read the valuations, we could hand these up.

HIS HONOUR: No. I will adjourn until half past eleven.

(Short adjournment.)

UPON RESUMPTION:

ROBERT LEDBROOK GILBERT
Sworn and examined:

MR. CLARKE Q. Your full name is Robert Ledbrook Gilbert and you reside at 2 Donald Avenue, Epping, and you are a registered valuer and have been for some years? A. That is right.

Q. And you say you are a registered valuer without limitation?
A. That is correct.

Q. Perhaps everyone in the Court knows what that means but I do not, could you tell me what that means? A. Under the Valuer's registration requirements I am registered to value all properties in New South Wales. 10

Q. You have not got any limitation as to district or area?
A. No, none at all.

Q. In 1975 I think you were an associate director of Hardie & Gorman Pty. Limited? A. That is correct.

Q. And in your capacity at Hardie & Gorman you were approached by Minter Simpson & Co. I think in March or April 1975 to prepare some valuations of the property 233, 237 Glebe Point Road, Glebe? A. That is correct. 20

Q. I wonder if you would have a look at this? Is this a list of your qualifications (shown)? A. It is.

(List of Mr. Gilbert's qualifications tendered without objection and marked Exhibit N).

Q. As at the time of your valuation, which is 30th April, 1975, you were asked to value it on the basis of its value as at 26th March, 1973 and again to value at the time of your then valuation? A. That is correct.

Q. You understood there were endeavours to sell the property taking place by the mortgagee in possession? A. I was not aware at that point of time but subsequently. 30

Q. You were later, in 1975, asked to give your valuations for the dates 26th March, 1973, 27th August, 1973 and 18th January, 1974? A. That is correct.

Q. So far as 26th March, 1973 was concerned you were asked to value as at that date on the assumption that works which you had classified as illegal in your earlier report had in fact been legal works? A. That is correct.

Q. Would you have a look at first of all the seven page

document and enclosures, the document bearing date 30th April, 1975, which I now hand you and tell me whether this is the valuations that you prepared (shown)? A. It is.

Q. If you look at the enclosures there is a photograph missing. (Exhibit M shown). Is that the photograph that completed the valuation? A. Yes it is.

(Valuation bearing date 30th April, 1975, tendered without objection and marked as part of Exhibit N).

Q. I show you a letter 15th August, 1975 (shown). Is that your letter giving valuation as at various dates upon the assumption I have previously put? A. That is correct. 10

(Letter from Hardie & Gorman Pty. Limited to Minter Simpson & Co, dated 15th August, 1975, tendered without objection and marked as part of Exhibit N).

Q. I then show you a typed document headed "sales" on the first page, headed "rental evidence" on the following pages (shown). Is that a schedule of material which you considered in coming to your conclusion as to value? A. It is.

(Document consisting of sales figures and rental evidence tendered without objection and marked as part of Exhibit N). 20

Q. Then have you with you I think five pages in handwriting which constitute the primary or some of the primary material upon which you used to write your valuation and also setting out your basis of valuation? A. That is correct, I do.

Q. I wonder if you could extract those five pages? (Witness complied).

(Five pages of handwritten material on which the valuation is based tendered without objection and marked Exhibit O). 30

Q. I think you have a photostat copy of the document headed "sales" and "rental evidence", have you? A. Yes I do.

Q. In relation to the first document "sales" the reference to 175 Glebe Point Road sets out, I take it, under the heading 1st January, 1973, the Valuer General's valuation, is that right? A. That is correct.

Q. The figure in brackets "\$647 P.L.F." means \$647 per linear foot?" A. That is correct.

Q. Is that a computation taken from the Valuer-General?

A. That is correct it is.

Q. Then there is the zoning and then the third month of 1973 there is a sale referred to at the figure stated? A. Correct.

Q. Can you tell me is that sale the contract date or the transfer date? A. I understand it is the contract date but I was unable to sight any contract to be sure of that.

Q. It is correct, isn't it, that the use of these sales was somewhat limited and particularly with regard to some of the sales set out the use was definitely limited, that is right, isn't it? A. I am not sure that I understand the question. In the application of an as comparable sale use I found them quite limited.

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Q. The next property is 365 Glebe Point Road and the reference to the sale there is December, 1974 and is it your understanding that was the transfer or the contract? A. Contract date as I understand.

Q. Then 155 Glebe Point Road you have again worked out the dollar per linear foot from the Valuer-General's valuation and the sale there, is that the date of contract or transfer?

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A. The contract as I understand it.

Q. Incidentally, did you find in the sales any sale comparable at the relevant time in the sense that it was a sale of retail premises and commercial offices in the zoning this property had? A. No, I could find no sales at all in the Glebe area of fully commercial property on residential zoned land.

Q. The sales that you referred to of course are combined shop and dwellings? A. That is correct.

Q. And either two or three storey buildings? A. Yes.

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Q. Again in the rental evidence you give the date of the lease, and if we take 329 Glebe Point Road it indicates that the rental being looked at is after May 1974? A. That is correct.

Q. And you work out the dollar per linear foot per week?

A. That is correct, the rental paid. I have priced it to show a rate per linear foot frontage per week.

Q. The next one is the lease from 1974. Perhaps you might just explain the reference to the Valuer-General's Department?

A. Well, under each of the sales I have given the source of my information. In the first one it was from the managing agent, in the case of 365 Glebe Point Road it was from the

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Valuer-General's Department.

Q. And 327 Glebe Point Road there is endorsed on my copy of the document in handwriting the words "take away food bar", is that what the shop is used for? A. That is correct.

Q. I think the rest of the first page is self-explanatory. If I go to the second page the lease of 239 Glebe Point Road was a long term lease from 1966. Now could you explain the next passage, "Rent review at 12/71 on basis of disregarding lessee's expenditure"? A. Well, the T.A.B. leased the property in 1966 and at their expense they converted it from a radio electrical retail shop into a T.A.B. and my information from the T.A.B. is that on the basis of rent review under the lease agreement the rent was to be determined ignoring the expenditures and the alterations carried out by the T.A.B. 10

Q. In the next column or the next paragraph under rental "reviewed by determination at \$61 per week." Is that in 1971? A. That is at December, 1971, yes.

Q. And then from December 1976 it was reviewed up again to \$150 per week? A. That is correct, on a different basis at that point of time. 20

HIS HONOUR: Q. Is this determination and arbitration or was it just agreement between the parties? A. The parties could not agree as to the rent.

Q. And whose determination was it? An estate agent? A. That I am not aware of, your Honour.

MR. CLARKE Q. When you say on an as is basis was that again disregarding any expenditure of the lessee? A. No, on the expiration of the lease, the original lease term, the improvements reverted to the lessor and the rental then was reviewed on the basis of the shop as it stood with the improvements included. 30

Q. Then I think 329 Glebe Point Road is self-explanatory from April 1974, 331 Glebe Point Road it was a Goodways shop and the lease was from May 1972 at a rental of \$40 per week and then at the end of the lease there is a new rental of \$100 per week. Was that by negotiation? A. No, as I understand it that was what was the amount determined by the managing agent because their lease had expired.

Q. 331A Glebe Point Road, a wine bar, \$65 a week from July, 1973? A. That is correct. 40

Q. There are not included in those instances any rentals of purely office premises, are there? A. No.

Q. Is that because you could not find any? A. I could not find any leases or office premises, no, on first floor level.

Q. Could I just come to your handwritten notes? I think you have got a photostat copy of the first three pages, have you not? A. Yes.

Q. If I could hand you a photostat copy of the next two. (Handed to witness). First there is a sale of 175 Glebe Point Road. You have got a note "with direct access off Glebe Point Road", reference to the rear lane, access to the garage, then you have some figures under "gross income potential" and perhaps you might explain those if you could? A. I made a written observation that the dwelling had a direct access off Glebe Point Road because with the shops and dwellings accommodation relatively few of the dwellings had a direct access either through the shop or off the back lane so with the direct access off Glebe Point Road it was important from the point of view of the rental potential of the dwelling the property had rear lane access and a garage. It had similar access to the subject property. I have noted the sale price in March 1973 at \$35,750 and the zoning of the property was business neighbourhood. For the purpose of analysis I have placed on the property the shop and the residence what I believe to be a reasonable rental as at the date of sale for the purpose of working back to a net income potential from the property at that point of time, though I was unaware of any actual leasing of that property at that point of time. I placed a value of \$30 a week on the shop and \$30 a week on the residence giving a total rental value per week of \$60 or \$3,120 per annum which, incidentally, relates back to an improved value per foot frontage for a rental purpose of \$3.53 per linear foot.

After taking off Council, water rates, insurance, repairs, maintenance and allowance for vacancy, it gives a net income of \$2,252 which if equated to the purchase price plus acquisition costs shows a yield of a little over six percent, 6.17 per cent. I then made the observation that sort of yield was not consistent with the sort of yield you would expect from properties which derive income from a dwelling which is suitable for owner/occupation and also the fact that it was a permissible use under the zoning of the land.

HIS HONOUR: Q. How did 175 Glebe Point Road compare with 177? A. 177 was the adjoining premises which is a newsagent and I have a photograph here which would demonstrate the comparison. 177 was leased as a newsagent; it had a larger shop frontage than the subject property and my understanding was that the newsagent leased the whole property but he chose not to occupy the residence.

MR. CLARKE: Q. You have photographs also I think of all

the properties to which you refer? A. Yes.

Q. Is that all the properties to which you refer in these documents? A. Yes, apart from - I haven't the photos here of the subject property.

Q. Could I have those photographs? (photographs handed to Mr. Clarke).

HIS HONOUR: Q. Did the \$3.53 per linear foot that you took for 175 have any conscious relationship to the \$3.82 that was being paid for 177? A. I did take that into consideration, yes.

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MR. CLARKE: Q. Just before coming to the photographs, the rental for 177 was a rental for the whole premises, was it, including what you describe as the disused residence? A. That is correct.

Q. Are you able to say whether the residence upstairs was available for use? A. I cannot say with any certainty, no.

Q. You have noted on most of the photographs where it is not clear the property photographed by arrows and lines but I wonder if you might look at 365 Glebe Point Road and if you could carry out the same exercise with that? Just put two lines on either side of 365 (witness complied). What sort of a shop is that? A. It is a bakery/cake shop.

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(Four pages of photographs tendered without objection and marked Exhibit P.)

Q. The sheet of 365 Glebe Point Road, the rear view, is it the property in the foreground? A. It is, it is a three-storey - there are, in addition to the shop and the residence to the shop, there are three self-contained flats.

Q. And it is the building with the washing hanging outside?
A. Yes and the three garages on the ground floor.

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Q. The next sheet to which I wish to refer, the one I will number No. 2, was the sale of 365 Glebe Point Road. The sale was in December, 1974, as you said. Then you noted an income, shop and residence, \$45, three flats at \$35 - \$105: totalling \$150. Now what was the basis of that? A. That was the information I got from the vendor which was the rents he was receiving as at the date of sale.

Q. The Council rates, water rates, insurance, management, repairs and the vacancy factor are set out as the deductions to come to a figure of \$6,970? A. That is correct.

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Q. I am afraid I cannot read the last, less - A. Well, what I did there, the purchase price was \$60,000 and I allowed an acquisition cost of a thousand dollars so the the total outlay was \$61,000 from which he gained a net return of \$6,970.

Q. So that was a yield of 11.42? A. That is correct.

HIS HONOUR: Q. On p.1 the note I had relative to the yield of 6.17 per cent was that you did not think that was inconsistent with yields of comparable properties. There seems to be a completely different yield figure thrown up by 365. Is that out of line with the expected yield on properties of this kind or is there such a disparity between the two properties that you would expect a much higher yield? A. There is I believe a disparity or difference in yield because the property number 175 although it is a small property, one residence and one shop, those are the sorts of property that are suitable, perhaps more suitable to owner/occupiers rather than investors, whereas property 365 Glebe Point Road was a shop and four dwellings, obviously an investment property, but I also would say that this was a sale that occurred in late 1974, the period when the market was difficult to say the least and it was a yield reflecting I believe the market and the type of property that it was.

Q. When did the downturn in the market come? A. Well, there was evidence of it from about - and it is sometimes very difficult because you have got the benefit of hindsight now, much wiser after the event - but there was evidence of it starting about April/May 1973 but it was quite evident towards late 1973.

MR. CLARKE: Q. When you say there was evidence of it in April/May 1973 what type of evidence are you alluding to there? A. Well, about that time there was quite a fall off in the volume of sales, properties were not selling and properties were not leasing and it was very difficult in that development properties, particularly non-economic producing properties, many people were trying to dispose of development sites, but no one was buying them - well, I say no one was buying them but there may have been some sales - so it was that period of time that it was clearly definable now but perhaps not everyone was quite as astute at that point of time.

Q. Prior to April/May 1973 what was the state of the market? A. The market was quite buoyant.

Q. Were prices rising between mid-1972 and April/May 1973? A. Yes, it is reasonable to say prices were rising.

Q. When this evidence started to appear, lessened sales, great difficulty in effecting sales after April/May 1973, did that have an immediate effect on prices? You have said that

there was evidence of more difficulty in effecting sales and lettings after April/May 1973 and the question I was asking, did that reflect immediately in lessened prices or was there some delay before prices became lesser to any extent? A. I do not believe that there was any real fall in value at all. There was just a lack of sales; properties were not being transacted.

Q. If we go forward - or perhaps I ought to ask this at this stage, how did the property in the Glebe area fit into that pattern, was it any different in the Glebe area or much the same or what was the position? A. I think generally speaking it was much the same.

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Q. If one goes into 1974 for instance and there was a vendor who had to sell a property in a hurry, was this so-called downturn, did that result in any lessened price for such vendor? A. Well, to sell a property in a hurry at that point of time I believe he would have had to expect to achieve something less than what it was worth. I know that sounds a little Irish, but properties were not being transacted - it was like having a Rolls Royce outside Alice Springs - a very valuable car but no buyers there at that time. It was not that it had no value.

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Q. What would have been the major factor in the difference in yields for the two properties we are talking about? A. Which two properties? Q. 175 and 365? A. Well first of all you would have reasonably expected a differential in the yields because one was a small property suitable for owner occupation and one was essentially an investment property. Properties that are essentially investment properties, these invariably show a higher yield. Properties suitable for occupation - people don't think in terms of investment, they think more as an investor in terms of owner-occupation.

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Q. Is that a more important factor than the actual timing? A. No, I think the market would also show a further aberration in the yields in that as at December 1974, for a start, the cost of finance was very high, I suppose you could say it was an opportunists market, to take advantage of people's difficulties.

Q. Then the next document, No.3, the document headed "Basis of rental estimate". The first item is T.A.B. What was the T.A.B.? A. That was a property, 239 adjoining the subject property.

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Q. And the butcher's shop was, I think, 231, was it not? A. The Take-away Food Bar.

