SUPREME COURT OF QUEENSLAND

CITATION:	*Caxton Street Agencies Pty Ltd v Korkidas & Anor* [2002] QSC 210
PARTIES:	**CAXTON STREET AGENCIES PTY LTD** **ACN 010 381 174** (respondent/plaintiff) **v** **MICHAEL KORKIDAS** (first applicant/first defendant) **KATINA KORKIDAS** (second applicant/second defendant)
FILE NO/S:	S 1533 of 2002
DIVISION:	Trial Division
PROCEEDING:	Application for summary judgment
ORIGINATING COURT:	Supreme Court Brisbane
DELIVERED ON:	28 June 2002
DELIVERED AT:	Brisbane
HEARING DATE:	26 June 2002
JUDGE:	Holmes J
ORDER:	**1. That the defendant's application for summary judgment on the statement of claim be dismissed;** **2. that the plaintiff have leave to amend its statement of claim in accordance with exhibit "B" to the affidavit of Mr LeMass filed on 21 June 2002, subject to compliance with Rule 382;** **3. that the defendants make further and better disclosure in terms of the plaintiff's application filed herein on 21 June 2002.**
CATCHWORDS:	PROCEDURE – QUEENSLAND – PRACTICE UNDER RULES OF COURT – SUMMARY JUDGMENT Application for summary judgment on plaintiff's statement of claim – whether plaintiff has real prospect of succeeding on its claim – whether need for trial. TAXES AND DUTIES – STAMP DUTIES – WHAT TRANSACTIONS OF INSTRUMENTS ARE LIABLE – GENERALLY – QUEENSLAND

Whether unstamped contract of sale, for which there exists an undertaking to pay stamp duties, may be relied upon as founding a cause of action.

CONTRACTS – GENERAL CONTRACTUAL PRINCIPLES – OFFER AND ACCEPTANCE – MATTERS NOT GIVING RISE TO BINDING CONTRACT – STATEMENTS OF INTENTION, NEGOTIATIONS AND INVITATIONS TO TREAT
Whether formal contract executed – whether intention to create binding legal agreement.

CONTRACTS – PARTICULAR PARTIES – PRINCIPLE AND AGENT – AUTHORITY OF AGENTS – CONSTRUCTION AND EXTENT OF AUTHORITY – IMPLIED AUTHORITY OF GENERAL AGENTS
Whether first defendant had actual or ostensible authority to sign contract of sale in second defendant's name.

Duties Act 2001, s 487, s 509
Stamp Act 1894, s 4A(I)
Taxation Administration Act 2001, Div 3
Uniform Civil Procedure (U.K.) r 24(4)
Uniform Civil Procedure Rules, r 292, r 292(3)

Australian Broadcasting Commission v XIVth Commonwealth Games Ltd (1988) 18 NSWLR 540.
Bridal Estates v Myer Realty Pty Ltd (1977) 51 ALRJ 743.
CSR Limited v Casaron Pty Ltd [2002] QSC 021.
Dent v Moore (1919) 26 CLR 316.
Farrelly v Hircock (No. 1) [1971] Qd R 341.
Foodco Management Pty Ltd & Anor v Go My Travel Pty Ltd [2001] QSC 291.
Geebung Investments Pty Ltd v Varga Group Investments (No. 8) Pty Ltd (1995) 7 BPR 14 551.
Howard Smith & Co. Ltd v Varawa (1907) 5 CLR 68.
Hoggett v O'Rourke [2001] 1 Qd R 490.
McPhee v Zarb [2002] QSC 004.
Marek v Australasian Conference Association Pty Ltd [1994] 2 Qd R 521.
Masters v Cameron (1954) 91 CLR 353.
Richlaw Pty Ltd v Blackburne [1998] WASCA 120.
Shepherd v Felt and textiles of Australia Limited (1931) 45 CLR 359.
Swain v Hillman [2001] 1 All ER 91.
Three Rivers DC v Bank of England (No. 3) [2001] 2 All ER 513.
Toyota Motor Corporation Australia Ltd v Ken Morgan Motors Pty Ltd [1994] 2 VR 106.

