# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Scanwell Freight Express (HK) Ltd & Anor v Global Air Leasing P/L & Ors* [2003] QSC 155 |
| PARTIES: | **SCANWELL FREIGHT EXPRESS (HK) LTD**<br>(first plaintiff)<br>**SCANWELL FREIGHT EXPRESS (B.V.I) LTD**<br>(second plaintiff)<br>**v**<br>**GLOBAL AIR LEASING PTY LTD** (ACN 090 602 118)<br>(first defendant)<br>**GLOBAL AIR CARGO PTY LTD** (ACN 101 402 582)<br>(second defendant)<br>**GLOBAL AIR OPERATIONS PTY LTD** (ACN 101 402 233)<br>(third defendant) |
| FILE NO/S: | SC No 10500 of 2002 |
| DIVISION: | Supreme Court |
| PROCEEDING: | Application |
| DELIVERED ON: | 20 May 2003 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 16 April 2003 |
| JUDGE: | McMurdo J |
| ORDER: | **1. Judgment for the second plaintiff against the second defendant in the sum of $828,737.04**<br>**2. The monies paid into an interest bearing account pursuant to the order of 20 November 2002 together with interest accrued thereon, but in total not exceeding $828,737.04, be paid out to the plaintiffs' solicitors.** |
| CATCHWORDS: | PRACTICE – SUMMARY JUDGMENT FOR PLAINTIFFS – R 292 - where contract between second plaintiff and second defendant discharged – where second plaintiff paid second defendant a deposit and also made an advance payment under the contract – where claim made for restitution of advance payment - where application for summary judgment – whether right to advance payment had become unconditional<br><br>PRACTICE – SUMMARY JUDGMENT FOR PLAINTIFFS – R 292 - where claim made for restitution of deposit- where application for summary judgment - whether the defendants' foreshadowed delay in performance constituted a repudiation |

entitling the plaintiff to discharge contract - whether real prospect of successfully defending claim

*Uniform Civil Procedure Rules* 1999, r 292

*Baltic Shipping Co v Dillon* (1992-1993) 176 CLR 344, considered
*Carr v J A Berriman Pty Ltd* (1953) 89 CLR 327, cited
*Decro-Wall International SA v Practitioners in Marketing Ltd* [1971] 1 WLR 361, considered
*Federal Commerce & Navigation Co Ltd v Molena Alpha Inc* [1979] AC 757, considered
*McDonald v Lacscelles Ltd* (1933) 48 CLR 457, considered

COUNSEL: D D Bates for the applicants
P W Hackett for the respondents

SOLICITORS: McCullough Robertson for the applicants
Morgan Conley Solicitors for the respondents

[1] This is an application for summary judgment. The application as filed seeks judgment for all plaintiffs against all defendants. As the matter was argued, it became an application by the second plaintiff for judgment against the second defendant.

[2] It is common ground that the second plaintiff and the second defendant entered into a written contract dated 23 July 2002, entitled "Aircraft Charter Agreement", whereby that defendant agreed to charter to the second plaintiff an aircraft to carry cargo by 26 flights from Hong Kong to Chicago, New York and Los Angeles. The agreed price per flight was US$285,000. The agreement acknowledged the payment by the second plaintiff to the second defendant of an amount of US$150,000 as "the deposit". It is also common ground that the second plaintiff made a further payment of US$285,000 to the second defendant, as the price of the proposed first flight, but that there were no flights and the agreement has been terminated. By the amended statement of claim, the plaintiffs to recover those two amounts (totalling US$435,000 but claimed as A$785,737.04) upon a restitutionary basis or, alternatively, at least the second amount as damages for breach of contract or pursuant to s 82 of the *Trade Practices Act* 1974 (Cth). In seeking summary judgment, the plaintiff relied only upon the restitutionary claims.

[3] It is convenient to discuss first the claim to recover the payment of US$285,000. It is common ground that this was paid as the agreed price for the first flight. It was not paid also as a deposit. The agreement consistently refers to "the deposit" as the acknowledged deposit of US$150,000. By cl 3.4, it was agreed that:

> "3.4 The Charterer having paid the deposit shall pay the cost of the first flight less the amount paid by way of deposit to the Airline at least five (5) days prior to the departure of the first flight ie by close of banking business in Australia on Friday, 9th August 2002. Such payment will be made in accordance with clause 3.1 hereof."