Q. I am sorry - ? A. The Butcher's shop, yes, adjoining. I believe that was 231, yes.

Q. Now the T.A.B. you have there, 26 feet, is that the frontage? A. That is the frontage of the shop, yes.

Q. And did you work out the lineal foot - you refer to the increase in rental in 1976. Then the Take-away Food Bar ---

HIS HONOUR: Q. Why did you allow \$20 for the residence there and \$30 for the residence at 175? A. Because this was a dwelling which was attached solely to the shop and there was no separate access to it.

Q. The Take-away Food Bar was 327 Glebe Point Road? A. Yes.

Q. The Bar and residence as at March 1973 was \$60 a week?
A. Yes.

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Q. And then you have got less allowance for dwelling, so that is the commercial part of it or the retail part of it, \$40 a week which gives you a P.L.F. of \$2.66? A. that is correct.

Q. The \$60 is for the Take-away Food Bar plus the residence?
A. Plus the residence yes.

Q. Then Goodways is 331 Glebe Point Road? A. Yes.

Q. And you take the figures at 72 and 75 in order to get your P.L.F. figures again? A. Correct.

Q. Then the next item you say there is no real evidence in respect of office space and you adopt \$1.75 per annum, is that \$1.75 per square foot per annum? A. Yes.

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Q. And the following words, what do they say? A. "As an integral part of the letting".

Q. Perhaps you might tell us why you chose that figure.

A. Well, as I said I could establish no real evidence as to the rental value of, first of all, office premises. They were quite attractive and the access to it was through the shop on the ground floor or the real estate agency on the ground floor. I applied to that what I believed would be a fair rental having regard to my experience in assessing rentals of office accommodation in various locations on the fringe of the city.

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HIS HONOUR: Q. What is the degree of error there? It could just as easily be \$1.50 or \$2.00? A. It could, yes.

Q. Is that the margin? A. I believed that in this location and the amount of space involved that this is a fair estimate. You will get certain circumstances where a particular person with a particular desire for a certain location is prepared to pay a lot more to gain it. It is something I would have to say, I am just relying on my experience rather than direct knowledge of this particular location.

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MR CLARKE: Q. I think it may be of assistance if one looks at it from a point of view of a range rather than a set figure. Do you follow? A. Yes.

Q. What would you think, as a letting proposition, the likely range would be? A. I think his Honour was spot on saying it could be \$1.50 or it could be \$2.00.

Q. We come to the next page, No.4. It has the word "income" as a commencing word. You say the market would seem to be static, not in a slump at 1975. Then is the income you are working out on this process - you adopt here - is that the income for 1973 but you also take it as applicable in 1975 on the basis there has been no movement in the market? A. Yes, that is correct. 10

Q. Now you take the lineal footage at \$3.50 per lineal foot to arrive at \$133 per week inclusive of basement, an annual gross of \$6,916? A. That is correct.

Q. Now tell me how you adopt the figure of \$3.50? A. Well, I thought frankly the three rentals I had looked at and referred to earlier were most appropriate; Goodways was a large frontage with floor space. It was probably - or not probably - it was in a better retail location than the subject property and that was a lease which I had the letting of prior to the date of assessment here and a letting after the date of valuation. Similarly the T.A.B. which was right next door - it would be difficult to find a closer comparison. It also had a large frontage, relatively speaking, of the shops in the area and an open clear space. I adopted this as a basis of determining the rental and at the same time I reflected that the finish of the subject property in its present condition was superior to those two shops in finish. 20 30

Q. Then the offices, you have simply done a mathematical calculation of the square footage of the offices at \$1.75 to arrive at \$2,128 per annum? A. Correct.

Q. And it calculates out to a total amount of \$4.58 per lineal foot per annum? A. Per week.

Q. Per week? A. Yes.

Q. Did you compare that back against the lineal footage valuation of other premises where there were lettings of shops and residences? A. Yes. I had a - I compared it, summarised it and viewed it as to how it compared as far as lineal footage - ground and first floor - with other properties. 40

Q. But you had no basis for comparison with a shop plus offices?

A. No, none at all. At that stage it was an academic comparison.

Q. And you got O/Acc. the figure 4.50 - what does that mean?

A. That is overall, \$4.50 lineal per week, overall.

Q. Then you have your vacancy allowance? A. Yes.

Q. Your Council rates, water rates, land tax, insurance, repairs and management, which gives you an annual net return of \$7,090? A. That is right.

Q. And then you have a capitalisation rate of ten per cent to give you a figure of - and I will come back to that - of \$70,900? A. That is correct.

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Q. And then you say less immediate costs to finish as 500 - that is finish development work? A. Yes, as at the date of inspection there were some incomplete works, particularly to the ladies toilets. They needed to be completed.

Q. Still in 1975? A. Yes.

Q. And then the acquisition costs and stamp duty totalling, with the finishing costs, it gives you \$1,500 as your final assessment of value based on rental income of \$70,000? A. That is correct.

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Q. Can you explain the adoption of a capitalisation rate of ten per cent? A. I adopted ten per cent and I would have to say, on reflection, I think I was probably too low. It was reflective essentially - it was solely a commercial investment property and importantly, it was a non-conforming use of the site. The property was zoned residential 2B which, under the Planning Scheme Ordinance specifically prohibited commercial premises. It was clearly known at that point of time that Leichhardt Council were antagonistic towards the use of premises, making it difficult for changes of use. Obviously if there was a right under the ordinance to a change of use, any purchaser buying a property for investment is rather wary if he knows there is difficulty he may face, perhaps longer than reasonably expected vacancy, whilst he has a dispute with Council so ten per cent is reflective of the commercial investment property and a non-conforming zone and I would have to say on reflection I think ten per cent is too low.

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Q. Coming to the last page in your valuation of April 1975 you refer to the works being carried out without Council consent and the subsequent invalidating order of the Local Government Appeal Board on 12th July 1973. This is p.5. Is a description of the process by which you take account to the fact that as at March 1973 the works carried out were illegal and there was a dispute in progress, is that correct?

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A. That is correct.

Q. And, perhaps I will read it on to the record - no - I will have it typed to save reading it : "Restoration of premises", and then-? A. Estimating.

Q. "Estimating up costs"? A. No, it says, "This could have been rationalised and estimated as....."

Q. Just above that you say, "Restoration of premises"? A. "Letting up costs".

Q. "A new tenant should...." and then the figures are income potential for six months for 237, leasing commission 250, costs of re-conversion and back tolegal costs comes to \$5,050. You say that a prudent purchaser would have not only wanted to deduct any \$5,000 for the risks of litigation and costs involved, you allow \$10,000 and that is how you came to the figure of \$60,000 shown in the valuation? A. Yes. 10

Q. And you say 11.6 per cent yield which is again purely mathematical. Could I ask you these questions. You have given us your general experience. What is your experience of this particular area of Glebe? A. In 1963 I was the responsible officer of the Valuer General's department for the valuation of the Glebe area and incidentally as the valuer for Glebe I dealt with the subject premises in 1963 - in fact late in 1973, early 1974, as I recall - 20

Q. I am sorry, how long was it, your contact with the Valuer General in 1963? A. I was a member of the Valuer General's Department for 13 years and during 1963 I was the officer responsible in the Valuer General's Department for the valuation of the Glebe area. In 1973 or 1974 - early 1974 I think it was - I was, as an associate director of Hardie and Gorman, a member of a team of consultants to the Commonwealth Government with Clarke, Gazzard, as I recall, to advise them on the cost of properties in the Glebe area where the Commonwealth Government was proposing to acquire properties. At that point of time a deal of analysis of sales, but more particularly residential properties in the Glebe and to Glebe Point Road and quite a few of those were Administration Board property sales. So I have a direct experience and involvement in Glebe. 30

Q. Was there, in 1973, some activity taking place involving sales by the Glebe Administration Board? A. Yes. There were quite a few sales, more so, I believe in 1972. 40

Q. And some involving sales to protected tenants of the premises there? A. There were sales to protected tenants and sales to 7A tenants and 5A tenants. I did establish at that point of time

the Glebe Administration Board was taking a very generous view in the sales of its properties to sitting tenants.

Q. Did you yourself make any particular enquiry of sales of subject properties with which we are concerned, 233 to 237 Glebe Point Road? A. Yes, as part of a general enquiry I did in 1975 and the valuation. I then spoke, as I recall, with a butcher - I now know it is a fellow who has since purchased the subject property - and at that point of time he told me (objected to by Mr. Morling)

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Q. Not what he told you. You had discussions with him about the sale of what, 237? A. Yes, I was making enquiries that I believed a reasonable valuer would make and can make as a valuer.

MR. MORLING: I don't mind if he says the state of his belief. I realise the valuers on both sides must rely on hearsay. If my friend wants to pursue to that I won't object.

MR. CLARKE: Q. In general terms, is a sale of part of a property to an adjoining owner, a semi-detached building, is that treated, to your knowledge, as a true comparable? A. It is a sale I would also look on as suspect to start with. I would not pay particular attention to it.

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Q. What was your belief in relation to the sale of 237 Glebe Point Road? A. 237 was purchased by the purchaser of 233/235 for amalgamation purposes. I understood that prior to the purchase of 237 - and I made these enquiries in trying to understand the sale of 237 - I understand that the purchaser of 237 had previously to that attempted to buy 231 and had offered to pay \$22,500 for that property. The tenant of the property is a butcher who, at that time, had six butchers working for him. He was quite a successful butcher and the first he became aware of the sale proceedings was the arrival of the surveyors. He contacted the owner and wanted to know - (objected to by Mr. Morling)

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Q. You understand, for his reasons, he matched the figure?
A. For his reasons he more than matched the other.

Q. And so the company that owned 233, 235 - ? A. Turned their attention to the property on the other side.

Q. And had there been - and I don't want to go into detail - but from your enquiries - negotiations in 1972 by the butcher for the purchase of his butcher's shop previously? A. No. I understand in 1972 that property 237 was on offer and was available for purchase for in the order of -

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MR. MORLING: I do not mind hearsay evidence of a sale.

MR. CLARKE: Q. I don't know if it was in the valuations but I think the actual price in 1972 was \$22,500? A. That is correct.

Q. The other two parts of the Glebe property, 233 and 235 were purchased in 1970? A. Yes, that is correct.

Q. For a significant - do you know the price? A. \$18,000.

Q. Was that sale three years previously of much value in assisting to arrive at a valuation? A. No, I don't believe it was.

HIS HONOUR: Q. In the valuation which you prepared, which is now part of Exhibit N, you say on p.4 giving tenancy details, "We are advised that as at 26th March 1973 the premises were occupied by Peter Craig Real Estate Pty. Limited as to the ground floor, part of the basement area and part of the first floor". As far as I understand the material that you have given you have not taken that into account in any shape or form? A. No. 10

Q. Was there a reason for that? A. Yes. I believe I further went onto say in the report that I believed those rentals were excessive and furthermore I understood they were weekly tenants and as such did not enhance the value of the property. 20

Q. I realise that you say the rentals were excessive but just treating Peter Craig - I understand readily enough the other companies were related companies but as best I understand it, Peter Craig was at arms length.

MR. CLARKE: No your Honour, I thought that was in the --

MR. MORLING: I do not suggest that your Honour.

MR. CLARKE: There were ejection proceedings subsequently and I do not think Mr. Morling and I want to go into details, but there was a real question mark about these.

CROSS-EXAMINATION

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MR. MORLING: Q. Mr. Gilbert, when did you first see these premises with a view to valuing them? A. In 1975.

Q. And by that time had they become vacant? A. It was vacant on my inspection.

Q. As the photograph shows, the renovations to the Glebe Road frontage were fairly extensive, were they not - ? A. Yes, they appear to be.

Q. And indeed the same would apply to the back of the premises which front on to the lane? A. Yes.

Q. And all three of the premises, 233, 235 and 237 have been completely renovated save for the small amount of work to be done on one of the toilets? A. That is correct.

Q. And the rear of the three properties has been converted into a sealed car park with marked car parking spaces on the sealing? A. In conjunction with the butcher's shop, yes.

Q. Are the premises now in the same condition as they were when you saw them in 1975? A. No. The premises now present better because they are occupied and cleaned up, but essentially it is much the same. 10

Q. They present the appearance, as the photograph shows, of being one building as distinct from three separate structures? A. That is correct.

Q. And I know it is terribly difficult but you went back to 1972/73. Would you think that the total cost of renovations, including the sealing of the carpark and the alterations to the back of the premises and the new shop fronts or street fronts and all the work done inside would be worth, say \$15,000 or \$20,000 in cost? A. It would not surprise me particularly, when you start renovating old buildings of this type - 20

Q. It might be between \$15,000 and \$20,000, as the sort of figure you would think not unlikely.

HIS HONOUR: Would it matter, "as at 1973 costs"?

MR. MORLING: Q. As at - the cost to the then owner in carrying out such improvements as appear to have been carried out, meaning all the back and all the front might have been of the order of \$20,000? A. I don't know what they looked like, it is difficult to make an observation as to cost. They may have been in reasonable condition prior to his commencement, or in poor condition. 30

Q. Most of the premises in any section of Glebe Point Road, being premises occupied for commercial purposes, look very old? A. Yes, I would have to agree all of Glebe Point Road looks very old.

Q. Some premises, although old, have been quite extensively renovated? A. Yes.

Q. You made your valuation on a capitalised rental basis. A. Yes.

Q. When did you investigate the circumstances of the sale of No. 237 Glebe Point Road? A. As at the date of the original inspection when I spoke to the fellow - I think it was the butcher. 40

Q. Would it not be usual for you to refer in your valuation to a sale of part of the premises which you are valuing if you are then aware of a sale if only for the purpose of dismissing it?

A. I did report, I thought, the property was purchased in 1972.

Q. Then you decided you could not make any use of the sale at all? A. That is correct.

Q. Do you agree with me that there was a booming real estate market in this part of Glebe between the early part of 1972 and March 1973? A. You have to be very selective about that statement, I believe, in answering, because I can't accept that applies to all the properties in Glebe.

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Q. Did you investigate sales and re-sales of properties in Glebe Point Road? A. No. There were sales and re-sales in Glebe Point Road, yes.

Q. You have not referred to any in your evidence have you? A. No.

Q. And you will agree that the classical test to ascertain whether a market is rising or falling in any given area is to have regard to sales and re-sales of the same property.

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A. Yes.

Q. The obvious reason being that there is no room for error in comparison between different properties, that is your understanding? A. I am not sure of the statement.

Q. The reason why you adopt the sales and re-sales of the same property is that it eliminates the necessity to make comparison between the selling prices of different properties? A. It helps.

Q. It eliminates it? A. No, it depends how far apart the sales are.

Q. Is it your belief that the real estate market generally in Sydney was tightening up as at April 1973? A. It was starting to, yes.

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Q. I want to suggest to you it was in 1974? A. No, I say 1973.

Q. Was not there present in the real estate market generally, in the State in 1973, a state of near euphoria which came to an abrupt end when Cambridge Credit Corporation collapsed?

A. I would agree that the bottom of the trench arrived in about September 1974. It was getting to that direction for quite some time.