COUNSEL: Mr Hackett for the applicants

Mr Morris QC for the respondent

SOLICITORS: H Drakos and Company for the applicants
LeMass Solicitors for the respondent

The summary judgment application

[2] The applicant defendants seek summary judgment on a claim by the respondent plaintiff for specific performance of a contract of sale, and on their own counter-claim for removal of a caveat lodged in reliance on the same alleged contract of sale. As to the latter, I should say at the outset that there is a presently insuperable difficulty: Mr Hackett sought to read a reply thought to have been filed by the defendant, presumably on the basis that it incorporated an answer to the counter-claim. In fact, no such reply has been filed. Thus, no equivalent to the notice of intention to defend having been filed to permit use of the R 292 procedure, it does not seem to me that the defendants can presently seek summary judgment on the counter-claim. The proper course on that aspect of the application is, I think, to adjourn it, but I will hear the parties on the issue. I propose to proceed with the application for judgment on the statement of claim, assuming that the reply, if it exists, contains no admission relevant to the defendants' case, since there was no reference at all to it in argument. The parties may in any event consider that my conclusions on this part of the application would apply equally in relation to the application on the counter claim.

The document of 17 January 2002

[3] The source of the litigation is a document in these terms:

> "We, MICHAEL KORKIDAS and KAY KORKIDAS agree to sell to Caxton Street Agencies Pty Ltd as Trustee for N & L Hamson Trust property at 169 Boundary Street, West End for a price of THREE MILLION DOLLARS ($3,000,000.00) with a deposit of ~~ONE HUNDRED THOUSAND DOLLARS ($100,000.00)~~ payable upon signing of the Contract with completion ninety (90) days from Contract Date. The sale is to be on such other terms as may be agreed upon by the Seller and the Buyer.
>
> Dated this 17 day of January, 2002."

The words "One Hundred Thousand Dollars ($100,000.)" appear to have been ruled through by pen. The document is signed by M Korkidas in two places: both above the name Michael Korkidas, and above the name Kay Korkidas, reading in the latter case "for Kay Korkidas". Below the signatures appears a hand-written addition: "Deposit payable $20,000 immediately & balance within seven days".

The pleadings

[4] In its statement of claim, the respondent plaintiff pleads that this document was a record of an oral agreement reached at a meeting between its representatives, Mr and Mrs Hamson, its solicitor, Mr LeMass, and, on behalf of both defendants, the first defendant and his solicitor, Mr Poulos. The document was, it is pleaded, signed by the first defendant on his own behalf and on behalf of the second defendant. It constituted a sale contract evidenced in writing which contemplated, but was not conditional upon, execution of a formal contract to contain any additional terms agreed. That contract was partly performed by payment of the deposit of $20,000. The pleading goes on to assert that the contract was subsequently repudiated by the defendants' asserting that the document was not intended to create legal relations.

[5] The applicants duly filed a defence and counter-claim in which they denied that the second defendant had been a party to the meeting giving rise to the document, and asserted that the first defendant did not have authority to agree to the matters in question on the second defendant's behalf. The document prepared was, it is pleaded, no more than a record of discussions. It was not signed on the second defendant's behalf; nor did Mr Poulos, the solicitor, have instructions to act on behalf of the second defendant. Thus, it is said, no contract was created by the execution of the document: both because it was not signed by the second defendant, nor by the first defendant with authority, and because it was not intended to create legal relations. It was no more than a letter of comfort; was not enforceable, amounting to no more than an agreement to agree; and was either void for uncertainty, or conditional upon the signing of a contract. The counter-claim, relying on the facts pleaded in the defence, asserts that the plaintiff lacks any caveatable interest to support a caveat registered by it over the property

Summary judgment under the Uniform Civil Procedure Rules

[6] The defendants now bring this application for summary judgment. The plaintiff has responded by seeking leave to amend the statement of claim to allege the existence of ostensible authority in the first defendant to act for the second defendant, and to add a new cause of action for breach of warranty of authority as against the first defendant.

[7] The application was brought under r 293 of the *Uniform Civil Procedure Rules* insofar as judgment was sought on the plaintiff's statement of claim. That rule requires the defendants to satisfy me that the plaintiff has no real prospect of succeeding on its claim, and that there is no need for a trial.

