Privy Council Appeal No. 65 of 1986

Brian Ronald Austin — *Appellant*

v.

(1) Jimmie Merrill Keele
(2) Sirs for Men Pty. Limited
(3) Intercontinental Investments Pty. Limited
(4) Eva Mary Shergold and
(5) Constance Lillian Skuce — *Respondents*

FROM

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

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH JULY 1987

Present at the Hearing:

LORD KEITH OF KINKEL
LORD BRANDON OF OAKBROOK
LORD MACKAY OF CLASHFERN
LORD OLIVER OF AYLMERTON
SIR DUNCAN MCMULLIN

*[Delivered by **Lord Oliver of Aylmerton**]*

This is an appeal from that part of an order of the Court of Appeal of the Supreme Court of New South Wales made on 16th December 1985 which dismissed with costs the appellant's appeal from the dismissal by Waddell J. on 8th February 1984 of his claim to a beneficial half-interest in a number of properties in Sydney. The properties concerned were 19 and 21 Henry Street, Waverley and 53 Yarranabbe Road, Darling Point, of all of which the second respondent, Sirs For Men Pty. Limited, was the registered proprietor, 17 Henry Street, of which the third respondent, Intercontinental Investments Pty. Limited, was the registered proprietor and 11 Henry Street, which had been purchased by the third respondent but which had not yet been registered in its name. The fifth respondent is the vendor of that property who has been paid the purchase price and claims no beneficial interest. She has taken no part in the proceedings. It will be convenient for the

[24]

purposes of this judgment to refer to the appellant and the first respondent respectively in abbreviated form as "Austin" and "Keele" and to the corporate respondents as "Sirs" and "Intercontinental".

The claim arises out of a long business association between Austin and Keele and was originally framed in such a way as to involve a detailed and careful investigation of that association and a close consideration of accounts which had been produced to give, so it was alleged, effect to the terms upon which it was commenced and continued. As originally framed Austin's claim was for the dissolution of a partnership asserted between himself and Keele but that was abandoned at the time of the trial and replaced by a claim to a beneficial interest in certain shares in Sirs and to a beneficial interest in the properties based on a series of separate oral agreements made in 1965, 1966, 1970 and 1971, on the occasion of the acquisition of each property, that Sirs and Intercontinental (as the case may be) should acquire the properties as trustees for Austin and Keele in equal shares, the respective purchase prices to be reimbursed to the trustee company out of Austin's and Keele's respective entitlements to participate in the profits of that company and other companies.

The trial judge, in a long and careful judgment in which he reviewed the whole history of the relationship between Austin and Keele, decisively rejected the evidence of Austin with regard to the oral agreements upon which his claim was based and accordingly dismissed the claim. Although it was argued before the Court of Appeal that Waddell J. was wrong to reject the evidence as to these alleged agreements and the claim raised in reliance upon them, that argument was rejected by the Court of Appeal and Mr. Ireland has frankly conceded that he cannot challenge before their Lordships the concurrent findings of fact in the courts below. Their Lordships have thus been absolved from considering the only basis upon which the claim was formulated at the trial. That would no doubt have concluded the case had it not been that in the Court of Appeal two additional and alternative bases were put forward to support Austin's claim and that the Court granted leave to amend the statement of claim to enable them to be raised. In the light of the course which the proceedings have taken it is, happily, unnecessary to set out the factual background in anything like the detail with which it fell to be considered in the courts below, but the way in which the claim is now put necessitates some consideration of the relationship between the parties and of events prior and subsequent to the acquisition by Sirs and Intercontinental of the properties the subject matter of the claim.