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Q. There were a number of spectacular corporate crashes.

A. Yes.

Q. The first of which was Cambridge Credit Corporation?

A. Right.

Q. And I suggest to you the market was strongly rising market generally throughout 1973? A. I would have to disagree.

Q. Are you able to give his Honour any details of sales and re-sales of the same property in Glebe Point Road 1972/73?

A. No, but there were sales and re-sales in Glebe Point Road by the Glebe Administration Board.

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Q. Have you seen Mr. Cossack's valuation? A. I have.

(Luncheon adjournment).

ON RESUMPTION:

Q. You have seen the properties which, according to Mr. Cossack's records, were sold and re-sold in Glebe Point Road in 1972/73?

A. I have.

Q. You would not doubt that there was a strong rise in values in 1972 and up to and including March 1973, of properties available for use as shops or offices in Glebe Point Road? A. There would have been I believe an increase in value, yes.

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Q. And that increase would be best measured by sales and re-sales of such properties? A. If you had satisfactory sales, yes.

Q. Were you a director of Hardie and Gorman in 1973? A. I was an Associate Director in 1973.

Q. And 1974? A. Yes.

Q. And each year your company, that is to say Hardie and Gorman, together with other large real estate companies in this City, furnished to the newspapers an annual review of the year's trading? A. Yes, that is true.

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Q. And there is no doubt that the report furnished to the Sydney Morning Herald at the end of each year was a fair statement of its views on the real estate market for the past year?

A. Yes, I think so.

Q. Could I approach you with a copy of the Sydney Morning Herald of 26th December 1973 which, as you will see, is a page devoted to a real estate review of 1973? A. Yes.

Q. And do you recall that, as at that time, you regarded 1973 as being "another year of intense activity in the real estate market in which sales....." - would you agree you stated in your report "Another year of intense activity in the real estate market....were substantially greater than the record in 1972?"

A. That was not my report.

Q. You were a director? A. Yes, that is correct.

Q. And that was the position? A. That was the position. They were the figures as stated.

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Q. Can you recall what the level of sales for your company was in that year? If I suggested a figure of just on 32 and a half million dollars would you be able to agree with that? A. I could not disagree with it.

Q. It was something like that? A. Yes.

Q. An all time record? A. Yes, I think it has to be reviewed on what the sales were.

Q. Of course, and does the third paragraph of the 1973 report read, "Increased attention was directed to the.....to complete redevelopment". That is how it read? A. That is how it read - I don't recall it.

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Q. You would not have any doubt that that was the report - the report I am showing you - was your company's report for that year? A. Yes, no doubt at all.

Q. And does it go on, "New retail development however continued to be frustrated by planning problems and the reluctance of some firms and Councils to accept and realise the need for.... for non-shopping facilities", is that so? A. That is what it says.

Q. In that year of 1973 there was an entirely different climate in the way of demand for retail and office space than obtained the following year? A. Yes, it was a marked difference.

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Q. And did part of the next paragraph read, "There was very strong demand for retail premises to lease and rental levels... areas showed an upward trend". Do you agree that is what it says? A. That is what it says, yes.

PASSIM. The test of the passages read from The Sydney Morning Herald do not appear in their entirety as read to the witness - the actual passages will be obtained from the articles.

Q. I show you a report for the next year and I show you a copy of a page of the Sydney Morning Herald which, I think was, 20th December 1974 - but don't hold me to the exact date. Did your report in that year start, "This year the real estate market beset by a variety of problems, has been dull..... considerable degree lacking in confidence", is that what it said? A. Yes. That is it, I can't read from here.

Q. I am not suggesting for one moment that you deliberately, this morning, said to his Honour that the market was tightening up -

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HIS HONOUR: "Showing signs of softening."

MR. MORLING: Q. In April 1973, what I am suggesting is you were one year out? A. With respect, I maintain what I said. I think part of it is - if I had been asked a question as at March 1973 I would have said it was extremely buoyant. I said this morning with the benefit of hindsight we are all more knowledgeable - and I think it is easily seen, January 1973 was the peak of the stock market, and from January 1973 to the crunch in September 1974 there was a continual decline all the way through. The real estate market, it follows pretty closely the stock market, and the sales and Hardie and Gorman in those years, quite frankly, was not strong in residential sales or small sales. It was made up mostly of major commercial properties.

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Q. The second paragraph of your 1974 review, did it read, "Substantial drop in the volume of real estate transactions in all sections has inevitably followed". That is the way it read? A. Yes.

Q. And are you now able to agree with me that Hardie and Gorman - the value of transactions of Hardie and Gorman fell to just over eight million dollars that year, is that not right? A. Yes.

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Q. In any event, in March 1973 there was a great feeling of optimism in the real estate market generally? A. Generally, yes.

Q. And do you know yourself what the sales and re-sales - the figures relating to properties in Glebe Point Road - show as to the monthly increase in values in 1972/73? A. I did note from reading Mr. Cossack's, that he deduced some but from my own investigation those particular sales I chose to ignore.

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Q. Before we come to any other sales let us take the subject land. Is it sometimes the case that parcels of land which have been aggregated have a bigger value per square foot than smaller parcels of land? A. That is quite possible, yes.

Q. And that is the reason that sometimes, not always, but sometimes, the adjoining owner would pay more per square foot for land than anybody else? A. That is correct.

Q. And apart from the hotel in this section of Glebe Point Road the Bourke Company's land holding was the largest that you are aware of in 1973? A. Yes, I think that might be so. There may be one other property on the other side of Bridge Road that might be equal to it.

Q. Well the position was then that there was in the one holding, 10 as at March 1973, a parcel of land which had formerly consisted of three separate shop sites, then having been come to be held by the one person? A. That is right.

Q. So that it was on ordinary valuation principles likely that the value per foot of the aggregated parcel would be higher than the value per square foot of a much smaller parcel? A. I believe not in those circumstances.

Q. But didn't you have proof that that was likely to be so by the circumstances that a certain price had been paid for No. 237 to bring about the aggregation? A. That was true of the purchaser's point of view, yes. Q. In other words I think you said before lunch to Mr. Clarke that you rejected the sale of 237 as being of futility in arriving at a valuation? A. I reject that I did not say it was futility. 20

Q. You rejected it? A. Yes.

Q. And by that you meant that it was no value to you in arriving at an opinion as to the value of the aggregated parcel? A. That is correct.

Q. Would you turn your mind to what your valuation would have been if you had accepted that sale price as indicative of the value of the subject land - and by the subject land I mean now the whole property? A. Did I. - 30

Q. Did you turn your mind - ? A. Yes, I did.

Q. Did you make any calculation? A. It seemed to me it was purchased in May 1972 or thereabouts, the valuation was March 1973. It was \$22,500 which may have been an excessive price as at May 1972 but I believed as at March 1973, had it been still in isolation as one shop, it would have been worth more than \$22,500.

Q. How much more? A. Well it was very difficult to say from the point of view that when I saw it it was completely changed. If I assumed it had a residence with a separate access and a shop 40

on the ground floor, it could have been in isolation worth between \$30,000 and \$35,000.

HIS HONOUR: Q. To the adjoining owner or an independent purchaser? A. To an independent purchaser.

MR. MORLING: Q. That is if it was in the same condition as in May 1972? A. I am assuming an average condition. I was unaware of what it was like.

Q. And that would be say \$30,000 to \$35,000? A. Yes.

Q. But assume the quality of the premises has been upgraded and a carpark put in the rear of it, it would be worth more than that sold as an individual parcel? A. Of course, it would have to be entirely different again. I am talking about as a shop and residence, not necessarily a shop and office as at 1973. As a shop and dwelling I believe it would have a greater rental potential than a shop and an office. 10

Q. Would you agree with me that the sales and re-sales of lands being used for commercial purposes in Glebe Point Road indicate that in the latter part of 1972 and the first three months of 1973 values were rising in the order of 8 per cent or 9 per cent per month? A. No, apart from the sales of the ones sold by the Glebe Administration Board, I did not detect any evidence to support that assertion. 20

Q. Can I ask you about 155 Glebe Point Road, which I think is the third sale on your - on the first page of the list. Do you have your notes there? A. Yes.

Q. You say that property sold for \$31,000 in May 1972? A. I believe you said it was in March.

Q. I have no basis other than Mr. Cossack's say-so, but he has 30th March 1973 as the contract date and I have no doubt he and you can sort that out without any problem. He is a month earlier than you for the contract date? A. Yes. 30

Q. And that property is the property shown in the two photographs I am showing you? A. Yes.

Q. If I could see the exhibit (shown to Mr. Morling) There is no point in tendering these. The property had been sold the previous year, had it not? A. Yes, it had.

Q. It had been sold 7 or 8 months before? A. There is a little bit of doubt in my mind and also Mr. Cossack's mind as to when it did - 40

Q. I take it you had some discussion with Mr. Cossack? A. No,

the report.

Q. It was sold for \$17,030 was it? A. I can't recall.

Q. If you don't know the facts, I won't tax you. You don't know the facts? A. No, I don't.

Q. And that property is in a very much more inferior condition to 233 to 237, is it not? A. It is.

Q. The properties 233 to 237 occupy most of the frontage between an active trading hotel and the T.A.B.? A. Yes.

Q. And are within about 80 feet of the Junction of Pymont Bridge 10 Road and Glebe Point Road? A. Yes.

Q. And are opposite some commercial development and high rise development? A. High rise now, yes.

Q. When did that high rise building go up? A. Subsequent to that.

Q. Opposite? A. Three small shops and four flats.

Q. Whereas No. 145 is opposite some quite old single unit dwelling houses? A. Yes.

MR. MORLING: Q. Indeed it would be fair to say that the property 155 Glebe Point Road is just about at the tail end of the shops as they peter out going down towards Parramatta Road in this section of Glebe Point Road? A. That is a fair statement, yes. 20

Q. Of course the rear part of the premises of No. 155 are quite unsuitable for the parking of motor vehicles belonging to the occupants of the building other than perhaps one parking space?

HIS HONOUR: Q. Do you want to see the photographs again? A. No, I can recall that photograph, your Honour. It obviously has not got the parking facilities of the subject property.

MR. MORLING: Q. In 1973 that was a significant facility when attached to retail or commercial development? A. Not being a retailer on the strip, it is my observation of the parking areas and I took particular note, it was not used to a great extent. In fact I think council would have requested a sign to be put on the front of the building to try and attempt to get people to stop parking in Glebe Road and to park off the street. Council obviously thought it was not being parked and were trying to encourage people to use it. 30

Q. In 1973 the presence of a parking facility for a dozen cars at retail or commercial development was regarded as adding quite significantly to the value of premises fronting onto a busy road? A. It would depend on what you mean by quite significantly. 40

I don't believe that there was a great significance in added retail value to the property because where was parking there. There was obvious significance to office users who can park but not necessarily retail users.

Q. If a person had wanted to commence a new commercial or retail use in Glebe Point Road in 1973 the likelihood would have been that the Leichhardt Council would have demanded some sort of monetary contribution towards a parking fund? A. That is true.

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Q. If the developer could not provide parking on site? A. Yes, they would.

Q. Without being specific about it the sort of parking levies which were being sought in those days in areas such as Glebe would be at least \$1,000 a car space, wouldn't it? A. I don't know specific figures.

Q. It was a quite significant sum of money, wasn't it? A. It may have been, this would only apply to new developments.

Q. For instance say if the hotel wanted to expand that sort of space would have been very valuable for that purpose to the hotel? A. Yes, it could have been.

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Q. I now turn to property 175 Glebe Point Road which is the first property here on the list of sales, that was sold as you say for \$35,750 you say in March 1973. Again Mr. Cossack has 12th January, 1973. Can you assist me by telling me the source of your information as to the contract date? A. The source of my information was the records at Leichhardt Council. There was some confusion at times when they note various transactions.

Q. That property had been sold not long before the sale which is noted by you as item 1 in the list? A. That's correct.

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Q. Were you aware of that when you prepared this list? A. I was.

Q. It would be normal, wouldn't it, to note a sale as having taken place shortly before valuation date? A. Yes, and perhaps I was remiss in not putting it in. I didn't put it in or utilise it because of the background of the sale.

Q. Could I suggest that this may have been the reason, Mr. Gilbert, that when you were writing valuation of \$60,000 or \$70,000 you were writing it at a time when the real estate market was in one of the greatest troughs that the market has suffered in this city? A. That is a fair statement, I was writing the valuation at that point of time, yes.

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Q. What I am suggesting to you, I am affording you an excuse that why you didn't put it in your valuation was that you had forgotten to an extent the strongly rising market which was evident in Glebe as at March 1973? A. If I could say this, I accepted before there was a rising market. I didn't accept it was a strongly rising market and the reason it was omitted, it was a sale from the Glebe Administration Board to a sitting tenant on a low rental. As I expressed before, on my investigations of the sales of the Glebe Administration Board's properties, they have a very lenient or generous view towards their sitting tenants and there were a number of sales and the results brought significant increases in value which I believe was not so much reflecting value increases but reflecting the benefit granted to the tenant by the Glebe Administration Board. 10

Q. These were commercial properties not pure housing? These were shops and dwelling occupied by tenants for many many years, tenants of the Administration Board and it was the tenants of the board who purchased them.

HIS HONOUR: Q. Do you know the basis on which the Glebe Administration Board fixed the sale prices? A. That is something that I have attempted to establish. We were making an investigation of the market for the benefit of our report to the Commonwealth when the Commonwealth was acquiring large numbers of properties in Glebe. The answer was that they were not out to take full advantage of the market and furthermore quite a few of the tenants were protected. I don't know for certain of the status of the tenants at the time of sale but had he been a protected tenant or a tenant subject to an unregistered lease or a tenant under 17A the market value of that property subject to the tenancy would be significantly less than it would be with vacant possession and Dowling sold it to Bessingthwaite with vacant possession. 20 30

MR. MORLING: Q. The Glebe Administration Board had its own real estate advisers? A. It did.

Q. Do you remember who they were? A. Yes, I believe it was Jones Lang Wootten who had an office in Glebe.

Q. They actually had an office in Glebe? A. Yes.

Q. What I want to suggest to you is that the Board sought what it thought was fair prices in respect of properties or market price in respect of properties used for commercial purposes but were prepared to grant reasonably generous terms to purchaser on purely residential properties but at fair market prices, is that your understanding of what happened? A. It appeared to me at that time that that was not the case because quite frankly there were very few solely commercial properties that had sold. These properties were purchased, the principal occupation was a residence. Many of these shops 40

were closed and of course this particular shop 175 has been substantially improved in appearance to what it was when it was sold originally.

Q. When did you inspect for the purpose of making that comment? A. I inspected it for the purpose of this valuation first in 1975.