[8] It has been observed that the court should apply a more robust approach to the question of summary judgment under the *Uniform Civil Procedure Rules* than might previously have been the case[1]. But there remains, of course, the difficult question as to what level of satisfaction must be reached, and what material is required to achieve that satisfaction. have drawn considerable assistance from the following

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1 *McPhee v Zarb* [2002] QSC 004.

passages from the English authorities in relation to the equivalent English rule[2], to which I have previously referred in *CSR Limited v Casaron Pty Ltd*[3]*:*

[9] From *Swain v Hillman* , per Lord Woolf MR:

> "Useful though the power is under Pt 24, it is important that it is kept to its proper role. It is not meant to dispense with the need for a trial where there are issues which should be investigated at the trial … The proper disposal of an issue under Pt 24 does not involve the judge conducting a mini trial, that is not the objection of the provisions; it is to enable cases, where there is no real prospect of success either way, to be disposed of summarily."[4]

And from the speech of Lord Hope in *Three Rivers DC v Bank of England (No 3):*

> "It may be clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks. In that event a trial of the facts would be a waste of time and money, and it is proper that the action should be taken out of court as soon as possible. In other cases it may be possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance. It may be clear beyond question that the statement of fact is contradicted by all the documents or other material on which it is based. The simpler the case the easier it is likely to be [to] take that view and resort to what is properly called summary judgment but more complex cases are unlikely to be capable of being resolved in that way without conducting a mini trial on the documents without discovery and without oral evidence. As Lord Woolf MR said in *Swain's* case [2001] 1 All ER 91 at 95, that is not the object of the rule. It is designed to deal with cases that are not fit for trial at all." [5]

The failure to stamp

[10] The defendants' first point in support of their application for summary judgment was that the document of 17 January 2002 was unstamped and might not, therefore, be relied on to support the plaintiff's cause of action. Mr Hackett referred to my decision in *Hoggett v O'Rourke*[6]. In that case, I struck out part of a statement of claim as disclosing no reasonable cause of action, in that the share sale agreement relied upon was unavailable for that purpose by virtue of s 4A(1) of the *Stamp Act* 1894, which provided:

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2 Rule 24(4) of the *Civil Procedure Rules* (U.K.).
3 [2002] QSC 021.
4 *Swain v Hillman* [2001]1 All ER 91 at 95.
5 *Three Rivers DC v Bank of England (No. 3)* [2001] 2 All ER 513 at 542-3.
6 *Hoggett v O'Rourke* [2002] 1 Qd R 490.

> "An instrument chargeable with stamp duty … shall not, except in criminal proceedings, be given in evidence, or be available for any purpose whatever, unless it is duly stamped."

[11] The defendants' argument in this regard was, however, overtaken by the action of the plaintiff to stamp the document immediately after the hearing. Mr Hackett accepted that that step rendered inapplicable his submissions as to the effect of non-stamping. But because of its possible implications for the question of whether the application was properly brought and, consequently, costs, I shall deal with the issue, and how matters might otherwise have been decided.

The effect of non-stamping

[12] The *Stamp Act* was repealed by s 509 of the *Duties Act* 2001 with effect from 1 March 2002. Thus, while the document no doubt became dutiable under the *Stamp Act*, the condition governing its present availability is s 487 of the *Duties Act* 2001, which provides as follows:

> "**487 Receipt of instruments in evidence**
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> **(1)** Unless an instrument is properly stamped, it-
>
> (a) is not available for use in law or equity or for any purpose; and
>
> (b) must not be received in evidence in a legal proceeding, other than a criminal proceeding.
>
> **(2)** However, a court may receive the instrument in evidence if-
>
> (a) after it is received in evidence, the instrument is given to the commissioner as required by arrangements approved by the court; or
>
> (b) if the person who produces the instrument is not the person liable to pay the duty, the name and address of the person so liable, and the instrument, is given to the commissioner as required by arrangements approved by the court.
>
> **(3)** A court may receive in evidence an unsigned copy of an instrument that is imposed with duty or effects or evidences a transaction that is imposed with duty if the court is satisfied-
>
> (a) the instrument of which it is a copy if properly stamped; or
>
> (b) the copy is properly stamped under section 494."

[13] The effect of the failure to stamp described in s487(1)(a) is closer in its terms to the relevant provision in *Dent v Moore*[7], which said that an unstamped instrument was "not to be available or effectual for any purpose whatsoever at law or in equity", than the language used in s4A(1). Consequently, I do not think that the change in expression from that in s4A(1) would, on the reasoning which I applied in *Hoggett v O'Rourke,* render any different result in this case. In *Hoggett*, having reviewed some of the authorities which applied *Dent v Moore,* I came to the conclusion that "the breadth of section 4A(1) effected by the expression 'available for any purpose whatever' [prevented] reliance on the instrument in any form". My view as to the effect of s 487 is the same. The document in this case, unstamped, could not support the statement of claim. Nor, as it seems to me, could it found a caveatable interest.