By cl 3.1, it was agreed that:

> "3.1 With the exception of payments for the deposit and first flight … payment is due for each other flight at least one clear banking day prior to the departure of each other flight."

The defendant agreed to "arrange for and pay certain operational expenses" as detailed in cl 2.2. For present purposes at least, it may be assumed that in relation to a flight, some expenditure by the defendant in advance of the flight would have been necessary. This is a relevant consideration in assessing whether the payment for the first flight could be regarded as conditional, so that the defendant's title to retain the money was not absolute when the contract was discharged. Each party alleges that the contract was discharged for the other's breach or repudiation. For the defendant, it was submitted that the plaintiff was not entitled to recover because the plaintiff was the defaulting party. But this is not an answer to the plaintiff's claim for the return of a contractual payment, not in the nature of a deposit, if the defendant's entitlement to retain that payment had not become unconditional when the contract was discharged: *McDonald v Dennys Lascelles Ltd* (1933) 48 CLR 457 at 476-479 per Dixon J; *Baltic Shipping Co v Dillon* (1992-1993) 176 CLR 344 at pp 352-353 (Mason CJ) and pp 388-391 (McHugh J). So it is necessary to assess whether the defendant's entitlement to this payment was relevantly unconditional when the agreement was discharged. That is a question involving the interpretation of the contract, in relation to which McHugh J said in *Baltic Shipping Co v Dillon* (at p 391):

> "As a general rule, however, absent an indication to the contrary, a payment, made otherwise than to obtain the title to land or goods, should be regarded as having been made unconditionally, or no longer the subject of a condition, if the payee has performed work or services or incurred expense prior to the completion of the contract. If the payment has been made before the work has been performed or expense incurred, it should be regarded as becoming unconditional once work is performed or expense incurred. In that situation, the advance payment is ordinarily made in order to provide a fund from which the payee can meet the cost of performing the work or services or meeting the expenditure incurred or to be incurred before the completion of the contract."[1]

It can be accepted that at least one purpose for requiring an advance payment for a flight was to provide moneys from which the defendant was to meet its own costs of the flight. However, there is no contention that expense was incurred by the defendant in preparation for the first flight. The evidence shows that the first flight was postponed at the defendant's instance on a number of occasions, and that by the time the contract was discharged, the defendant had not yet managed to secure the necessary regulatory approvals to undertake any of the agreed flights. Consistent with the absence of evidence of any such expenditure by the defendant, there was no submission on its behalf to the effect that it had become unconditionally entitled to the payment by the time the contract was discharged. In

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[1] Where *Hyundai Heavy Industries Co Ltd v Papadopoulos* [1980] 1 WLR 1129 is cited as illustrating the point.

> my view, upon the proper interpretation of this agreement, the payment for a flight was conditional upon at least the defendant's incurring expense in preparation for that flight, and absent any assertion by the defendant of such expenditure, the defendant's right to the payment had not become unconditional. This payment was made conditionally upon the performance of the defendant's promise to make a certain flight, and as the defendant had not begun to perform that promise, there has been a total failure of consideration for the payment, and the sum paid is recoverable as money had and received to the use of the second plaintiff.[2]

[4] The result is that I am satisfied that there is no real prospect of successfully defending at least that part of the second plaintiff's claim constituted by its claim in restitution for the payment of US$285,000, and that there is no need for a trial of that part of the claim, so that there is a power to give summary judgment for the second plaintiff against the second defendant at least for that amount, together with interest. With one possible exception, there is no other matter raised within the written or oral submissions for the defendant which would provide any reason to refuse summary judgment for that sum.