Q. It was different then from when it was originally sold?
A. Yes.

Q. You are not suggesting it was different between the time it was sold and resold at the end of 1972 and early 1973? A. Well I can't say for certain. 10

Q. Number 175 Glebe Point Road is premises which are now used as a plant -- ? A. Florist.

Q. Called the Perfumed Garden? A. Yes.

Q. It is so constructed that only part of the frontage to Glebe Point Road is available for commercial use, the balance of it being the doorway leading into the residential premises upstairs? A. Yes, it is a standard size three feet doorway into the premises. 20

Q. That makes the frontage very much less attractive for commercial purposes than the frontages of either 155 or 365 Glebe Point Road? A. It does, about 14 feet.

Q. I think this is a close-up photograph of the premises which is in evidence (handed to witness) do you agree that that shows the Perfumed Garden? A. Yes it does.

Q. That shows its present condition. A. Yes, it is similar to a photo I put in myself.

Q. Does it look like it does in the photograph I am now showing you? A. No, that was one premises that I did gain access to the shop in 1975. 30

(Photograph of 175 Glebe Point Road, tendered without objection; admitted and marked Exhibit 6).

Q. It was clear to you in 1975 that the premises were very much inferior in the way that they had been fitted out to the subject premises? A. I would agree with that, yes.

Q. Once again there were no facility to park cars at the rear of the premises? A. There is a garage at the back.

Q. It would take one car? A. Yes.

Q. Is that shop a few doors up from number 155? A. It is.

Q. Whilst not as badly situated as 155 it is again in an inferior commercial location when compared with the subject land? A. It is, yes, location not zone.

Q. Just stopping at that sale, there you have a sale of premises which you said had taken place in March 1973, is that right? A. Correct.

Q. You regarded that as being an arm's length transaction?
A. Yes.

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Q. It was of land which was inferior in quality to the subject land? A. Well I'm not sure what your definition of quality takes in.

Q. It was less valuable foot for foot? A. I think they are two things that have to be considered, the location and the zone, and the development on the land, three things.

Q. Location - it was an inferior commercial location? A. I agree.

Q. The physical improvements were inferior to those on the subject land? A. They were inferior in finish and presentation however the layout of it providing direct street access to the residence from Glebe Point Road was a significant plus in comparison with the shop and parking with no direct access off Glebe Point Road.

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Q. The real value of premises in Glebe Point Road at that location was not as residential accommodation but as commercial space, wasn't it? A. Actually the differential in the sales, a pure residential property, shops and dwellings, was not that great and frankly in this location the dwelling had a significant value in the make-up of the value of the property.

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Q. I think the dwelling next door was disused, was it not?
A. Yes, that was the newsagent. He ran a business, the newsagent's, and has since changed, but they have a particular value as a newsagency and that particular newsagent did not have need for the dwelling. He was paying for the rental of a newsagency.

Q. Do you tell his Honour that premises 175 occupied by the Perfumed Garden were more valuable because they had a doorway giving access to the domestic section of the premises on Glebe Point Road than they would have been if the whole Glebe Point Road frontage had been given over to commercial development?
A. That's what I am saying in that location, yes.

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Q. That would not have been the situation up near the hotel,

would it? A. Well I would suggest it would have been in both cases and more so if the direct access next to the Glebe Hotel was off the street to offices upstairs.

Q. There are now some doorways in premises fronting onto Glebe Point Road by the Glebe Hotel? A. Yes there are.

Q. They are almost invariably in premises which are run down compared with their neighbours which don't have such doorways, aren't they? A. I couldn't -- I haven't made a survey of such things.

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Q. Have you been up there this year? A. Yes.

Q. Would you agree that the situation this year is little different from when you saw it in 1975 in terms of the appearance of the building? A. That is a fair statement, yes.

Q. It would be fair to say that you have not used comparable sales at all in valuing the subject place? A. I have to say yes because I contend there are no comparable sales to this particular property.

Q. If there had been sales which you regarded as being comparable you would have used those as the base of your valuation? A. I would have, yes.

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HIS HONOUR: Q. You would have used rental as a double check or not at all? A. Had there been sales of comparable properties I believe they would have been investment sales and they would have given me the opportunity to analyse the investment years and I would have applied that to this property.

MR. MORLING: Q. Did you know of the sale of 165 Glebe Point Road? A. 165?

Q. Yes? A. No, I believe I had a schedule, I can't quite remember.

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Q. When you prepared your valuation on 30th April, 1975, you were with Hardie & Gorman? A. That's correct.

Q. When did you leave Hardie & Gorman? A. 1977.

Q. The sales list is on the letterhead of Gilbert & Kendall Pty. Ltd.? A. That's correct.

Q. That was not brought into existence until some time in 1977 after you joined that company? A. I am not sure when it was brought into existence.

Q. The sales list? A. Yes, it was typed for the benefit of

Mr. Clarke.

Q. Do you have notes which form part of Hardie & Gorman's valuation? A. Yes I do.

Q. Do you have those in court? A. Yes I do, may I get them?

Q. Yes.

(Mr. Morling called for production of notes).

MR. CLARKE: Could I have identified what these documents contain?

WITNESS: They are all sales, Mr. Clarke. As far as I recall they are all the sales that occurred from 1972 through to 1975. 10

MR. MORLING: Q. These surely were not produced for the purpose of making a valuation, were they, in 1975? A. They were.

Q. Yet you did not make any reference to them at all in the written valuation? A. No, because I rejected them, most of them. There are quite a few of those sales there which are purely residential properties which I deleted altogether.

Q. Where did you get the information from? A. Leichhardt Council.

Q. (Approached). There is a reference to 308 Glebe Point Road, is that right? A. Yes, this is 308. It is a brick and tile semi. 20

Q. You have got 10th March, 1975? A. Right.

Q. Is that the contract date or what was it? A. It was the date shown to Leichhardt Council.

Q. That has come in very quickly to Leichhardt Council if your valuation was made in April? A. Yes, we try to keep on top of sales.

Q. What is the entry under 401, is that 29/10/77? A. Yes.

Q. How could that be if it was written in 1975? A. It was not done - all that can be is a misprint. It was done in 1975. 30

Q. It shows clearly 29th October, 1977? A. That's correct.

Q. It is your handwriting? A. It is not all my handwriting.

Q. There would appear to be no doubt about that figure? A. No, there is no doubt about it at all.

Q. Mr. Gilbert, I can readily appreciate that in a case which has dragged on for 7 years one can get confused about when one did something particularly if you are asked to make the valuations at points of time years before you are making the valuation. Is it possible do you think that some of this material was put together after you received instructions to give evidence in this case? A. No, I am completely positive it wasn't. I received these instructions in the first place -- I was aware it may have been eventually used for litigation purposes. I gave instructions at that point of time very clearly to my staff, assistant valuer, Mr. Case, to start off by scheduling every sale that occurred in the Glebe Street in a certain period. 10

(List of sales purporting to be for the period 1970 to 1975 M.F.I. 3.).

WITNESS: If I recall correctly it was one David Barron who worked with me then and he did a lot of leg work originally.

MR. MORLING: Q. Mr. David Barron did the leg work? A. He started off.

Q. Was Mr. David Barron not a senior director in the firm? A. No, David Barron was or is a Godson of Mrs. Gorman. He was certainly not a director, he was my assistant. 20

Q. In any event when you read the valuation you were of the opinion that the market value of the property with vacant possession was \$70,000, is that so? A. Yes.

Q. That information was expressed in the knowledge that as at March 1973 there was a little difficulty with the Leichhardt Council in relation to the matters referred to in the report? A. That's correct.

Q. Do I assume that the \$60,000 figure which you mentioned earlier this morning is something you have thought of since you wrote this valuation? A. No, that formed the valuation which issued in 1975. I expressed two figures in that valuation as instructed. 30

Q. I do beg your pardon. (Approached). Could you identify for me on the list of sales 175 Glebe Point Road? A. Here it is (indicated).

Q. If you could also indicate 155 and 365? A. That's 365 (indicated).

Q. Can you point out 155? A. Here (indicated). 40

Q. Why was it that you selected 365 as a sale worthy of mention and not 165? A. Well 365 is a commercial investment property. It was sold in December 1974 which was close to the date of valuation in 1975. 165 - I would have to see again to refresh

my memory why I left it out.

Q. In terms of location 365 was a fair distance away from the subject premises as compared to 165? A. 365 is a premises which is probably in the strongest section of the retail strip along Glebe Point Road up opposite approximately Toxteth Road. That strip was I believe more comparable to the strip where 237 was just entering on the other side near Bridge Road.

Q. 365 sold according to your list in December 1974? A. That's correct.

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Q. What was the point in taking a sale in December 1974 if you had sales much more approximate in point of time in March 1973?

MR. CLARKE: I think he was directing the previous answer to what he was doing in the report and one of the dates was April 1975.

MR. MORLING: Q. Is that the explanation? A. That's correct.

Q. You would agree with me, would you not, that market conditions in December 1974 were very much different to what they were in March 1973 on Glebe Point Road? A. They were, everything.

Q. I put it to you that 365 is in an area which is by comparison 20 run down, with the area near the hotel? A. No, I wouldn't accept that at all. Actually 365 is in a very strong retail strip and is not run down.

Q. Have you been into the premises 365 recently? A. I have seen the premises.

Q. Have you been in there? A. I have been in the shop but not in the dwelling, but I am talking about location.

Q. They are in a state of delapidation? A. Yes.

Q. And have been for years? A. That's correct.

Q. Indeed, if one goes down the back one would think they are almost derelict? A. I wouldn't say derelict but I think the photograph amply demonstrates that they are not in the best of condition.

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Q. There is no property in that condition anywhere near the corner of Glebe Point Road and Pymont Bridge Road, is there? A. No, when you said in the area, what I was saying is that it is in a retail strip which is superior to the strip which the subject property is in.

Q. It is a few doors down from the children's court shelter?

A. I guess that is no more detracting from value than being next door to the hotel or a T.A.B.

HIS HONOUR: Q. Is it near the children's court shelter?

A. There is a shelter there and I must admit I don't know if that was in existence in 1974 or 1973.

MR. MORLING: Q. Is it not a fact that premises are used for non-commercial purposes frequently, in fact that they are located in an area in which commercial use does not command a premium in price? A. You mean the children's court or the subject premises?

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Q. The children's court? A. That was a building that was never constructed for retail purposes.

MR. MORLING: Q. If I could just take you to p.1 of Exhibit O. Was the analysis of 175 the starting point in your valuation? The figure of \$30 per week for the shop is your assessment is it not? A. That is true.

Q. This is the Perfume Garden one? A. That is correct.

Q. Will you agree with me that as a shop the Perfume Garden is greatly inferior, as a shop site the Perfume Garden is greatly inferior to either 233, 5 or 7 Glebe Point Road? A. Looking at its location yes, it is an inferior location; looking at zoning, there is quite a deal of difference.

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Q. You talk about the zoning, there is unrelieved commercial and shopping development proceeding north along Glebe Point Road from the hotel to well beyond the subject lands - there is and was? A. That is correct and it is all zoned residential.

Q. The buildings clearly had existing use rights for some sort of commercial use? A. That is true.

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Q. So that quite apart from any problem about getting the Council to approve some renovations the actual use of the shop frontages for commercial purposes was protected by existing use rights? A. That is correct.

Q. So that the purchaser of the Perfume Garden property had no more than an assurance that he could use the premises as a shop than would the purchaser of the subject land? A. No, I would not agree with that at all. Quite obviously any use or any change of use requires a development application. Any potential purchaser of 175 or 237 would have regard to the zoning of it and the possible or potential difficulties and changes of use and would have regard to the fact of inability to extend the use of a residential zoning whereas he could extend

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the use of a commercial business zoning and furthermore you would have to consider the fact that if his property was demolished by fire he may have difficulty getting his existing use back on the land.

Q. What, you would put a new house there, would you? A. No, depending on Council's attitude they could attempt and successfully block the re-building of a destroyed building on a non-conforming zoning.

Q. You know this area fairly well, don't you? A. Yes, I have known of no such evidence - I beg your pardon, there was, I was involved in a case with the Valuer-General's department when a box factory was burnt out on residential zoning in Glebe. 10

Q. I was not talking about a box factory, I am talking about Glebe Point Road frontage. Do you know of any cases in Glebe Point Road in which a person has not been able to change the use of a shop from green grocery to grocery or some other similar type of change of use? A. Well, obviously there was a difficulty in the subject property and there is currently a dispute at the end of Glebe Point Road now where a shop has been vacant for six months because Council won't grant a change of use. 20

Q. The difficulty with the subject property related to the doing of work without authority, didn't it? A. That was part of it. An estoppel order was issued on the building but also the development application for an extension of the limit of tenancy into 327 was denied as a separate matter.

Q. You assessed the value of the Perfume Garden shop as being \$30 a week? A. Correct.

Q. How did you arrive at that? A. Well, the property was leased at \$60 a week; \$30 on the residence was a reasonable price. For instance, the flats which you inspected in Glebe Point Road, No. 365, as at the beginning of 1973 were leased at \$25 a week. 30

HIS HONOUR: Q. 25 or 35? A. 25 at the beginning of 1973 and on the sale in December 1974 they were \$35.

MR. MORLING: Q. Wouldn't it have been a more logical exercise from a valuation point of view if you were seeking to get the rental value of a shop on the subject premises to look at the premises next door to 175 which was leased simply as a shop or used simply as a shop? A. The butcher's shop? 40

Q. Whatever 177 was used for? A. I'm sorry, the newsagency?

Q. Yes, the newsagency. There you had a lease of premises which were used solely as a shop, is that so? A. They leased a shop and dwelling and chose to use the shop.

Q. Used solely as a shop. The person was prepared to pay as in August 1973, was prepared to pay \$65 per week for space which he proposed to use only as a newsagency? A. That is right.

Q. Would it not have been preferable to take that rental and adjust it one way or the other to get the rental value of a shop in the subject property? A. Well, he was paying \$65 a week for a shop next door, shop and dwelling. 10

Q. If you come to p.2 of Exhibit O you deal with 365 and the shop there is \$45, isn't it? A. Yes.

Q. And was the shop in 1975 used as it is now? A. Yes.

HIS HONOUR: Q. That is shop and residence? A. Shop and residence, yes.

MR. MORLING: Q. The shop and residence were used then as they are now? A. Yes.

Q. Would you agree that the shop gives a rundown appearance? A. It does. 20

Q. Bordering on delapidation? A. Well, it has a sheet hanging in one of the shop windows.

Q. Does that sheet hang in the shop window all the time, does it? A. As long as I can recall, yes.

Q. You would surely agree that the rental value of that shop is of no use at all in fixing the rental value of a shop near the hotel in Glebe Point Road? A. I agree, I did not use it, nor did I use the rent in 175 or 165.

Q. You were using it just for capitalisation rates? A. I was analysing sales to try to show what sort of yield it was showing. 30

HIS HONOUR: Q. You were not analysing sales, were you, you were analysing rental? A. 175 is an attempted analysis of the sale, a sale for \$35,750 and the sale indicated to me at 6.17 per cent net yield.