Undertaking to pay duty

[14] Mr Morris QC for the plaintiff tendered at the hearing an undertaking by his client to pay any stamp duty found to be exigible in respect of the document. He argued that s 487(2) contemplated a situation in which a reliance on an unstamped document was permitted subject to an undertaking to pay any stamp duty, and urged me to take a different course from that suggested in following dicta in *Hoggett v O'Rourke*[8]:

> "I do not think that an undertaking to pay stamp duty, at whatever stage offered, would resolve the applicant's difficulties. Section 4A (2) enables the admission in evidence of an unstamped document on such an undertaking, but it does not overcome the fundamental problem that such a document may not be relied on as founding a cause of action."

[15] Mr Morris argued that where one of the fundamental issues in the proceedings was whether the instrument was effective, it would be an extraordinary outcome to require a party to pay stamp duty in advance of a determination which might find it void and not dutiable. But while there is some authority for the proposition that a party may refer to an unstamped document in the pleading "not in order to set it up as valid and effectual for any purpose, but only in order to have it solely set aside"[9], the situation is entirely different when the party's cause of action is founded on the effectiveness of the document. It cannot be the case that a plaintiff can on the one hand contend that an agreement is valid and binding, but on the other hand that it is not dutiable. The answer to Mr Morris' conundrum may lie in Division 3 of the *Taxation Administration Act* 2001, which permits a person who has paid duty to seek a reassessment, and s 37(1), which provides for a refund where liability for tax is decreased.

The effect of stamping

[16] But the document has now been assessed and stamped. Once stamped it becomes

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7 *Dent v Moore* (1919) 26 CLR 316.

8 [2002] 1 Qd R 490 at 495.

9 See *Richlaw Pty Ltd v Blackburne* [1998] WASCA 120 and the authorities referred to therein.

> "pleadable, receivable in evidence and admissible as good, useful and available [and] its validity and operation as from the beginning [R] to be construed as unaffected by the enactment."[10]

Thus the issue of summary judgment is not to be determined on the question of stamping. I will go on to consider the remaining grounds of the defendants' application.

A concluded agreement?

[17] Mr Hackett for the defendants argued that the document of 17 January 2002 did not reflect a concluded agreement. That was apparent from its reference to "contract date" and to sale on "such other terms as may be agreed". In addition, he relied on subsequent correspondence between the solicitors for the parties as showing that it was intended that a formal contract would be executed.

[18] The defendants' solicitors wrote to the plaintiff's solicitors on 18 January 2002 advising that they were awaiting the draft contract of sale. In that letter they referred to some interest said to have been expressed by the defendants' solicitors in the property, and whether that led to any difficulty "with respect to negotiating reasonable terms with respect to the Contract…" A facsimile on the same date again requested the draft contract. The defendants' solicitors replied on 20 January 2002 advising

> "A draft contract will be submitted to you in due course. That contract will reflect my clients' instructions, namely an unconditional contract. The contract will be drafted as an "as is where is" sale. Your clients will then have an opportunity to make an offer to my clients to purchase the property on those conditions."

On 21 January 2002 the plaintiff's solicitors responded:

> "We have a problem with your final paragraph in that we say: -
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> your clients have already entered into a contract for the sale of the property to our client;
>
> the parties need only to confirm that the standard REIQ conditions apply and;
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> to confirm in writing that your clients' representations with respect to income are correct upon the reading of the leases and that our client be given the usual opportunity to read those leases."

Intention to execute a formal contract

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10 *Shepherd v Felt and Textiles of Australia Limited* (1931) 45 CLR 359 per Dixon J at 383.