[5] The possible exception is the counterclaim. There is no pleaded entitlement to set off the amount of the counterclaim. But in any case, the factual basis for the pleaded counterclaim is not established, even to the extent required to meet a summary judgment application. Of the material read for the defendants, only the affidavit of Mr Thynne goes to the counterclaim. He is a chartered accountant practising in Brisbane and specialising "in the provision of expert accounting evidence",[3] but it is plain from his CV that he claims no knowledge of or experience in international aviation. He has prepared a report containing a series of calculations of suggested lost profits, from the loss of the benefit of this contract. The factual bases for the report are stated to be the contract itself, various e-mails from a Mr Clark of the defendant and some discussions with Mr Clark. There is no affidavit from Mr Clark. Objection was taken by Mr Bates for the plaintiffs to Mr Thynne's affidavit, upon the ground that the factual bases were not evidenced. For the defendants, Mr Hackett effectively conceded the merit of the objection, by saying that he was not relying upon the affidavit although he had been "instructed to read it". In my view, the objection is well taken, but alternatively, the factual bases in Mr Thynne's report seem so unlikely that, absent some more weighty evidence of them, the Thynne report and affidavit provide no evidence of a sustainable counterclaim. To explain that, the written communications between the parties leading to the discharge of the contract demonstrate that, as at 10 October 2002, none of the defendants had the necessary accreditation to be able to use its intended aircraft to make the flights the subject of the agreement, and that the defendants expected a delay of at least 90 days in remedying that matter. It further demonstrates that the defendants were not prepared to perform the agreement by themselves chartering another aircraft, because of the prohibitively high cost of doing so. In Mr Butler's e-mail of 10 October, he explained that the cost per flight of a sub-charter would be of the order of US$650,000 to US$750,000. He then suggested that the agreement might be performed by the defendant's acquiring the use of another aircraft by what he described as a "wet lease", which he was endeavouring to secure, and for which he expected that the defendants would have

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2 *Baltic Shipping Co* at p 389; *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32 at p 65.

3 His affidavit, para 2.

to pay an amount which nevertheless "should allow us to maintain the same rate we have contracted with you by virtue of the ability for us to earn supplemental revenue on the back load" (ie the return trips to Hong Kong). Yet according to Mr Thynne's calculations, the cost of acquiring an aircraft was about US$250,000 *per month*, although the agreement provided a schedule of two flights per week. Mr Thynne's calculations make no reference at all to the defendants' predicament as plainly set out in Mr Butler's e-mails shortly before the contract was terminated, and his calculation of very substantial profits are irreconcilable with Mr Butler's statements at the time to the effect that if a "wet lease" could be negotiated, it "should allow" the defendant to provide the agreed service at the agreed rate. For these reasons, the pleaded counterclaim does not provide any reason for denying the second plaintiff summary judgment against the second defendant.

[6] The other sum claimed was expressed as a deposit, and neither party suggested it was otherwise. Accordingly, the defendant's entitlement to retain it depends upon whether it was the plaintiff or the defendant which was entitled to discharge the contract. The plaintiff must demonstrate that on this issue also the defendant has no real prospect of a successful defence and that there is no need for a trial.

[7] Before going to that issue, the circumstances of the payment of that deposit should be mentioned. The sum of AUS$268,000 (approximately US$150,000) had been transferred by the *first* plaintiff to the *first* defendant on or about 4 July 2002, as a payment for a flight proposed for 7 July 2002 from Hong Kong to the United States. That flight did not occur and the first plaintiff demanded repayment on or about 8 and 10 July 2002. The defendants say that the first defendant's receipt of that payment was as agent for the second defendant. That is of no present importance, because the second plaintiff and the second defendant, by their written agreement of 23 July, agreed that this money was to be taken as paid and received as the deposit under their agreement. It follows that the second plaintiff is entitled to this amount, upon a restitutionary basis, if it can establish that it was the party entitled to discharge the agreement.