Keele is and was at all material times a national of the United States and had business interests in various parts of the world and, in particular, in Australia in the sale of hair pieces and hair cosmetics and in the establishment and running of dance studios. His business interests have at all material times been conducted through companies and it was found as a fact by the trial judge that he effectively controlled all the companies involved in the various businesses in which he was interested, that he was *de facto* a director and that he occupied the position of a chief executive in accordance with whose instructions the *de jure* directors were accustomed to act. His association with Austin (which came to an end in 1977) began in 1959 and throughout the period relevant to this appeal Austin was, in effect, the manager of Keele's business interests in Australia and enjoyed as part of the terms of his employment a participation in the profits of some or all of Keele's various business interests not only in Australia but elsewhere. The principal vehicle for the sale of hair pieces and hair cosmetics was Sirs which had been incorporated prior to the commencement of the association between Austin and Keele under the name BNJ Warehouses Pty. Limited. Austin became a director in 1962 and remained one until February 1977. Numbers 21 and 19 Henry Street were acquired by Sirs in December 1965 and 1966 respectively at prices of $9,400 and $9,000. Contemporary correspondence between Austin and Sirs indicates that their contemplation at that time was that the purchase was intended to benefit Keele's children who were regarded as the beneficial owners of Sirs. 53 Yarranabbe Road was acquired in the following year at a price of $58,600. Again contemporary correspondence is quite inconsistent with the notion that Austin was to have any beneficial interest in the property. Having regard to this and to the trial judge's total rejection of Austin's evidence of an oral agreement on the occasion of each purchase that he should have a half-share, it follows that the case must be approached on the footing that the acquisition by Sirs was as beneficial owner and that, if Austin's claim to some beneficial interest in the properties is to be supported at all, such support can only be found in some subsequent event or transaction.

The way in which it was sought to substantiate the claim in the Court of Appeal and before their Lordships was in reliance upon a document signed by Austin and Keele and bearing the date 28th November 1967 and referred to as "exhibit A", the provenance of which was never clearly established. It is clear and is not now disputed that on 28th November 1967 Keele and Austin met together and signed a more or less formal agreement (referred to as "exhibit 10") which appears to have been designed to record and

establish the arrangements between Keele and Austin and between Austin and the various Keele companies in Australia whose businesses were being managed. Austin in his evidence denied any recollection of this agreement but was driven to acknowledge the genuineness of his signature upon it. The document, which is headed "Agreement" and was signed by both of them, was expressed to be entered into by Keele as "Technical Advisor" acting "on behalf of the beneficial stockholders of all Sirs For Men Companies, Fred Astaire Dancing Studio Companies, Masculine Hairpiece and Intercontinental Investment Co. Pty. Limited". In fact at that date Intercontinental had not been incorporated but it may well have been in course of formation. The agreement purported to continue the employment of Austin as General Manager and obliged him to "continue to sign undated resignations as a Director from these companies and to sign Statutory Declarations that he is not the beneficial shareholder of any of these companies and in no way entitled to benefit directly or indirectly from the assets of these companies except as set out under his remuneration listed below". It provided *inter alia* that the General Manager would continue to "assist in obtaining ... real estate investments ... or" (sic) "any other purpose either or both beneficial stockholders might desire". The "beneficial stockholders" were defined as Keele's two adult children or their nominated companies. It then set out his remuneration, consisting of a salary from a New Zealand company and an expense allowance, 15% of the net profit of Fred Astaire Australia and 25% of the net profit of Sirs, but subject to a proviso that in case of a loss Austin would bear the same percentage as that in which he participated in profit and that any excess drawings from any company would be deducted from the share of profit in Sirs. Clause 9 is of some significance having regard to what has been submitted as regards the implication sought to be made into the document exhibit A. It provided:-

> "Provided further that although the yearly audited figures are not complete for the companies it appears the General Manager is at present in arrears and in fact has been arrears in past years on monies drawn as 'loans' and other means more than he is entitled under this remuneration agreement. The General Manager understands in the future he will take no more than his percentage of the profits arranged herein."

This document came from Keele's custody and was not produced until very shortly before the trial but the trial judge concluded that it was a genuine document signed on the date which it bore and intended to record Austin's rights and obligations in relation to the companies.

For his part Austin produced and relied upon a quite different document, exhibit A, also bearing the date 28th November 1967 and also signed by both Keele and Austin. At the trial Keele disputed his signature of this document, alleging roundly that it was a forgery, but the trial judge held that his signature on it, which appeared in three places, was genuine and, indeed, that he had typed the document himself, although he held that it did not come into existence until some time after 28th November 1967. The latter finding was reversed by the Court of Appeal and there is no cross-appeal against that reversal. Thus the document has to be accepted as a genuinely signed document executed on the date which it bears. No satisfactory explanation, however, was ever tendered as to why or how it came about that two documents not entirely consistent with one another came to be signed on the same day. Exhibit A is headed "Confidential List of Agreements between Brian Austin and J.M. Keele". It covers two pages and is in two parts, the first of which concludes on the second page and deals with the percentages in which Austin and Keele are to share profits in Sirs (both in Australia and abroad), Masculine Hairpiece Co., Chic Wigs, Fred Astaire Dancing Studios, Intercontinental, and a number of other named companies. It is signed at the foot of the first page and at the conclusion of the first part of the document on the second page.