[19] Mr Hackett relied on the decision of the Court of Appeal in *Marek v Australasian Conference Association Pty Ltd*[11], and in particular on this passage:

> "The usual expectation of parties in negotiation for the sale of land is that they will not be taken to have made a concluded bargain unless and until a formal contract is executed. In this State real estate is ordinarily agreed to be sold by the execution by vendor and purchaser of a form of contract adopted by the Real Estate Institute of Queensland and approved by the Queensland Law Society … This notorious fact largely explains why these days in land sales the 'expectation is strong that the parties do not intend to be bound until a formal contract is executed' … Exceptionally the conduct of the parties may reveal an intention to make a binding agreement concerning land before a formal contract is signed."[12]

[20] It is apparent from the correspondence which flowed between the parties after 17 January (admissible in order to determine whether a binding agreement was formed[13]) that the execution of a formal contract was contemplated. That, of course, is not conclusive:

> "Where parties who have been in negotiation reach agreement upon terms of a contractual nature and also agree that the matter of their negotiation shall be dealt with by a formal contract, the case may belong to any of three classes. It may be one in which the parties have reached finality in arranging all the terms of their bargain and intend to be immediately bound to the performance of those terms, but at the same time propose to have the terms restated in a form which will be fuller or more precise but not different in effect or, secondly, it may be a case in which the parties have completely agreed upon all the terms of their bargain and intend no departure from or addition to that which their agreed terms express or imply, but nevertheless have made performance of one or more of the terms conditional upon the execution of a formal document or, thirdly, the case may be one in which the intention of the parties is not to make a concluded bargain at all, unless and until they execute a formal contract."[14]

[21] The statement of claim in the present case asserts that the agreement of 17 January 2002 was the sale contract, and while it was contemplated that a formal contract be prepared, it was not conditional upon such a contract coming to existence. And while it was also to contain any further terms agreed, in the absence of any further agreement, it would accord with the terms of the 17 January document. Thus on the plaintiff's case, the arrangement would fall into the first of the *Masters v Cameron* classes and amount to a binding contract.

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11 [1994] 2 Qd R 521.

12 [1994] 2 Qd R 521 at p527.

13 *Howard Smith & Co. Ltd v Varawa* (1907) 5 CLR 68; *Australian Broadcasting Commission v XIVth Commonwealth Games Ltd* (1988) 18 NSWLR 540; *Marek v Australasian Conference Association Pty Ltd* [1994] 2 Qd R 521 at 529; *Geebung Investments Pty Ltd v Varga Group Investments (No. 8) Pty Ltd* (1995) 7 BPR 14 551.

14 *Masters v Cameron* (1954) 91 CLR 353 at 360.

[22] The defence, on the other hand, pleads that it was agreed that a formal contract of sale would be executed comprising the terms set out in the 17 January document, but also setting out: other terms as to the lease situation in respect of the property; the access rights of adjoining owners; that the property was to be acquired on an "as is where is" basis and to be at the risk of the purchasers; and anything else which might be agreed. On the defendants' case the 17 January document falls within the third class in *Masters v Cameron*, i.e. there was no intention to make a concluded bargain unless and until the formal contract was executed.

The indicia of an intention to conclude an agreement

[23] The existence of a general practice of sale of land by contract in a particular form such as that referred to in *Marek* may be an indicium that no intention to make a binding agreement exists prior to signing of a contract in such form, but it has not invariably been regarded as material in determining whether a contract exists.[15]. The existence of matters as to which consensus has not yet been reached is another factor which may indicate that parties did not intend to be bound pending resolution of those issues[16]; and

> "Common sense leads … to the conclusion that regard may be had, not only to the nature but also to the magnitude of the transaction in considering how likely it is that the parties would have intended to make or record a binding contact by means of some informal, vague and relatively short document."[17]

[24] One fact which supports (although by no means conclusively[18]) the plaintiff's case for a binding agreement made on January 17 is the payment on that date of a deposit of $20,000. Other indicia in the January 17 document and the subsequent correspondence appear to favour the defendants' argument. The consideration involved in the transaction, $3,000,000, was significant. A further contract was contemplated, and there appear, according to the letter from the plaintiff's solicitors of 18 January, to have been some conditions requiring negotiation. It seems, at the least, to have been intended to incorporate standard REIQ conditions into the formal contract. On the other hand, the defendant's own pleading speaks in terms no stronger than of "clarifying" certain matters as to existing lease and access rights and the property's being at the plaintiff's risk.