Q. In this photograph of 365 which I think was the one that you said looked dilapidated and had a sheet hanging in the window, I just cannot see anything like that. Just have a look at the exhibit, would you? (shown). A. It is an angle shot, your Honour. 40

Q. That is the right photograph, is it? A. Yes, it is the right strip.

MR. MORLING: Q. Can I suggest to you that there are two parts to this shop frontage; one has a sheet over it on the right side as you look in, the left hand side does not, is that right? A. Yes, with an entrance to the flats.

Q. So perhaps the photograph does not show that part of the shop with the sheet? A. It is in that strip. Perhaps I could produce a clearer photograph for you. 10

Q. If we turn to p.3 of Ex.O, the basis of rental estimate for the two preceding pages they have been used at all to afford a basis for estimating the rentals? A. I'm sorry, 365 and 175?

Q. Yes? A. No, I did not attempt to use those for rentals at all. I used those to determine what sort of yields they were showing as investments at the date of sale.

Q. Would you think that a likely purchaser of the subject property would be buying it for his own occupation? A. No, I do not believe so. 20

Q. Why not? A. Well, it is possible.

Q. But why wouldn't such a person be a likely purchaser? A. Well, I would think the more likely purchaser would be an investor.

Q. The last purchaser had apparently purchased the premises for his own occupation, hadn't he? A. Yes he did. It appeared that he was sub-leasing quite a deal of the property so I suppose he could be viewed as an investor as well.

Q. Was there not a tendency even by professional people such as surveyors and plan drawers and the like to move away from the centre of the city in 1973 because of the high rentals then being obtained and a tendency to look for cheaper near city accommodation? A. Well, I cannot say I have any knowledge or experience of that happening. 30

Q. In your view would the T.A.B. have been in 1973 in Glebe somewhat of a draw card for pedestrians? A. Yes it would.

Q. It would be fair to say, wouldn't it, that the combined attractions of the hotel and the T.A.B. would have marked out the street frontage between those two establishments as being the most commercially desirable part of the road? A. Well, a lot of shopkeepers have different ideas on that as to the 40

type of people it attracts to the location. The T.A.B. and the hotel on either side can attract some undesirable elements with different types of retailing, others, take-away food stores, think it is tremendous.

Q. Premises 327 were down further to the north, I take it?
A. Yes?

Q. Would 327 be say a quarter of a mile from the Pymont Bridge Road intersection? A. Quarter of a mile?

Q. Well, would you like to put a figure on the distance? 10
300? A. 100 yds. I would say. Which property?

Q. I am talking about 327, the take-away food bar? A. I'm sorry - 327 and 227 - that would be the take-away food bar which is within the strip close to further up so it would be quite a distance. As far as yardage I do not know, it could be a quarter of a mile.

Q. Is that shop next door to a - A. A butcher.

Q. What is on the other side? A. There is a wine bar, further up there is Goodways.

Q. It is opposite a park? A. No. 20

Q. Is that your recollection, not opposite a park? A. You are talking about 327?

Q. Yes. A. It is not opposite a park.

Q. Is it next door to 325A, can you recall? A. Yes, it is very close to 325.

Q. That is a rundown dry cleaning place, isn't it? A. There is a haberdashery up there. This would be the strongest section of the retail strip.

Q. I just want to suggest to you that 327 is probably the A.N.Z. Bank? A. There is a new A.N.Z. Bank next door. The A.N.Z. Bank is not 327, the A.N.Z. Bank is next to it. 30

Q. Next to what? A. Next to the butcher which is next to the take-away foods.

Q. I want to put this to you that the order of the premises as they now exist as of today is this: you have got Goodways, Tiger Lil's, Hayes Butchery, a take-away food shop? A. That is right.

Q. And is that 327? A. That is 327.

Q. I want to suggest to you that the take-away shop has got the number 329A on the front of it now. Have you been there recently? A. I was there a short time ago, yes.

Q. Do the numbers appear to be the same as when you wrote this valuation? A. Yes they do. It is identifiable additionally by its narrower frontage than the other shops.

Q. Can you tell me from the calculations on p.3 what is the deduced value per annum per square foot you arrive at for the ground floor space in the subject premises? A. I did not do it, I did it on a foot frontage basis. 10

Q. Can you without much difficulty tell me what it works out at as an amount per square foot per annum? A. Yes I could.

Q. It need not be too exact, just an approximation.

HIS HONOUR: Are we talking about 193 or 195?

MR. MORLING: Q. I am talking as at 1973. I take it, Mr. Gilbert the figures on p.3 of Ex.0 are 1973 calculations, is that right? A. Page 3 of the valuation?

Q. They are made as at 1975 but related to 1973? A. I presumed they were related to 1973; I measured in 1975 and - 20

Q. I'm sorry, you are not with me. All I want to know is what does your valuation show as to the value per square foot as at March 1973 of the ground floor space of the subject premises? A. That works out about \$4.40 a square foot for the whole area inclusive of the common areas to the front to go upstairs and the areas at the back.

Q. Would you agree that it is commonly found amongst valuers that first floor space above ground floor commercial space leases for about 25 per cent of the rental obtainable for the ground floor space? A. No, I cannot say that is commonly agreed. 30

Q. Isn't that a circumstance which you very commonly find existing when you make valuations? A. Not at all. You could go into the developments, for instance in Westfield's where they are paying \$40 a square foot for retail areas, and you go upstairs and they are paying \$50 a square foot for offices.

Q. Could I limit it to premises, suburban shopping centres where you have a busy road, shops along the road frontage and a floor above the shopping frontage and in those circumstances if you were at Newtown or Ashfield you would expect to find that sort of relationship, would you not? A. No, I would not expect to find any relationship in my belief. 40

Q. If you had been fixing the price which a person would pay if he proposed to occupy the premises himself, would you have taken a different capitalisation rate than ten per cent?

A. No.

Q. Did not the first two exercises in Ex.O show different rates of capitalisation depending on whether the person was buying it as an investment property, as on p.2, or not as an investment property? A. Yes, but if I understood your question correctly you are asking me would I value the property differently 10 because someone was going to buy to live in himself and my answer is no, I would not, I would value the same way.

Q. You took the ten per cent as being applicable to - A. To a commercial investment property.

Q. What does the figure of six point one per cent represent then on p.1? A. That is a yield that was deduced from a sale of a property which was suitable for occupation as a residence plus a shop. It is the sort of property more likely to be purchased by an owner-occupier than the subject property whereas 365 was analysed on an analysis of a pure investment property. 20

RE-EXAMINATION

MR. CLARKE: Q. (Approaching with m.f.i.3) You were asked a question about the entry relating to 401. Now the entry opposite is in ink or biro as is the figures 401. Is that your handwriting? A. I do not believe I was asked a question on 401.

Q. Well, I understood that you were asked a question about 401 in relation to the date 29/10/77 - what appears to be 77. Is that your handwriting? A. No, that is David Baron's.

Q. On the right hand side is that your handwriting in pencil? 30
A. No, that is his as well.

Q. When did you yourself leave Hardie & Gorman? A. I left there in September, 1977.

Q. Is all the handwriting in that document David Baron's?
A. No, it is a mixture; mostly his, partly mine. He prepared that on my direct instructions when I received the instructions from the client and at that point of time I issued those instructions to him.

Q. You have got instructions in your file? A. That is my instructions to David Baron. 40

Q. If you could turn to p.4 of Ex.O it is a document that starts with the word "income" at the top and deals with as at

1973 and 4/75. You told Mr. Morling that your figure approximated \$4.40 per square foot and I think you used the words for the whole area including stairways and common areas? A. That is right.

Q. Do you mean by that the whole area of the ground floor or do you mean the whole - A. The whole of the ground floor area, it would apply to purely the usable retail areas, obviously the rate per square foot would be a lot higher.

Q. But taking the whole of the ground floor your rate per square foot is \$4.40, is that correct? A. That is the calculation I just made then. 10

Q. Is that a reasonably accurate calculation? A. Yes

Q. For the office space you take \$1.75? A. Right.

Q. Which is something more than 25 per cent of the \$4.40, correct? A. It would be, yes.

Q. Are you able to tell us what just the shop area, that is the real estate business premises, what rate per square foot was allowed for that or what rate you worked out for that? A. The whole of the ground floor was a mixture of uses and I viewed it at that point of time as one tenancy. There have been suggestions as possibly three tenancies but at the date of valuation in 1973 and as at 1975 it was, as I understood, in one occupation so the rate per square foot I am talking about is the whole of the ground floor. 20

Q. Inclusive of basement apparently? A. Yes, I think the basement is in great doubt.

Q. The basement, is that very material? A. Well, it offered some toilet accommodation and some storerooms.

FURTHER CROSS-EXAMINATION: 30
(BY LEAVE)

MR. MORLING: Q. In the main valuation you give two valuations, one as at 26th March, 1973 of \$60,000 and one at \$70,000 which is expressed to be the current unencumbered market value. Do I take it by the current market value you mean the value as at 30th April, 1975? A. Yes.

Q. Is the \$70,000 figure on p.4 of these notes the way in which that 70,000 was calculated? A. Yes it was, basically.

Q. And these were the notes which were produced to write that figure of \$70,000, is that right? A. Yes. 40

Q. (Approaching) I would suggest to you to strain your memory because on p.3 of Ex.O you refer to the T.A.B. 12/76, therefore I suggest to you that these notes could not have been produced in April 1975 and, if I can assist you further by turning over the page, Ex.O, p.4, there are some words which seem to read, "The market was seen to be static if not in a slump at 1975." Now surely these notes could not have been in existence in April 1975? A. These were a write up of the notes in a presentable form for Mr. Clarke.

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MR. MORLING: Q. If they were a write-up of the notes, they were a write-up of something with a December 1976 date, were they not? A. That was one piece of evidence that came forward.

Q. It came forward at some point of time after December 1976, is that right? A. That is true.

FURTHER RE-EXAMINATION

MR. CLARKE: Q. You identified m.f.i.3 as notes you had made by Mr. Barron. A. Yes.

Q. Were there any notes other than these notes you had prepared for the 1975 valuation? A. Yes.

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Q. In respect of Ex.O, which is the document which refers to 12/76 that Mr. Morling has referred you to, in relation to the material of dates prior to April 1975, where did the material come from for Ex.O? Do you follow? A. No.

Q. In Ex.O there are references to a number of dates prior to April 1975. A. Yes.

Q. These were not your original notes, were they? A. That is right.

Q. What was the source of material for these notes insofar as they related to pre April 1975? A. The base notes that you have.

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Q. M.f.i.3? A. Yes.

Q. Insofar as there is reference to 12/76, when did you get that information? A. That was recently, when I made a call on the T.A.B.

Q. When you ascertained you would be likely to give evidence, did you make further inquiries? A. I refreshed my memory by looking at sales and going back to the notes, and going to the Valuer-General's Department, and going through all the figures again.

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Q. Of those other notes you have there, were they used for the compilation of Ex.O? A. Which are they.

Q. The other notes you have just spread on the witness box.
A. They were not used in the compilation of anything else.

Q. Whose handwriting is on m.f.i.3, apart from Mr. Barron?
A. Just mine and David Barron's.

Q. Would you check carefully? A. Just mine and David Barron's.

Q. Did David Barron leave Hardie and Gorman when you left?
In other words, did he go with you? A. No.

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HIS HONOUR: Q. You had the document which is presently m.f.i.3 is that right? A. Yes.

Q. That does not contain calculations, but contains data, does it not? A. Yes.

Q. Without any intermediate step from that you produced the ultimate valuation which is presently part of Ex.N, is that right? A. Yes.

Q. And for Mr. Clarke's assistance you prepared the handwritten sheets, Ex.A? A. That is correct.

MR. CLARKE: And the sales and rentals.

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HIS HONOUR: Q. And the sales and rentals which are part of Ex.N. You must have made some intermediate calculations, did you not? A. I did. I picked this file up from Hardie and Gorman a short while ago, in its present form. Frankly the file is about half what it was when it started off.

Q. Is it the fact of the matter there were some intermediate calculations which have now got lost? A. I do not know what has been lost. Calculations were made. I had made observations on the file as to percentages yields, as to rents and rates and taxes.

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Q. And you do not have those? A. They are here in various forms.

(Handwritten sheets of data, formerly m.f.i.3,
tendered and marked Ex.Q)

FURTHER CROSS-EXAMINATION

MR. MORLING: Q. Ex.O was produced in the last few days, was it? A. Yes, the compilation.

Q. In the last week? A. Probably the last week, yes.

Q. Can you remember exactly when it was prepared? A. It has been done over a period of time.

Q. The actual five sheets, when did you physically write the originals out? A. Last week, I guess.

Q. When you say "over a period of time", it was over a period of time commencing last week, is that right? A. Yes.

Q. What really exhibit O is, is your justification of how you got the \$70,000 back in 1975, is it not? A. No, I do not concede that at all. 10

Q. It is absolutely clear that in 1975 in forming your opinion you could not have had regard to the T.A.B. in 1976, is it not? A. That is true. The T.A.B. rental in 1976 has not been reflected. It is there for information.

HIS HONOUR: In order to know what went into your actual valuation document it is necessary to look at not Ex.O but at those handwritten notes in your file, is that right? A. Yes. That is the basis of the valuation.

MR. MORLING: Q. And those notes to which his Honour was referring, are those the last exhibit or additional notes? - 20

HIS HONOUR: They are additional.

MR. MORLING: I submit I am entitled to see those without penalty.

(Counsel addressed. Matter left in abeyance at this stage. His Honour informed Mr. Gilbert it may be necessary for him to return. Counsel to confer.)
(Witness retired)

IAN LEAFE

Sworn and examined:

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MR. CLARKE: Q. What is your full name? A. Ian Leafe.

Q. Where do you reside? A. 13 Denman Street, Eastwood.

Q. You are a valuer, are you not? A. Yes.

Q. Are you a director of Craig Miller Pty. Ltd? A. I am.

Q. And you prepared a document headed "Curriculum Vitae", did you not? A. Yes.

(Abovementioned document tendered and marked Ex.R.)

(His Honour informed counsel he had not met Mr. Leafe, but had spoken to him on the telephone in relation to business matters. Counsel addressed.)

HIS HONOUR: It will be noted that I have consulted Mr. Leafe in a professional capacity. Neither Mr. Clarke nor Mr. Morling have any objection to my continuing to hear the case. 10

MR. CLARKE: Q. You have prepared a formal valuation of the premises 18/20 East Crescent Street, McMahons Point, as at 14th June, 1973, have you not? A. Yes.

Q. Were you first consulted to prepare a valuation in this matter - by whom? A. W.R. Carpenter Finance.

Q. Was that about October 1978? A. Yes, about that time.

Q. Was this document which I have typed recently? A. Yes.

Q. Second November 1978. What date was that? A. The date of my inspection of the property.

Q. And the valuation has only been typed up at the present time? A. That is right. 20

Q. Is that your valuation? A. Yes.

(Valuation dated 2nd November, 1978 tendered and marked part of Ex.R)

Q. I show you a photograph. Is that a photograph you took or had taken of the two premises? A. A photograph I took.

Q. When? A. On the date of inspection.

Q. November 1978? A. Yes.

Q. Building 20 looks a bit shorter than building 18. Is that because the top floor had disappeared in weather or conditions? A. That is correct. 30

(Photograph tendered and added to Ex.R.)