The critical part of the document for the purposes of this appeal is the second part, which appears to have been added after completion of the first part and which is likewise signed at the foot. It is in the following terms:-

> "The actual ownership of land deals regardless of which company owns the land as agreed between Austin and Keele is as follows:
>
> 19 Henry St Waverley, owned one half by Brian and one half by Jim.
> 21 Henry St Waverly, owned one half by Brian and one half by Jim.
> Keele flats at 14 Henry St Waverley owned solely by Keele.
> Balina land on the ocean owned solely by Keele.
> Stud Farm at Mornington owned solely by Keele.
> Yaranabee (sic) Road Flats one half Austin and one half Keele.
> Austin solely owns Block 2 Lot 6 Bell Channel Bay Freeport Bahamas.
>
> As of this date which is November 28, 1967 there has to be certain of these expenditures for land and cars and many other various expenses figured and adjusted to balance things out but generally the above is the understanding between Keele and Austin."

At the trial this document was relied upon simply as supporting evidence of the formation of the three oral agreements which had been pleaded in relation to the Yarranabbe Road property and 19 and 21 Henry Street. Those oral agreements having been rejected by the judge it was left simply as a free-standing assertion by Keele and Austin of a beneficial ownership in the properties concerned which was unexplained, unsupported by the facts and contradicted by contemporary correspondence exchanged at the time of the acquisition of the properties by the alleged trustee, Sirs. In the Court of Appeal, however, on an amended pleading allowed by the Court, it was sought to use the document as it has been sought to use it before their Lordships, for two quite different purposes, that is to say, first, as itself constituting or being a constituent element in an agreement concluded on 28th November 1967 which conferred on Austin the 50% beneficial interest claimed in the proceedings and, secondly and alternatively, as evidence of a common intention in Keele, Austin and Sirs to create a trust for Keele and Austin which, by reason of Austin's subsequent reliance, equity will enforce against Sirs.

It is a matter for regret that the amended pleading in which these alternative claims were raised has been mislaid and their Lordships have had to rely upon the summary of it which is contained in the judgment of Hope J.A. in the Court of Appeal. According to this, the first amendment alleged (to quote from the judgment) that:-

> "... Exhibit 'A' constituted a written agreement between Austin and Keele on their own behalf and on behalf of Sirs for Men. The terms and conditions of the agreement were that Sirs for Men would hold the three properties upon trust for Austin and Keele in equal shares, that the entitlements of Austin and Keele under the four agreements as to sharing profits already pleaded in the statement of claim and in the agreement (if any) constituted by the execution of Exhibit 'A' would be applied in payment of the purchase price of each of the properties so far as the entitlements would extend from time to time, and that Austin and Keele would thereafter make no claims either between themselves or upon Sirs for Men to a beneficial interest in the three properties or any of them or to a beneficial interest in the other properties referred to in Exhibit 'A' otherwise than in conformity with the agreement so pleaded."

The second and alternative formulation is summarised by Hope J.A. as follows:-

> "The third basis for the claim is that either at the time of or subsequent to the dates of the

> acquisition by Sirs for Men of each of the three properties, Austin, Keele and Sirs for Men formed the common intention that Sirs for Men should thereafter hold each of the three properties upon trust for Austin and Keele in equal shares in contemplation that Austin and Keele would continue indefinitely to perform substantial work for Sirs for Men and Intercontinental Investments and other companies associated with them, and thereafter Austin and Keele carried out that work."