[25] What finally convinces me is that the matter is not an appropriate one for summary disposition is the resounding lack of direct evidence from either side as to just what was said in the discussions surrounding the coming into existence of the 17 January 2002 document. No affidavit material has emerged from the defendants personally or from Mr Poulos, the solicitor who attended the meeting. All that is offered on that side is the affidavit of Mr Castrisos, who swears that Mr Poulos has

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15 *Bridal Estates v Myer Realty Pty Ltd* (1977) 51 ALJR 743 at 744, 749.

16 *Masters v Cameron* (1954) 91 CLR 353 at 361; *Marek v Australasian Conference Association Pty Ltd* [1994] 2 Qd R 521 at 528.

17 *Toyota Motor Corporation Australia Ltd v Ken Morgan Motors Pty Ltd* [1994] 2 VR 106 per Brooking J at p. 131.

18 See *Allen v Carbone* (1975) 132 CLR 529 for an instance in which no binding contract had been made notwithstanding the payment of a deposit.

informed him that "he participated in the conversations pleaded in the Defence and Counterclaim in the terms pleaded therein." Mr LeMass, the solicitor who represented the plaintiff at the meeting, makes no reference in his affidavit to what, if anything, was said by the parties as to any matters remaining to be resolved. Where the evidence is so clearly incomplete on both sides I do not consider it a proper matter for my resolution on an application for summary judgment.

Actual or ostensible agency

[26] I have reached a similar conclusion in relation to Mr Hackett's third argument, that the plaintiff cannot demonstrate either actual or ostensible authority. Certainly the plaintiff's pleading, even allowing for its proposed amendment, is far from satisfactory. After asserting that the first defendant had actual authority as the second defendant's agent, the statement of claim goes on to put an alternative position: that the firm to which Mr Poulos belonged was retained generally by the defendants to represent them in respect of the property in question, that the second defendant

> "permitted the first defendant to handle the management and control of and decision making in respect of the land on behalf of the defendants"
>
> and that
>
> "to the knowledge of the second defendant, the first defendant was armed with the means to represent himself as so having authority to deal with the land, by reason of his being one of the registered proprietors, the husband of the second defendant (as the other registered propriety), and the person having the apparent management, control and decision making in respect of the land."

[27] It is trite law to say that it is not enough, in order to establish ostensible authority, that the agent makes a representation of authority. That representation, by words or conduct, must emanate from the principal. Clearly, the mere facts of the first defendant's being married to the second defendant, or registered as proprietor with her of the subject land, cannot amount to a representation of his having authority[19]. The feature crucial to the pleading of ostensible authority is that the second defendant had "the apparent management, control and decision making in respect of the land". But that seems to me no better than a re-alleging of actual authority, with, tagged on, an assertion that if the first defendant had such authority, the second defendant must have known he would look to others as if he did. The plaintiff's evidence and pleading are singularly short of identifying anything said or done by the second defendant to hold out either the first defendant or Mr Poulos as her agent.

[28] On the other hand, the fact of agency is pleaded, and the denial of it comes only in a second-hand fashion through Mr Castrisos' affidavit saying that the second

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19 *Farrelly v Hircock (No.1)* [1971] Qd R 341.

defendant has informed him that the first defendant was not her agent nor held out as such. In those circumstances, where again a finding of fact as well as of law is entailed, I do not think that the matter is a proper one for summary resolution, particularly on evidence given on information and belief.

[29] Subject to confirmation that the document has indeed been stamped I am not prepared to give summary judgment on the statement of claim, and will dismiss the application. Although I will hear argument as to costs, it seems to me that, the otherwise fatal non-stamping of the document having been rectified only after the application was heard, it would be a proper case for the defendants to have their costs of the application.

[30] By its cross-application, the plaintiff sought leave to amend its statement of claim in terms of exhibit "B" to the affidavit of Mr LeMass, and also sought further and better disclosure necessitated by that amendment. Mr Hackett did not oppose the making of those orders in the event that the application for summary judgment was unsuccessful. I will make the orders accordingly.

[31] I order:

1. that subject to my satisfaction of the stamping of the document dated 17 January 2002, the defendant's application for summary judgment on the statement of claim be dismissed;
2. that the plaintiff have leave to amend its statement of claim in accordance with exhibit "B" to the affidavit of Mr LeMass filed on 21 June 2002, subject to compliance with Rule 382;
3. that the defendants make further and better disclosure in terms of the plaintiff's application filed herein on 21 June 2002.

[32] I will hear the parties as to the date by which disclosure is to be made, the fate of the application on the counter-claim, and costs.