Q. Have you also prepared, again very recently, a typed document for my benefit, headed Basis of Valuation? A. Yes.

Q. Was that document typed from handwritten notes? A. It was.

I. Leaf x

Q. Have you got the handwritten notes there? A. I have.

Q. Included in those notes is a valuation sheet which is a document in common form and which bears date November 2nd, 1978. Were these handwritten notes all of that date? Obviously the ones referring to this case were much later, bearing date 30th May, 1980. Is that right? A. Yes.

Q. Were all the others on 2nd November, 1978? A. Some of the earlier notes on this sheet were written in the last two days.

10

Q. But there are some in the sheet written on 2nd November and some written in the last two days? A. That is right.

Q. Does this document set out your basis of valuation? (shown)
A. It does.

(Basis of valuation tendered and added to
Ex.R.)

Q. Could you extract those sheets or would it be more convenient to use photostat copies in the morning? A. It would.

Q. What appears is that you valued on a capitalisation of rental income as at the relevant date in 1973, is that correct?
A. Yes.

20

Q. Were you aware at the time you did the valuation of a sale taking place somewhere around June 1973 of the premises to Group Unity Securities at \$185,000? A. I was.

Q. Did you use that sale in any way? A. I used that sale to back up my own calculations.

Q. In regard to the rents, you say at p.3 of your report that the rents were obtained from a January 1975 statement supplied by the managing agent. Is that correct? A. Yes.

Q. The managing agent in this case was Richardson and Wrench?
at its Crows Nest Office, is that right? A. Yes.

30

Q. You did not have access to any earlier rentals prior to that date, January 1975? A. That is correct.

Q. There were, as is clear, two premises on very low rentals indeed, \$4.29 and \$4.15 per week? A. That is correct.

Q. You dealt with those two units upon the basis that a rent comparable to other units was being obtained in the first instance, did you not? A. Yes.

Q. When you came to do your final remarks you made a deduction for the diminution in values because there were rent controlled tenants in the premises, is that correct? A. Yes.

Q. If you are taking into account development potential of a site in which there are old flat buildings, is the presence or otherwise of rent controlled tenants relevant? A. I believe it is very relevant.

Q. In what way? A. The presence of rent controlled tenants in my view detracts from the attractiveness of a property for redevelopment purposes because redevelopment involves demolition and improvements and rent controlled tenants are generally the first to be evicted. 10

Q. You did not obtain the benefit of outgoings from the managing agent, but you came to your own estimates, did you not? A. Yes.

Q. Did you make inquiries of the Council in doing that?
A. I had inquired at the Council as to the relevant Valuer-General's valuations immediately prior to the valuation, which was in 1971. I had records in the office of rates in the dollar for council rates and water rates for the North Sydney Municipality. They allowed me to calculate municipal rates and water rates. I had old land tax scales in the office which I used to calculate land tax. I estimated the insurance and made an allowance for repairs, and included the management in accordance with the Real Estate Institute scale applicable at the time. 20

Q. In relation to rentals, leaving aside any controlled rentals at the moment, did you have some means of checking the reasonable accuracy of the rentals you were given, against rentals you knew about in other properties? A. I did. I had the opportunity of checking some of our own records in our office. We have a fairly large rent roll and I was able to check rents which we were obtaining from properties on the north shore at that time. 30

Q. Did that confirm or otherwise the rentals you had been given by the managing agent? A. It confirmed the rentals.

Q. Is there a schedule of comparable sales annexed to the valuation? A. Yes.

Q. Is "comparable" used fairly loosely in that table? A. Yes. 40

Q. 18-20 is the subject property and 5th October, 1973 was the completion date, but you are unaware of the precise contract date, is that correct? A. Yes.

I. Leafe x

Q. 24 East Crescent Street, you say that was not really comparable at all? No.

Q. In relation to the family sale, you again treat that with reservations because of the domestic nature of the transaction, is that right? A. Yes.

Q. In the ultimate did you make your valuation simply on the basis of rental return? A. That is correct.

Q. Checked by reference to the sale of the subject premises themselves? A. Yes.

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Q. Were there simply no comparable sales which would assist you to evaluate it in any other way? A. I could not find any comparable sales, no.

(Further hearing adjourned until Thursday
5th June, 1980 at 12 noon.)

IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION
COMMERCIAL LIST

)
)
) No. 3568 of 1976
)
)
)

CORAM: ROGERS, J.

KOORAGANG INVESTMENTS PTY. LIMITED

v.

RICHARDSON & WRENCH LIMITED

FOURTH DAY: THURSDAY, 5th JUNE, 1980

MR. MORLING: On going through the transcript yesterday - and I will give it to Mr. Clarke - when I was reading to Mr. Gilbert the passages from the Annual Real Estate Review on Hardie and Gorman, the shorthand writer on a couple of occasions noted the commencement of the passage which I was reading to the witness, and ended up with the last few lines. I was not intending to tender that volume, but I thought what I would do is to show it to Mr. Clarke, together with a list of the passages which I read to the witness, and perhaps then have that page just either attached to the transcript, or I will tender it as an exhibit.

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HIS HONOUR: Yes; thank you Mr. Morling. Have you given any thought to the question whether I should say you should warn Mr. Rathborne, assuming he gives evidence. You obviously have not thought about it, but if you would, at some stage.

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MR. MORLING: Your Honour, there have been proceedings elsewhere, to which my friend made oblique reference, which have terminated, in the light of that, I am inclined to think no; but I would like to give it further reflection, in the event that he is called.

MR CLARKE: Before Mr. Leafe is recalled, could I just call Mr. Gilbert, to endeavour to clear up as far as I can that outstanding matter.

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HIS HONOUR: Yes.

ROBERT LEDBROOK GILBERT
On former Oath:

HIS HONOUR: Mr. Gilbert, you are bound by the oath you took yesterday.

MR. CLARKE: Q. Mr. Gilbert, you recall yesterday Ex. Q was tendered, with notes in your handwriting and in the handwriting of Mr. Barron, which contains some data? A. Yes.

Q. Just before that was tendered, his Honour asked you a question on P. 127, "Is it the fact of the matter that there were some intermediate calculations which have now got lost?" and you answered, "I do not know what has been lost. Calculations were made. I have made observations on the file as to percentage yields, as to rents and rates and taxes". Then his Honour asked, "And you do not have those? A. They are here in various forms." Perhaps you might just have the file. Since that answer, have you been through the file more thoroughly, and are there some handwritten notes that were made at the time in 1975? A. Yes, there is a variety of handwritten notes, including the description of the property, and the floor plan of the property.

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There is a document from Leichhardt Council setting out the unimproved value of the property. There is the zoning plan; there is the basis of instructions.

MR. CLARKE: Perhaps those handwritten notes that you found in the file should be marked for identification. I am quite content for Mr. Morling to look at them, with or without penalty.

(Abovementioned handwritten notes in file m.f.i.4.)

Q. As to any handwritten notes that show a basis of working out - in other words, and intermediate step between the date of Ex. Q and your final valuation - you have not been able to find any such notes in the file? A. That is correct.

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Q. What is your recollection - were there any other notes which are now not with the file, or are you just not able to say one way or the other? A. I am unable to say specifically what is missing. I do recall that because it was potentially a litigation matter, that there was a requirement at the time to have them typed up; but whether they were typed, I don't know.

Q. Well, if they were typed up, they are missing; but you are not able to specifically say what is missing, although you feel there is something missing in the file. A. Yes - well I thought there are things missing in the file; there was a planning map and there was an ordinance, which is missing. They are the sorts of things, I can recall that are missing. What else is missing. I don't know.

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MR. CLARKE: Perhaps I can hand Ex. Q back.

CROSS - EXAMINATION

MR. MORLING: Q. Mr. Gilbert, as you said yesterday, when you were making this valuation back in 1975, you were getting bits and pieces of information from various sources; that is so, isn't it? A. Correct.

Q. And that is the ordinary way in which valuers go about making valuations? A. Correct.

Q. They have to rely upon informants for much of the material from which they form their opinions? A. That is true.

Q. And you felt - and I suggest, very properly - no diffidence yesterday in passing your opinions on them, upon the basis of what people had told you about dates of contracts and that sort of thing? A. Among other things, yes. 10

Q. And unless you have reason to believe that one of your informants was telling you untruths, you would tend to accept what he said? A. I guess it depends on the importance of the matter he is telling me.

Q. But if you yourself were not able physically to, say, find out from a tenant what he was paying, the next best source would be to ask the person collecting the rents? A. That is true. 20

Q. Just going to your transcript, and I do not want to take too much time about this, and it may shorten it if I, with his Honour's leave, show you what you said yesterday. (Approaches witness) I am going to show you pp. 95 and 97. When Mr. Clarke was asking you questions in relation to the documents which became Ex. O he said this to you on p. 95, question 3. "Q. Then have you with you I think five pages in handwriting which constitute the primary or some of the primary material upon which you used to write your valuation and also setting out your basis of valuation" and your answer was, "That is correct, I do." Now did you understand the word "primary" there to refer to material which was in existence at the time you wrote the 1975 valuation? A. Basically, Yes. 30

Q. And over on P. 97, question 6 - and it is a long question and answer, you might like to read it before I ask you about it. When you commenced your answer to Mr. Calrke's question by saying "I made a written observation that the dwelling had a direct access", and you go on to explain it, you were at that stage of the belief that you had made a written observation in a document which was part of the primary material you had in front of you when you wrote the valuation back in 1975; is that not so? A. Could you start the question again? 40

Q. Yes, I think you should see the question again, in fairness to you. What I am putting to you is that the written observation which is referred to in the first part of your answer to that question was a written observation you believed

you had in notes which became Ex.O, those notes being in existence in 1975. Is that not right? A. Well, I can't recall seeing a written observation. I made an observation.

(Witness retired & excused)

IAN LEAFE
On former Oath:

HIS HONOUR: Mr. Leafe, you are bound by the oath which you took yesterday.

(Photocopy contract of sale of property 18 - 20 East Crescent Street, McMahons Point, from Harris-Reeve Parker to Group Unity Securities Pty. Limited dated 25.5.73, tendered without objection and marked Ex. S.) 10

MR CLARKE: Q. Mr Leafe, will you have a look at Ex. S, please and I particularly show you an annexure setting out a list of tenencies. I think the position is you have already seen a photostat copy giving the same information and, totalling the weekly rentals, one gets to an amount of \$20,982 per annum, is that right? A. That is right. 20

Q. Now your valuation is based, I think you said, in essence on the return of the property as an investment? A. That is correct.

Q. If one took the figures in the contract rather than the figures you took, what effect would that have on your valuation?
A. It would have a net result of reducing my figure to \$173,000.

Q. Before I come to that, if one looks at the basis of valuation, what you have done, as appears from your valuation, is that for the purposes of arriving at a rental return, you have treated the controlled tenancies as though they were normal uncontrolled tenancies, and put a comparable rent on them to the rent being recovered from the other premises? A. That is correct. 30

Q. And then that brought you to a figure, after allowing for outgoings, of \$188,000. Then you have a column, "Allowance for two rent controlled tenants", of \$4,000 each. Perhaps you could just explain that process to us? A. I arrived at the figure of \$188,000 by a capitalisation of the net income as shown - I am sorry, you want me to explain the process of the adjusted figure, or --? 40

Q. Why did you adjust up, initially, and then make a separate allowance for it?

HIS HONOUR: I think he explained that yesterday. I think the only thing he perhaps has not explained yet is how he came to fix on \$8,000 as the allowance.

WITNESS: Your Honour, I fixed on the figure of \$8,000, or more correctly, \$4,000 per rent controlled tenancy, basically relying upon my own experience of dealing with rent controlled tenancies; I have been involved in eviction matters with rent controlled tenancies. It is a figure which I allowed to cover the legal costs of obtaining vacant possession of a rent controlled flat and also the probability that it might be necessary to pay a tenant some lump sum to vacate.

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HIS HONOUR: Q. Well, you did cast your mind back to the going rate to get out a controlled tenant as at the relevant time, did you? A. I am sorry, your Honour?

Q. You were casting your mind back to what was the going rate for getting out a controlled tenant at the relevant time? A. That is correct.

MR CLARKE: Q. Then your figures of, taking the figures in the contract, \$173,000 - perhaps you might just give us the gross rentals that you worked on or how you arrived at the figure of \$173,000? A. I adjusted the figures which are shown in the contract by taking the three protected tenancies at a comparable rental, which gave me a gross rental of \$23,530. I allowed a 2½% vacancy factor, which was \$588; which gave a net amount of \$22,942. I deducted the outgoings, the same amount of outgoings as shown on my calculation of \$6,153, which gave a net income of \$16,789, and I rounded that down to \$16,700. I capitalised that figure at 9%, which gave a capital amount of \$185,000. I have subsequently, since looking at the contract, been aware that there were three rent controlled tenancies, as opposed to two which I allowed for in my original calculation, so I deducted an amount of \$12,000 from the \$185,000, to give a figure of \$173,000.

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Q. Your valuation therefore, if one takes the figures of tenancies as in the contract, comes out at \$173,000. Now of course the fact of the contract itself, in May 1973, to Group Unity, the price was \$185,000. In your first valuation, your written valuations, you did not adopt that figure as being the actual value, you discounted it by about \$5,000.

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HIS HONOUR: He said he used it to back up his own calculations.

MR CLAKRE: Q. Is there any reason why you take the value as being lower than the \$185,000 that was apparently paid for it in May 1973? A. Well, I showed you how I arrived at my \$180,000, and I have no way of knowing how the figure of \$185,000 was agreed upon between the parties, but I would wonder or perhaps query whether the full account was taken of the effect of the rent controlled tenancies.

CROSS - EXAMINATION

MR. MORLING: Q. Mr. Leafe, you approached this valuation upon the primary basis of capitalising net rentals? A. That is correct.

Q. And you did that because, in your view as a valuer, there was insufficient evidence of comparable sales upon which to safely base your valuation? A. Comparable sales of what type?

Q. Comparable sales which you had sufficient confidence in to use as the primary basis for your valuation? A. That is correct.

Q. And that situation made the valuation task rather difficult? 10
A. Yes, the task could have been easier.

Q. Indeed, it was a difficult valuation to make, was it not?
A. I would not say it was a particularly difficult valuation to make. I had available to me a sale of the subject property.

Q. Yes, but that was a sale which you did not have sufficient confidence in to make the primary basis of your valuation?
A. I never said I didn't have confidence in the sale of the subject property, with respect.

Q. But if you had believed that that was the best evidence of value, you surely would have made it the basis of your valuation? A. I felt, as a valuer, I have an obligation to at least justify the sale price, by using my own calculations. 20

Q. In any event, you took the view that the best method of determining the market value of the land as at June 1973 was to capitalise the net rentals? A. That is correct.