The Court of Appeal rejected both these formulations and if they were right to do so this appeal must necessarily fail because no third or further way in which Austin's claim can be supported has been or, in their Lordships' opinion, can be suggested. In their Lordships' opinion, the submission that exhibit A either was in itself or was a constituent part of an agreement giving rise to an equitable interest in the land in favour of Austin and Keele in equal shares is beset by insuperable difficulties. It involves the proposition that exhibit A, either alone or in conjunction with some other surrounding circumstances, constitutes not merely a record of a pre-existing legal situation (which, having regard to the trial judge's finding, was entirely unsupported by any evidence) but was in itself a specifically enforceable contract by Sirs to constitute itself a trustee either by way of sale of the beneficial interest or by way of some sort of compromise of disputed rights. It has not been contended that the document itself constitutes a declaration of trust. The claimed transfer or creation of equitable interests in Keele and Austin must rest, therefore, upon the doctrine of specific performance. As was pointed out by Kirby P. in the course of his judgment, it is not altogether easy to conceive of a court of equity enforcing by a decree of specific performance a contract entered into by a company for the disposition of its property for no stated consideration and for the benefit not only of its own agents but of those very agents who, so it is claimed, committed the company to the very disadvantageous obligation created in their favour. Moreover there is the obvious difficulty that on no analysis can the document be construed as stating with sufficient certainty the essential terms of a specifically enforceable agreement for sale and thus as constituting a sufficient memorandum of the agreement pleaded to satisfy section 54(a) of the Conveyancing Act 1919.

But leaving these difficulties aside altogether, there simply was no evidence before the court proving the agreement pleaded or from which such an agreement could be inferred. It was never contended by Austin that Sirs had agreed to constitute itself a trustee

for him gratuitously and even if it had been a court of equity would not have assisted him. What had to be established, therefore, was some agreement for the purchase from Sirs by Keele and Austin of the properties referred to in exhibit A at a certain price payable in a certain way. What was alleged and what has been contended before their Lordships' Board was an agreement to purchase at historical cost, a price to be met in some unspecified manner by a set-off against future shares of profit not only from Sirs but the other companies mentioned. An attempt was made before the Court of Appeal to justify this by reference to a document brought into being in 1973 by Sirs' auditor, a Mr. O'Brien, but the evidence as to this established only that it was a document prepared on the instructions of Austin and Keele respectively in order to reflect their respective contentions. There simply was no evidence of any such agreement outside exhibit A itself. It was submitted that, from the reference in the last sentence of the second part of exhibit A to the "expenditures for land and cars and many other various expenses" being calculated and adjusted, an agreement to purchase at cost on the terms pleaded can be inferred. Their Lordships have felt unable to accept that such an inference can properly be drawn from so slender a context and it becomes the more unlikely having regard to the express reference in clause 9 of the contemporary exhibit 10 to Austin's account with Sirs being overdrawn.

There is equal difficulty in construing exhibit A as a compromise between (*inter alios*) Austin, Keele and Sirs of disputed rights in the various properties mentioned. Such a compromise would no doubt, if proved, constitute a consideration for the formation of a contractual obligation but no evidence of any such dispute was tendered and it was, in any event, never suggested that the compromise constituted the sole consideration for the obligation said to have been assumed by Sirs, which, as pleaded, was always dependent upon the payment by Austin and Keele of the cost to Sirs of the acquisition of the properties. Even, therefore, if this were a possible construction of the document, any contention that it can stand as a complete and enforceable agreement in the terms pleaded must founder upon the total absence of any evidence to support the essential terms as to price and the method by which the cost of the properties was to be reimbursed to Sirs.

The alternative formulation of the claim on the footing that exhibit A evinced a common intention on the part of Austin, Keele and Sirs that Sirs should hold the properties as trustee for Austin and Keele intended to be acted upon by Austin and in fact acted upon is attended with at least equal difficulty. The Court of Appeal's principal ground for rejecting this

argument rested upon the lack of evidence that in executing exhibit A Keele was either acting or purporting to act on behalf of Sirs so as to fix Sirs with the requisite common intention which must lie at the threshold of any such claim. Indeed, Hope J.A., with whom both Kirby P. and McHugh J.A. agreed, was of the view that exhibit A, when contrasted with exhibit 10 (which was clearly intended to regulate the arrangements between Austin and the various companies), contained fairly clear indications that it was not being signed on behalf of the companies but was intended merely to record a list of personal understandings between Keele and Austin as individuals.