[8] The agreement contained terms as follows:

> "1.2 … This contract applies to departure out of (Hong Kong) each Thursday and Sunday between August 15, 2002 and November 10, 2002. Subject to the provisions of clause 3.3 hereof this contract provides for a total of twenty-six (26) flights …
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> 3.3 Between the period of August 15, 2002 and November 10, 2002 (the plaintiff) is entitled to ONE (1) CANCELLATION without penalty during the time outlined by this agreement. Cancellation notification must be provided a minimum of four (4) days prior to departure of the flight out of (Hong Kong) in order for this cancellation waiver to apply.
> 3.4 The Charterer having paid the deposit shall pay the cost of the first flight less the amount paid by way of deposit to the Airline at least five (5) days prior to the departure of the first flight i.e. by close of banking business in Australia on Friday, 9th August 2002. Such payment will be made in accordance with clause 3.1 hereof.
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> …

> 6.5 In case of mechanical difficulties, damage to Aircraft, adverse weather conditions, or other circumstances which, in the opinion of AIRLINE, require such action, the Charter Flight may be cancelled or delayed at the point of origin, or any other point, or any point on the itinerary may be omitted. In such event, AIRLINE may take whatever reasonable steps it deems necessary for the protection of itself, other Parties, and the cargo, including sending collect communications for instructions on the disposal of perishable cargo without instructions. In the event of the cessation or delay of Flight for any reason above, CHARTERER agrees AIRLINE will be entitled to the amount stated herein, or a prorated share thereof, in accordance with services performed. CHARTERER shall be responsible for the reasonable cost of providing alternate carriage to destination, or the agree-upon rates hereunder, which is greater.
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> …
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> 7.1 AIRLINE may, without notice, substitute an Aircraft. AIRLINE is authorized to select or deviate from the route notwithstanding the same may be stated herein or upon any Air Waybill. AIRLINE does not undertake to commence or complete transportation or effect delivery of cargo within any particular time. No employee, agent, or representative of AIRLINE is authorized to bind AIRLINE by any statement(s) or representation(s) of the date(s) or time(s) of departure, arrival, or duration of any Flight.
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> 7.2 AIRLINE may cancel the operation of any Flight(s) upon notice to CHARTERER that such cancellation is required because of events beyond AIRLINE's control (*Force Majeure*) and, upon such notice, performance hereunder shall be excused without liability. Examples of events beyond AIRLINE's control are acts of God, weather, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, riots, epidemics, lightning, earthquakes, arrests, explosions, accidents to machinery or Aircraft, failure of public utilities, unavailability of fuel, or inability to secure landing slots. It is understood that settlement of any such strikes, lockouts, or industrial disturbances shall be at the sole direction of AIRLINE. … In the event AIRLINE completes any segment of a planned Charter, AIRLINE shall be compensated on a *pro rata* basis for the portion completed. In the event AIRLINE provides alternate service for any Charter under this Agreement, CHARTERER shall be responsible for all amounts due hereunder."

[9] The evidence shows that the first flight was postponed by the defendant on a number of occasions before the contract was eventually discharged. The first action by either party to purport to terminate the agreement was that of the plaintiff, by an e-mail to Mr Butler of 27 September, in response to Mr Butler's advice that the first flight would not occur on 29 September, as at least the plaintiff had expected when it paid the US$285,000 on or about 23 September. The plaintiff contends that the contract was subject to a number of variations, as to the agreed date for the first

flight, by which the agreed date had become 29 September. The defendant says that it was entitled to unilaterally postpone the flight in reliance upon cl 6.5 as set out above,[4] and that in turn, it was entitled to postpone the first flight beyond 29 September so that there was no anticipatory breach by its communication that it would not make this flight on 29 September. It is unnecessary to resolve that issue, because, notwithstanding the plaintiff's demand on 27 September for repayment, the parties appear to have then agreed to the contract remaining on foot and that the first flight would occur on 10 or 13 October 2002.[5] On 10 October Mr Butler sent the e-mail I have described above,[6] in which he said, in effect, that the defendant could not make the first flight before 1 November, and that its ability to make the flights thereafter depended upon its successfully negotiating a "wet lease" of another aircraft. He also advised that he hoped to confirm the next day that "we have a firm cover in place from 1st November" saying that "I shall call you personally … when I have received and reviewed the terms we expect overnight tonight". However, there is nothing to indicate that Mr Butler did so "confirm", the next day or otherwise. The plaintiff's response to this e-mail of 10 October was to send an e-mail the same day demanding a refund of the total of US$435,000 paid. The next communication between the parties was the plaintiff's e-mail of 12 October, complaining of a lack of response to its e-mail of 10 October, and again demanding a refund. On 14 October, Mr Butler sent a lengthy e-mail, in which he refused to make any refund, and asserted that "as previously advised in my e-mail of 10th October, we are in a position to operate … via a longer term (6 months minimum) … lease … as from the 1st November, 2002", but upon terms which involved some departure from the schedule of 26 flights, at 2 flights per week, from Hong Kong to the US which had been set out in the written agreement. Mr Butler was then proposing three flights per week until mid December "subject to demand" and then "one flight per week from (Hong Kong) and possibly one flight per week from elsewhere in Asia e.g. (Singapore) until the market picks up." Although he then proposed "the rate already quoted at US$285,000", he continued that "the precise terms will be set out and discussed between Adam Ho[7] and Luke Butler."