Q. And when you made your valuation you had the benefits of some years hindsight? A. That is correct.

Q. The real estate market generally, in mid-1973, was very buoyant, was it not? A. I agree.

Q. Would you agree that it was a strongly rising market for land suitable for redevelopment for residential units? A. I would agree it was a generally strong market. 30

Q. Would you agree that McMahon's point was a particularly favoured area for developers for residential unit development?
A. I have not had sufficient knowledge of the McMahon's Point area to say it was a particularly favoured area.

Q. Would it be within your knowledge that the Municipality of North Sydney generally, and in particular that part of it close to the harbour foreshores, had for some years prior to 1973 been particularly favoured by developers for residential unit development? A. Yes, I would agree. 40

Q. And indeed, by 1973 it had become rather more fashionable than it had been in past years to have residential accommodation as close as possible to the city? A. I would agree with that.

Q. And that tendency manifested itself in other parts of the metropolis quite close to the City of Sydney itself? A. Yes.

Q. Indeed that was the time, wasn't it, when the Wolloomooloo area was the subject of great redevelopment proposals by the Londish group? A. I am sorry, my memory would not permit me to give an unequivocal answer to that question.

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Q. When did you first see the contract which I think is now Ex. S? A. This morning.

Q. And I do not for a moment, Mr. Leafe, criticise your reference to it in your valuation, but you say in that valuation that it was sold on 5th October 1973, do you not, and you inserted the reference to the date, 5th October, because, at the time you wrote that, you believed that that was the date of sale? A. That was the date I got from North Sydney Council records.

Q. And you would agree with what Mr. Gilbert said a few minutes ago, that valuers simply, as a matter of course, have always had to rely upon information given to them by third parties, when making a valuation? A. Yes.

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Q. And that goes for the date of the contract, if you do not have physical possession of a stamped copy, I suppose? A. Yes, I would agree with that.

Q. And it goes for any other information of importance which you do not have direct knowledge of but which you have to get from third parties? A. Yes.

Q. And you would agree with Mr. Gilbert that the practice of valuers in 1973 was to accept what third parties told them about matters affecting value, unless they had reason to believe that they were being told falsehoods? A. I agree with Mr. Gilbert. It depends upon the importance of the information, whether you verify it or not.

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Q. Well, nothing would be more important than the date of contract of the sale of the land which you were valuing, would it? A. I agree,

HIS HONOUR: Q. I suppose it also depended on who was giving you the information? A. Yes your Honour.

MR MORLING: Q. And unless you had reason to disbelieve the rentals which the owner of property gave you, you would accept that? A. If I was given some rentals on a property, I would take steps to verify them myself, as I in fact did in this case.

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Q. In this case you knew you were making a valuation for the purpose of coming to court, didn't you? A. At the time I did it - no.

Q. You knew it was a valuation which arose out of a dispute between some parties? A. Yes.

Q. Indeed it was made in reference to the Carpenter dispute, was it not? A. That is correct.

Q. And you knew enough about that matter to know that it involved a vast sum of money? A. Yes.

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Q. So you had a pretty good idea that you would end up in the witness box, when you wrote that valuation? A. With respect, back in 1978 we had not been given a definite indication by our instructing solicitors we would be in court.

Q. You would agree that valuation is necessarily an inexact science? A. Yes.

Q. And that is particularly the case, is it not, when there are a number of variables, each of which, when used in the ultimate calculation, can affect the result? A. Yes.

Q. For instance, you would agree that valuers could well disagree between themselves about the sustainable future income which might have been generated by the East Crescent property as at June 1973? A. They could disagree, yes.

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Q. For instance, you would need to know for how long the rentals which were then being charged had been charged at the then current rates, before you could form a positive view about the likely future sustainable rentals? A. I would not accept that. I think the fact that the rentals are being paid was sufficient evidence that the market, or that those particular tenants are prepared to pay that amount.

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Q. But you cannot raise rentals every week or every month, can you, in a building such as that? A. No, you can't.

Q. And you would expect there to be rests between the rises in rentals? A. Yes.

Q. And if the rest period had just about expired and a new re-appraisal period was about to arrive, you would have to take into account in determining the future sustainable rentals. A. Yes.

Q. Do you have any information as to when the rentals of the property had last been reappraised prior to June 1973? A. No, I do not.

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Q. Now would you agree with me that if you asked a number of competent valuers to express an opinion about the sustainable

future rentals from this property, as at 1973, they might well differ between themselves by, say, 15%, depending on the confidence they had in the particular property, their views as to its attractiveness, their inquiries as to the last date of reappraisal, and other matters? A. I agree that there could be some discrepancy between valuers.

Q. And a 15% factor would not at all surprise you? A. I would not necessarily accept the figure of 15%, no.

Q. I did not ask you to accept it as necessarily; but what I am putting to you is that the opinions which might have been thrown up by the request made to a number of competent valuers might disclose a discrepancy of up to 15%, as between opinions? A. They might disclose it, yes. 10

Q. And you will agree with me that whilst outgoings are more susceptible of exact calculation, there is a real area for difference of opinion between competent valuers on matters such as the amount which should be provided annually for repairs? A. There would be a difference of opinion, I agree.

Q. Would you agree with me that it was the practice of many valuers in 1973 to calculate the repair allowance to be provided for in the sort of exercise which you have undertaken, to take an amount per flat? A. Yes I would. 20

Q. That was fairly common, wasn't it? A. I can't speak for other valuers, but certainly the method I have adopted.

Q. And it was of the order of \$25 to \$50 per flat in a large building? A. No, I would not agree.

Q. It was rarely more than \$50, was it? A. I venture to say it was closer to \$100 per flat.

Q. Well, would \$75 be somewhere near it? A. I expressed an opinion that in my view it was closer to \$100 per flat. 30

Q. For instance, you would agree that another competent valuer might well have said, say \$80 a flat, for this building? A. He could adopt that figure, yes.

Q. And that would be a 20% variation on that part of the exercise of capitalising net rentals? A. Yes.

Q. In fact your repair figure works out at \$100 per flat, doesn't it? A. That is correct.

Q. So that by calculation, if it had been \$80, it would have been \$360 less, would it? Can I just ask you to do this exercise with me, unrelated to the facts of the particular case: assume valuer X formed the view of a particular property that the gross rents likely to be obtained in the future was \$25,000 per year, and assume he formed the view that the outgoings of all kinds was 40

likely to be \$5,000 per year, he would end up with a figure of \$20,000 which he would have to capitalise at what he regarded as the appropriate capitalisation rate, would he not - to do the exercise you have done? A. That is correct.

Q. And if he capitalised that figure by 9%, the result would be within a touch of \$220,000, would it not? A. Yes.

Q. I am accepting whatever problems there are about generating the rent, but having taken them all into account and made all his judgments, he comes to the view that \$25,000 gross would be the likely future gross return - you understand that? A. His actual rents? 10

Q. No, I want to put this clearly to you: that this Mr. Valuer X has come to the view, after he has made his inquiries, after he has formed his opinions and done all the other mental exercises which no doubt a valuer does, that \$25,000 per year is the likely future gross annual rental income from the property; that is what I am putting to you? A. Yes.

Q. And I am also putting to you that the same valuer, having made all his inquiries, made all the judgments he has got to make, forms the view that \$5,000 is the likely annual outgoing on the property, and he is left with therefore an opinion that \$20,000 per annum is the likely future net return. Now it is an exercise of some skill, is it not, to select a capitalisation figure? A. I agree. 20

Q. And when you are talking about capitalisation figure in the order of 9%, you would certainly agree that competent valuers as between themselves might find themselves one per cent above or 1% below the 9% figure? A. Yes.

Q. And in respect of the sort of property at East Crescent in 1973, you would agree any competent valuers might vary 1% above or 1% below the figure of 9% that you have taken. A. Yes. 30

HIS HONOUR: Q. And that is because it had more intangibles than usual to take into account? A. Your Honour, there will always be an area of disagreement on capitalisation rates, on any property, I would suggest.

Q. I accept that. That is why I was asking you, was this property one with a degree of difficulty higher than the usual margins for error? A. I would agree, your Honour, on two counts. Firstly the state of repair and secondly the presence of rent-controlled tenants. 40

MR. MORLING: Q. Now can I ask you to do with me another fairly simple exercise. Let us assume another valuer, Mr. Valuer Y, is valuing the same property which was being valued by Mr. X - do you follow me - and I ask you to assume that what Mr. X has done is to come up with the opinion that \$25,000 was the likely gross rentals; \$5,000 the likely outgo; \$20,000 the likely

net rentals; 9% the proper capitalisation figure hence valuation \$220,000. Do you follow me? A. Yes.

Q. Now Mr. Y is a little bit more optimistic about the gross rentals, and instead of forming an opinion that \$25,000 is the correct figure, comes to the view that \$26,500 is the correct figure. My arithmetic may be wrong, but I think that is about 6% over \$25,000. Such a variation would be well within the area of difference which in your experience might be thrown up by the varying opinions of competent valuers? A. I would like to think that a competent valuer should be within a 5% leeway, the maximum. 10

Q. I may be wrong, but I thought some little time ago you said that it might be as high as 15.

MR CLARKE: Yes; I think, your Honour, I omitted to ask questions about that. It was not put on the basis that the same information was being used in both matters.

MR. MORLING: Q. Well, let me do the arithmetic. At 5%, \$1,250. 5% over and above \$25,000 is \$26,250 - right? A. Yes.

Q. Suppose Mr. Valuer Y, for whatever reason or reasons, and particularly related to his view about future repairs, thinks that the outgoings will not be \$5,000 but will be \$4,500 per year - do you follow me? A. Yes. 20

Q. You will agree that that would be well within the range within which might be found the opinions of competent valuers - \$500 on \$5,000? A. That is 10%.

Q. Yes. A. I have already said, I believe a 5% figure.

Q. You did not say that, with respect - not in relation to outgoings, as I recall your answer. You said 5% in relation to income. You said 5% just now in relation to income; I would suggest the transcript would show something different to what you said earlier. 30

HIS HONOUR: That is a comment that I do not think you are asking for an answer on. But be that as it may, where do we go from here?

MR. MORLING: Q. I would ask you to do the calculation on \$4,500. If that were the case, the net rentals would be \$21,750, would they not? You would agree with that? A. Yes.

Q. And if Mr. Valuer Y preferred to take 8% as his capitalisation rate, what would his valuation be?

HIS HONOUR: Q. What is your figure, Mr. Leafe? A. Your Honour, I make the approximate capitalised figure \$271,000. 40

HIS HONOUR: Yes, I think that is near enough to what Mr. Morling wants.

MR. MORLING: Q. You thought that the best method of valuing the subject land was by capitalising the net rentals? A. That is correct.

Q. On p. 1 you refer to the Valuer-General's valuations, as at July 1971; you will agree with me that the Valuer-General's rating valuations almost invariably are below market values?

A. As a general comment, yes.

Q. And you would regard as being unrealistic both the \$54,000 figure and the \$140,000 figure in paragraph 2 on p.1 of your report, if those figures are related to market values - as at 21st July, 1971, which is the date they are said to refer to?

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A. I would agree that they are probably conservative.

Q. Now just a few matters of minor detail. If I could ask you to go to the loose sheet of papers which now form part of Ex. A, your valuation, could you tell his Honour how you calculated the \$1,437 for management? A. I adopted a figure of 6¼% on \$23,070.

Q. I want to suggest to you that - I am sure innocently - the 6¼% should only be taken on the first \$10,000 of revenue and that thereafter the scale provides for a somewhat lower percentage? A. I would want to check the 1973 scale before I - - -

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Q. I wonder whether, if you are able to, so as not to have a dispute about it, you could possibly check that? A. Yes.

Q. In the calculation you made for Mr. Clarke, you ended up with one figure of \$16,789, which you said you rounded to \$16,700. That is a rather pessimistic way of rounding figures, isn't it, to go from 89 to the figure below, not to the figure above? A. I have generally adopted the practice of rounding down. I think in the end result it does not make a large difference to the valuation figure.

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Q. Will you agree with me that when a developer purchases land with a view to redevelopment, he sometimes incurs quite heavy holding charges? A. I would.

Q. And back in 1973, might those holding charges have been, say, 12½% of his outlay? A. My recollection of the market at that stage in relation to the question that you are asking, I am afraid, is not sufficient for me to specify a figure.

Q. It certainly would have been 10%? A. I am sorry, I would not be prepared to specify a figure.

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Q. But one great virtue of having improvements on a development site was that the income from the improvements could be off-set against the holding charges? A. I agree.

Q. One could almost bide one's time as a developer, without

much penalty, if you had a property, such as this one, generating the sort of income which your valuation shows could be generated from it? A. To say that one could bide one's time without penalty - -?

Q. Well, I mean to say that the income would more or less off-set any holding charges? A. One would have to know the holding charges incurred and compare it with the net income being received.

Q. Well, if the developer next door bought a vacant block of land, he would have no income to off-set against his holding charges, would he? A. No. 10

Q. Do you have much to do with the selling of real estate?
A. Not a lot, no.

Q. Is it your experience that reserve prices which are fixed on land put to auction are very commonly exceeded? (Objected to, rejected)

MR. MORLING: I would accept the witness' disclaimer of what land sales take.

HIS HONOUR: There is one thing I would like to think about over lunch, Mr. Leafe, if I could ask you now. If you go to p. 4 on your valuation, you take what might on one view be termed a rather pessimistic view of the prospects of redevelopment, having regard to factors that you mention there. Assume, however, that you thought the prospects of redevelopment were bright. How would that reflect itself in the valuation exercise? Would you be capitalising at a different rate, or what? A. Your Honour, I would not be using a capitalisation method to come up with a redevelopment value. 20

Q. Well, you would abandon the earnings approach completely, would you? A. Yes your Honour. 30

Q. If I may read to you from another document, "Our valuation hereunder has been made having regard to the earning capacity of the property in its existing use, and its future potential for multi-storey redevelopment." Is that position two inconsistent approaches then - that you proceed on the earning basis, notwithstanding that you are apparently contemplating a high future potential? A. Your Honour, I think to clarify the matter - -

Q. If you would. A. If I was valuing the site as a redevelopment site, I would want to have a thorough knowledge of the redevelopment code applicable from North Sydney Council at that time, so that I could accurately work out how many units or town houses, and what was the highest and best use for the site at that time, and come up with a maximum development; and then resort to comparable sales of similar types of 40

development sites to come up with a valuation figure.

Q. What about this situation, where you think, "Well, there is a prospect for redevelopment, but I, the valuer, don't think it is high enough for me to proceed on the basis that I should value it as a redevelopment site simpliciter. So that safety dictates that I should proceed on an earnings basis, but I could still add some increment for the fact that there is this redevelopment potential". How do you incorporate that into the calculations? A. No your Honour, I believe a valuer has to decide for himself what is the highest and best use, and then proceed along that line.