Their Lordships are not entirely convinced that the documents demonstrate so clearly the distinction between corporate and personal intentions and in the light of the findings of the trial judge that the companies were controlled by Keele - so that in effect each constituted merely an *alter ego* - the inference that obligations entered into by Keele were intended to bind equally the companies of which, *de facto*, he was the controlling director is not one that is difficult to draw. But even making this assumption, their Lordships are left in no doubt that the Court of Appeal reached the right conclusion. Essentially, Austin's claim under this head is based upon an implied trust arising from the sort of circumstances envisaged by Lord Diplock in his speech in *Gissing v. Gissing* [1971] A.C. 886 where, in dealing with the common case of the trust affecting the matrimonial home vested in one spouse, he said (at page 905):-

> "... if at the time of acquisition and transfer of the legal estate into the name of one or other of them an express agreement has been made between them as to the way in which the beneficial interest shall be held, the Court will give effect to it - notwithstanding the absence of any written declaration of trust" ..."
>
> "... in the express oral agreements contemplated by these dicta it has been assumed *sub silentio* that they provide for the spouse in whom the legal estate in the matrimonial home is not vested to do something to facilitate its acquisition, by contributing to the purchase price or to the deposit or the mortgage instalments when it is purchased upon mortgage or to make some other material sacrifice by way of contribution to or economy in the general family expenditure. What the court gives effect to is the trust resulting or implied from the common intention expressed in the oral agreement between the spouses that if each acts in the manner provided for in the agreement the beneficial

> interests in the matrimonial home shall be held as they have agreed."

Although Lord Diplock referred to the formation of a common intention "at the time of acquisition", the Court of Appeal expressed the view, with which their Lordships agree, that although it may be more difficult to prove the requisite intention in relation to property already held beneficially by the trustee, there is no reason in principle why the doctrine should be limited to an intention formed at the time of the first acquisition of the property - an opinion echoed by Mustill L.J. in his judgment in *Grant v. Edwards* [1986] Ch.D. 638 at page 651. In essence the doctrine is an application of proprietary estoppel and there is no reason in principle why it should be confined to the single event of acquisition of the property by the owner of the legal estate. It is thus no impediment to the case pleaded that the properties were acquired by Sirs in 1965, 1966 and 1967 and there is no particular difficulty in finding, at least as between Austin and Keele, a common intention that they should each have a beneficial interest. It is expressed in exhibit A, and in addition Austin relied upon a number of other *indicia*, as supporting the notion that Sirs was, at least from November 1967 onwards, to act merely as a trustee. To begin with, the rents were paid into a separate account from which the outgoings also were paid. It was claimed that the surplus from time to time in the accounts was divided equally between Austin and Keele and there was some evidence (although relating to a very much later period) of equal drawings. Secondly, it was established that, from some time in the 1970's, Keele paid to Austin a sum equal to half the rental value of a flat which he occupied in the Yarranabbe Road property. Thirdly, there was evidence that Austin and Keele jointly kept the safety deposit box in which the deeds of the properties were kept. But these *indicia*, whilst consistent with the common intention pleaded, were equally susceptible of other explanations and in relation to the rents and outgoings of the properties these were throughout brought into Sirs' accounts as part of its ordinary income and expenditure.

Even if, however, it is accepted that these *indicia* can be prayed in aid as additional evidence of the common intention alleged, they carry the case no further. A trust does not come into being merely from a gratuitous intention to transfer or create a beneficial interest. There has first of all to be the additional ingredient of an intention or at least an expectation that the *cestui que trust* will act in a particular way, normally, though not necessarily exclusively, by making some contribution towards the cost of acquisition of the property in which the interest is intended to subsist. Moreover, Lord

Diplock's formulation of the principle in *Gissing v. Gissing* involves the further essential element that the trustee has so conducted himself that it will be inequitable to allow him to deny to the *cestui que trust* the beneficial interest which it is proved that he was intended to have. There has to be some conduct detrimental to the *cestui que trust*, even if only in the sense of an irrevocable change of legal position, which is referable to the common intention proved and undertaken on the footing of the grant of the beneficial interest claimed. Classically this takes the form of some contribution towards the purchase of the property, a feature which is entirely absent in the instant case. In fact there was not, from first to last, any evidence that Austin ever contributed a cent towards the cost of the properties.