[10] The plaintiff's case as pleaded seems to heavily rely upon a right to terminate for an alleged repudiation within the defendant's e-mail of 27 September, in which it was advised that the first flight would not occur on 29 September. However, upon the evidence there is common ground that the agreement continued beyond 27 September and that it was on foot when Mr Butler sent his e-mail on 10 October. In response to that e-mail, the plaintiff purported to terminate the contract. As I read Mr Butler's e-mail of 14 October, it proposes a different agreement rather than its being an affirmation of the 23 July agreement, as varied. If the plaintiff was entitled to terminate, it seems to me that it did so by its e-mail of 10 October. If the plaintiff was not entitled to then terminate, then its e-mails of 10 and 12 October constituted a repudiation, entitling the defendant to discharge the contract, as it did by Mr Butler's e-mail of 14 October. Is it clear that the plaintiff was entitled to terminate on 10 October? There is an issue as to whether the parties had agreed that the first flight would be on 10 October, or instead might occur on 13 October.[8] That issue

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4 The submission being that there were "other circumstances which, in the opinion of (the Defendant)" required the postponement.

5 See affidavit of L T Yee, para 37 and affidavit of L Butler, para 43.

6 At [5].

7 A representative of the plaintiff.

8 As Mr Butler swears in para 43 of his affidavit.

cannot be resolved in the present context: the plaintiff cannot demonstrate, for the purposes of obtaining summary judgment, that there was an actual breach by the failure to make the first flight on 10 October.

[11] The question then is whether it is sufficiently clear that the defendant repudiated the agreement by Mr Butler's e-mail of 10 October. That was certainly a communication to the effect that the defendant would not perform the agreement as varied, for even on the defendant's case, the first flight was to occur no later than 13 October. The defendant was saying that there would be no flight before at least 1 November, and even this required some agreement to be put in place for the lease of another aircraft, which would have to be "confirmed" to the plaintiff the next day. Mr Hackett submitted that the plaintiff was not entitled to terminate until it had given something in the nature of a notice to make or remake time of the essence, and in this respect he cited *Carr v J A Berriman Pty Ltd* (1953) 89 CLR 327 at 348-9. That submission would be relevant to the plaintiff's claimed entitlement to terminate for an (alleged) actual breach, constituted by the defendant's not making the flight on 29 September. But as the contract was not discharged but instead was kept on foot, upon the basis that the first flight would occur on 10 or 13 October, it is not necessary to determine whether time was of the essence in the agreed date of 29 September. Nor is it necessary to consider whether time was of the essence in relation to the flight to occur on 10 or 13 October, ie whether it became a *condition* of the contract that the flights would commence on whichever of those dates was agreed. In assessing whether the plaintiff was entitled to terminate for an anticipatory breach, ie a repudiation, it is relevant but not necessary to determine whether the parties had made it a condition that the agreed flights would commence on 10 or 13 October as the case may be. An anticipated breach of a term is not necessarily sufficient to constitute a repudiation merely because that term is a condition, because "although the failure, at the time fixed for performance, to comply with such a term will permit the injured party to forthwith to terminate the contract, however minor the breach may be, the same result does not follow as of course when there is a repudiation of the future performance of such a term. In the latter circumstance, the issue is whether the repudiation is of such a degree as to render further performance by the injured party futile."[9] The repudiation must be such as to indicate an intended failure in performance to deprive the injured party of "substantially the whole benefit for which he has bargained",[10] or that it will cause such a delay as would "frustrate the performance of the contract".[11] Put another way, the foreshadowed breach, to amount to a repudiation, must go to the root of the contract.[12] The defendant's e-mail of 10 October went further than saying that there would be some relatively minor delay in making the first flight: it postponed it at least for some weeks and indicated some uncertainty as to whether there would be "confirmed" the arrangement which would enable the defendant to make the flights beyond that date. It did not promise that flights would commence on 1 November, which was described as "the earliest possible start". There was no indication of the latest possible start. In the context of an agreement under which the plaintiff was to have the benefit of two flights per week, and on designated dates and with a