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HIS HONOUR: So that even though you think that there is some future potential use, if you do not feel it is sufficiently safe to proceed on that basis, you resort to an earnings basis on the present use, and disregard the fact of this potential? Perhaps you could think about it over lunch, too, because it has got me a bit puzzled.

(Luncheon adjournment).

ON RESUMPTION:

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HIS HONOUR: Q. Mr. Leafe, have you been able to understand the questions I asked you before lunch? A. Yes I have, your Honour.

Q. Can you help me? A. I reiterate basically what I said before, that a property is capable of being valued on two bases: I think the valuer has an obligation to at least make preliminary calculations along both bases and, having done that, he decides what is the highest and best use of the property, and then pursues that line of valuation.

MR. MORLING: Q. And the view you took about this property was that its highest and best use was as investment property, and it was upon that basis that you valued it? A. That is correct.

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Q. Therefore there is no component in the valuation for any future redevelopment value? A. No.

Q. Does that mean that if, on the other side of the road, there had been an identical parcel of land with an identical building upon it, let in identical terms to the subject land, with the outgoings being identical, and all other things being identical with that parcel of land, except that there was a boundary zone dividing the two properties, with the result that the subject property was zoned for high-rise development and the land on the other side of the road was zoned only for low density development, would you still value them at the same price? A. No. Firstly there is a number of differences between the two properties.

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Q. No, I just asked you to assume that no --? A. Yes, I think you said they were different zoning, to begin with.

Q. If I put the question again: Two properties identical in every respect, save that one is zoned for high-rise development and the other is zoned for low-rise development only, would you value them both as investment properties and arrive at the same result? A. In both cases I would want to pursue the line which I have just said. I would want to see what was the highest and best use of both properties. They are obviously different zonings. 10

Q. Well, if you assume that the highest and best use of the property in the different zone was as an investment property to produce income from rentals, would you go through the same exercise of capitalising the rentals? A. Yes I would.

Q. And would you get the same result? A. If it was zoned for high-rise development, the highest and best use might not be for investment purposes.

HIS HONOUR: Q. But I think you assume that is currently the best use. 20

MR. MORLING: Yes.

HIS HONOUR: Q. And it is only a latent future potential that this property has which is available to it by reason of the zoning. Now I think the point that I was seeking to make and that I think Mr. Morling is making to you is that you don't pay anything for the latent potential, on the valuation exercise that you prescribed? A. No your Honour, it is not the highest and best use at that time.

Q. Yes. So really you get the potential for nothing, because you aren't paying for it, is that so? A. Yes, I accept that. 30

MR. MORLING: Q. Mr. Leafe, would you agree that some competent valuers would take a different view to that which you just expressed on that matter? A. I would say that any competent valuer would have to adopt a similar approach to myself in determining the highest and best use.

Q. But would you agree that some competent valuers would hold the view that something should be added to the investment value of a property, if the property has some potential for future re-development? A. No, that is in contradiction of what I just said. 40

Q. I realise it is in contradiction, but would you think that, in your experience, other valuers would not share the view which you have expressed to his Honour? (Objected to, allowed) A. I would agree that other valuers may not agree with me.

Q. Well, if I could just ask you to take this example for me: I suppose if you had a vacant parcel of land in an area zoned for high-rise residential development, it would be almost certain that you would come to the view that the highest and best use of the land was for high-rise residential development?
A. Yes.

Q. If there were a parcel of land in an area zoned for high-rise development and on the parcel of land there was a small residential flat building of eight flats, which generated sufficient income to pay for the rates and taxes and leave some income over and above that, wouldn't that land, with that building on it, still be valued by you as land, the highest and best use of which was for residential flat development?
A. It would depend upon what my calculations showed it was worth as a high-rise site.

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Q. But surely, Mr. Leafe, even the fact that a developer can, say, for two years have some income to off-set against his holding charges will have a bearing on the price which the developer will pay for such a parcel of land? A. I would agree it would have some bearing, yes.

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Q. Are you familiar with the expression of a sale being "out of line"? A. Yes I am.

Q. That is an expression which is in common use amongst valuers?
A. Yes, I would agree.

Q. And has been in common use ever since you have been a valuer?
A. Yes.

Q. It refers to the situation which valuers sometimes are confronted with, that a parcel of land has sold at a price which seems to be out of line with the sales of other parcels of land? A. That is correct.

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Q. Out of line with the prices obtained on sales of other parcels of land - would you agree? A. Out of line with the pattern of sales in a certain area, yes.

Q. And valuers disregard out of line sales when making a valuation, do they not? A. I would not agree that they disregard them; I would say that they treat them with reservation, and perhaps if the sale is important to their particular case, they make more inquiries as to why it is out of line.

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Q. There are all sorts of reasons why sales may be out of line, aren't there? A. Yes.

Q. It may be that there was an anxious vendor for instance. That is commonly a reason, is it not? A. It could be a reason, yes.

Q. Sometimes the reason might be that the vendor does not test the market as well as he should - you would agree?

A. Yes.

Q. What are some other reasons which, in your experience, you have found to account for out of line sales? A. I think possibly a fairly common one would be a forced sale under a mortgagee situation.

Q. Yes; or say if partners had fallen out - the partners owning the land - and are dissolving their partnership?

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A. It could be a reason.

Q. But in any event it is your experience that even without any discernible reason, a parcel of land may sell for more or less than a theoretical valuation exercise would disclose as being its value? A. Well, the market determines the value, not the valuer.

Q. Yes. For instance if, in the case of the East Crescent land, a buyer, in your view wrongly, thought it was prudent for him to add something to his purchase price to allow for future redevelopment prospects, the price which he would pay would be more than the value you had written for the land?

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A. If he was forced to pay a higher price, yes.

Q. And were you valuing land, yourself, in the North Sydney Municipality in 1973? A. Yes, I was valuing over the whole of the Sydney Metropolitan Area.

Q. I think you have agreed with me that in June of 1973 there was a considerable buoyancy in the market? A. Yes.

MR. MORLING: Q. Values had been rising for some time prior to June, 1973? A. Yes.

Q. And the then current mood of the market was that values were 30 likely to continue to rise? A. At what stage in 1973?

Q. In June 1973? A. Yes.

Q. And in fact they did continue to rise for some months thereafter, did they not? A. My recollection they continued to rise until about November of 1973.

Q. Then they flattened off for a while? A. My recollection the market started showing a hesitancy over the Christmas period and then early 1974 the credit squeeze came in.

Q. Then about the middle of the year was there a remarkable fall in the market for land? A. I prefer not to say a general statement there was a remarkable fall; there was certainly a drop off of demand, there was a levelling off of values. There was a variation in this from one type of property to the next.

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Q. Would you think a development company would have been in the market for the subject land as at June 1973? A. Yes, it could have been in the market.

HIS HONOUR: Q. Could you go to page 4 of your valuation? Under the heading "General remarks" you have given consideration to development potential of this property as a home unit site. How detailed was the consideration that you gave to that possibility? Did it extend, for example, to considering how many home units might be built on the site, what their sale price would be and such like matters? A. Your Honour, I made some inquiries from North Sydney Council as to the code which was applicable at that time. My inquiries revealed some brief parameters regarding site coverage, minimum site area per unit, they could not give me detailed information because they had a fire there in 1976 which destroyed a lot of their records but the information which I did get I came up with a hypothetical figure of 13 units. As I said, I did not have all the information on the code which I would like to place a lot of reliance on that figure.

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Q. Where did you go from there? A. Well, I could not find any sales of development sites with development approvals of them at the time of sale. I then went back to our own valuation records to try and ascertain what a unit site was worth at that time in that area and I came up with a range of between eight to ten thousand dollars per unit site.

Q. So it was the juxtaposition of the value which would thus be established on the one hand with the earnings calculation that you did on the other that led you to the conclusion which you next expressed that "the relatively strong market for investment properties in the early part of 1973" coupled with the matter you mentioned, you formed the opinion that the highest and best use would be as investment? A. That is correct.

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HIS HONOUR: Anything arising out of that, Mr. Morling?

MR. MORLING: No, your Honour.

RE-EXAMINATION

MR CLARKE: Q. You were asked some questions about hypothetical rents or possible rents. What I wanted to ask you first was this, in a situation of investment property such as 18 to 20 East Crescent in 1973 if there were then known actual rents would they form the starting point for any property valuation? A. Yes they would.

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Q. You were also asked a question about a difference of 15 per cent or whether 15 per cent differences might be acceptable but absent from the question was any basic premise that the income generated by the property was the same in respect of both valuations. Now I wanted to ask you this, assume that the income generated by the property is known, it is an investment property, what would be the acceptable range you would expect between valuations, that is a valuation of that property as an investment property? A. On the assumption that there is such a thing as a true value for a property, in my view an acceptable range of two valuers doing the same job on the same property - (Objected to; allowed). A. two valuers doing the same valuation on the same property, in my view an acceptable allowance would be five per cent either side of that hypothetical true value. 10

Q. Holding charges, you were asked questions about that. I do not want to go into detail but they would include interest charges on moneys borrowed for the purchase, would they? A. That is right.

Q. (By leave). You have last night seen a report, a valuation report of the same property prepared by Mr. Feltham for the defendant in this matter, have you not? A. That is right. 20

Q. In preparing valuations for potential mortgagee is there any particular approach that is adopted by valuers? A. I think the valuation prepared for mortgage purposes the valuer in effect is saying that the figure that he placed at the base of his report is the figure which he would reasonably expect to be obtained in the situation of a forced sale.

FURTHER CROSS-EXAMINATION

(By leave). 30

MR. MORLING: Q. Is it common in your experience for mortgagees to have their own panels of valuers? A. Certainly building societies, yes.

Q. And to insist on intending mortgagors at their own expense obtaining valuations from one of the members of the panel? A. Yes, building societies, yes.

Q. You would regard it as being important to a valuer in making his valuation that he be furnished with any information which the mortgagee has about the property? A. In my experience the valuer is very rarely given much information about the property when he receives his instructions, he finds it out himself. 40

Q. If the mortgagee has it you would expect it to be given to the valuer to assist him? (Objected to; allowed). A. Yes.

I. Leafe, xx.

Q. And of course where land is zoned for high rise development its value may be affected if there is a change in zoning?
A. Yes.

Q. In 1973 the Municipality of North Sydney underwent a number of changes in its zoning proposals for high rise development in the 1970s, did it not? A. Yes.

Q. Changes were made from time to time in the codes governing the development of land for residential flats development?
A. Yes, I am not aware of the details of those changes. 10

Q. The possibility of a zoning change would have to be checked out by a mortgagee if there was any significant lapse of time after the making of a valuation and before the advancement of moneys by the mortgagee? A. If there had been a change of zoning I would submit the valuation does not hold good any longer.

Q. HIS HONOUR: I think what counsel was asking you was would it be necessary for a prudent mortgagee to check that there had been no change in zoning when there was a spread of time between the original valuation and the time of making of the advance? (Objected to; question withdrawn by Mr. Morling). 20

MR. MORLING: Q. Did your firm in 1973 make valuations as members of the panel of any mortgagee? A. Well, we were on a panel for one of the building societies, yes.

HIS HONOUR: Q. You were in 1973? A. Yes, we were on a building society panel of valuers.

(Witness retired and excused).

(Copy contract of sale between Kooragang Investments Pty. Limited and Aswan Pty. Limited dated 22nd February, 1979 tendered without objection and marked exhibit T). 30

(Two photocopy letters from Richardson and Wrench Limited to the plaintiff, both dated 18th November, 1974, tendered; objected to; admitted and marked exhibit U).

ALFRED DREGGS
Sworn and examined:

MR. CLARKE: Q. Your full name is Alfred Dreggs? A. Correct.

Q. You live at 69 Waterhouse Avenue, St. Ives, and you are the general manager of W.R. Carpenter Finance? A. Correct. 40

I. Leafe, xx, ret'd.
227.A. Dreggs, x

A. Dreggs, x.

Q. And you are well acquainted with the man named - I do not mean it as personally acquainted but acquainted with a person named John Giles Bourke? A. Yes I am.

Q. In 1973/74, perhaps even back to 1972, did your company lend moneys on mortgage security to a number of companies in which Mr. Bourke was concerned? A. Yes.

Q. And Mr. Bourke, did he give guarantees - A. He did in every case.

Q. And there has been without detail a substantial deficiency incurred by your company upon seeking to realise on the mortgage securities? A. Yes. 10

Q. That deficiency with interest until May 1980 was \$1,704,443? A. Yes.

Q. Did your company start an action to recover some moneys, and I will come to the detail in a moment, some moneys from Mr. Bourke in 1974? A. Yes.

Q. And that was to recover the amount of one loan of \$60,000? A. Approximately.

Q. In that particular case he was the borrower himself? A. Yes.

Q. Whilst proceedings in another place were taking their course nothing was done by your company? A. Correct. 20

Q. But once those proceedings had been terminated did you endeavour to have the statement of claim served upon him. A. Yes, we have been endeavouring to do so.

Q. Is the position presently that you have been unable to serve the statement of claim. A. That is right.

Q. Have you had a man named Alan Bird of Alan Bird Investigations, a process server or inquiry agent, endeavouring to serve Mr. Bourke? A. Yes we have.

Q. Would you have a look at this (document shown). Is that a report dated 23rd May, 1980? A. Yes it is. 30

(Report from Alan Bird Investigations to W.R. Carpenter Finance dated 23rd May, 1980 tendered without objection and marked Exhibit V).

CROSS-EXAMINATION:

MR. MORLING: Q. What efforts have you made to see if Mr. Bourke

has any assets? A. We have not made any efforts to see if he has any assets.

Q. I think you were given yesterday, weren't you, an address where he could be found? A. No, our investigator thought he found the address which was stated in that letter, he located that address about a month ago.

Q. You did know, did you, that he was currently in business as a real estate salesman? A. No.

Q. If you have made no efforts to ascertain whether he has any assets do you have no belief about that matter? A. I am not in a position to say whether he has or he has not. We have not inquired into them. 10

Q. Were you aware of any defamation proceedings brought by him for damages against a newspaper? A. Yes.

Q. I suppose you read in the papers an apology by the Daily Mirror to Mr. Bourke? A. Yes, that was some time ago I think, wasn't it?

Q. Yes, 1977? A. Yes.

Q. Did it cross your mind he might have received some compensation from the Daily Mirror for what he apparently claimed was a defamatory article. A. It did cross my mind he might have got some moneys, yes. 20

Q. You have made no efforts to ascertain whether he received any payment from the Daily Mirror? A. No, I did not know how to go about finding that information.

Q. You have not issued a bankruptcy petition against him?
A. We have issued a statement of claim against him which will lead possibly to bankruptcy.

(Witness retired and excused). 30

(Interrogatories 1 to 8; 18 to 26; 70 and 71
tendered without objection and marked Exhibit "W".)

MR. MORLING: I am prepared to admit that the defendant was recognised in Sydney throughout 1973 as a company competent to carry out valuations of real estate and with substantial experience in carrying out such valuations.

(Case for the plaintiff closed).