Even making the assumption here that Keele had the necessary authority and intention to bind Sirs and to form the requisite intention on its behalf, the difficulty which then immediately presents itself is to ascertain what, if any, expectation the parties entertained and to find any evidence of the second essential element, that is to say, conduct on the part of Sirs rendering it inequitable to deny the existence of a trust. In matrimonial cases it may not be difficult, once the intention is established, to find conduct on the part of a spouse reasonably clearly referable to the creation of his or her beneficial interest in the property. But this was an arms' length arrangement between men of business and it is to be expected that there would be spelt out in some way the conduct or contribution anticipated as the *quid pro quo* for the creation of the beneficial interests claimed. What is pleaded is that this is to be found in the contemplation that Keele and Austin would continue indefinitely to perform work for Sirs and other companies which work was in fact carried out - presumably in reliance upon the intended beneficial interests. That was a case raised for the first time in the Court of Appeal and with no further opportunity to examine or cross-examine witnesses. There was no direct evidence in support of it and it became necessary therefore to seek to infer it from such evidence and documents as already existed.

It has been submitted that once it has been ascertained that the claimant has performed acts which are capable of fulfilling the criterion that they are acts which would not have been performed save for the assumed existence of the intended beneficial interest, it will be inferred that they have been so performed in the absence of evidence to the contrary. Authority for that proposition is to be found, it is claimed, in *Greasley v. Cooke* [1980] 1 W.L.R. 1306 and in the judgment of the Vice

Chancellor in *Grant v. Edwards* (at page 657). This may well be so where there is proved a clear contemplation at the time of ~~the~~ formation of the common intention that acts having a particular quality will be performed on the faith of the existence of the beneficial interest which the parties have agreed or have in mind. In *Grant v. Edwards* Nourse L.J. expressed it as "conduct on which the woman could not reasonably have been expected to embark unless she was to have an interest in the house". In the instant case however there is absolutely no evidence of such a contemplation. It does not emerge with any clarity from exhibit A itself; it is inconsistent with exhibit 10, which makes it clear that Austin's interests in the companies and their property was confined to his agreed remuneration; and Austin himself never claimed any such intention in the course of his evidence, basing himself on the series of oral agreements which were rejected by the trial judge. The pleaded case therefore is entirely unsupported by evidence. What was contended before the Court of Appeal in support of the plea that Austin continued to be employed on the faith of the creation of the beneficial interest claimed was that he rendered valuable services at a very inadequate remuneration and that he left large sums of commission undrawn in Sirs. These contentions were carefully considered and rejected by Hope J.A. in the course of his judgment for reasons which it is unnecessary to repeat and with which their Lordships entirely agree. In their Lordships' view the Court of Appeal was entirely right in holding that no trust of the properties vested in Sirs had been established.

As regards the remaining two properties, numbers 17 and 11 Henry Street, which were acquired by Intercontinental, these were purchased some considerable time after the purchase of the properties acquired by Sirs. The purchase of 17 Henry Street was completed in February 1971 at a price of $19,000 and that of 11 Henry Street in July 1971 at a price of $28,000. In both cases the trial judge was prepared to draw the inference of an intention on the part of Keele and Austin that in some way or another they should have beneficial interests in the properties but he rejected entirely Austin's evidence of an oral agreement to this effect made at the time of acquisition. There was no other evidence from which there could be inferred a common intention at the date of the acquisition of 17 Henry Street that Intercontinental, from whose resources the price was paid, should hold the property as a trustee. In the case of 11 Henry Street, which was purchased at the same time as another property, 9 Henry Street, there was some correspondence indicating an intention that both Austin and Keele should contribute half the purchase price, but in

fact, so far as Austin was concerned, that was never implemented. As regards 9 there was evidence from Intercontinental's own books that the price of that property was debited to two companies, one controlled by Keele and the other, Trent Merrill Investment Pty. Limited, by Austin. Trent Merrill Investment Pty. Limited was a co-plaintiff with Austin in the action claiming a beneficial interest in 9 Henry Street and the Court of Appeal concluded that that company had in fact acquired a half interest in that property. There has been no cross-appeal against that decision. There was, however, no similar circumstance in relation to 11 Henry Street from which a common intention to create a trust of the property could be inferred and the Court of Appeal rejected Austin's claim in relation to both that property and 17 Henry Street. Their Lordships are entirely unpersuaded that that decision was erroneous in any respect. Even if any such common intention could be found, there was, as in the case of the other properties, an entire absence of anything to support a conclusion that Austin had acted to his detriment on the faith of having the beneficial interest alleged in the amended statement of claim or that any other circumstances existed rendering it inequitable for Intercontinental to deny the existence of such an interest. It follows, therefore, that Austin's claim in relation to these properties too must likewise be rejected.

Their Lordships will accordingly humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the respondents' costs before their Lordships' Board.