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9 *Greig and Davis* "The Law of Contract" at p 1249.

10 *Greig and Davis* at p 1249.

11 *Decro-Wall International SA v Practitioners in Marketing Ltd* [1971] 1 WLR 361, at p 380 per Buckley LJ as approved in *Federal Commerce & Navigation Co Ltd v Molena Alpha Inc* [1979] AC 757, at 779.

12 See, eg, *Federal Commerce v Molena Alpha* at p 779 per Lord Wilberforce.

designated starting date, in my view the threatened breach was such as to deprive the plaintiff of a substantial part of the benefit to which it was entitled under the contract. It is difficult to see how the plaintiff was expected to conduct business in reliance upon this charter without knowing if and when flights would commence, and where that uncertainty might have continued at least for some weeks. When the plaintiff agreed to the ultimate postponement of the first flight to 10 or 13 October, the circumstances reveal, at least upon the plaintiff's part, some sense of urgency. Mr Butler's own e-mails spoke of the very high demand for aircraft and indicated the profitability for the plaintiff in being able to airfreight goods from Hong Kong to the United States at this time. A delay of even a few weeks was to deny the plaintiff potentially a very substantial benefit.

[12] This is an application for summary judgment, and despite the more robust approach warranted by the terms of r 292 compared with its predecessors, the issue should not be determined now if the defendant has some real prospect of an outcome at trial whereby its foreshadowed breach of the agreement would not be held to have been repudiatory. It seems to me however that the defendant has no real prospects in that respect. That view is consistent with the absence of any submission at this hearing that there should be a trial to investigate that matter. The defendant has instead relied upon alleged breaches of the agreement, as justifying its conduct including the e-mail of 10 October. In particular, Mr Butler's affidavit asserts a default by the plaintiff in failing to provide a detailed inventory of intended cargo which he says was affecting the second defendant's ability to obtain the necessary flight approvals. He swears that he had conversations with representatives of the plaintiff in which he explained to them the requirement to give a detailed inventory "pursuant to Article 6.1 of the (relevant) agreement as varied well in advance of the flight taking place". However, cl 6.1 requires the furnishing by the plaintiff to the defendant of a declaration describing the cargo and its value and weight "prior to the commencement of the Charter Flight". It did not require that declaration even some days in advance of a flight, and contrary to Mr Butler's assertions that the failure to provide such an inventory was affecting his company's ability to obtain flight approval out of Hong Kong and into the United States, the position as he communicated in his e-mails of 27 September and 10 October was that there was a difficulty in obtaining approvals for other reasons. He advised in his e-mail of 10 October that his company's aircraft would not obtain permission to fly into and out of the USA for at least some 90 days, which has nothing to do with cl 6.1. The defendant has shown no substantial case of any breach of cl 6.1 or otherwise which would justify its repudiatory conduct.

[13] I am therefore satisfied that the second defendant has no real prospect of successfully defending the restitutionary claim for the return of the deposit. It seems clear to me that the e-mail of 10 October was a repudiation entitling the plaintiff to discharge the contract, which it did. I conclude therefore that the second plaintiff is entitled to judgment against the second defendant for the deposit also.

[14] The amounts received under the contract were, according to the contract, expressed in US dollars. But the funds were received by the second defendant in Australian dollars, and the plaintiff claims their return in Australian dollars. There is no issue as to the Australian dollar amounts of the moneys as received by the second defendant which are, as pleaded, respectively $268,000 and $517,737.04, being a total of $785,737.04. In the circumstances, there should be judgment for the second plaintiff against the second defendant for the sum of $785,737.04, together with

interest on that sum at 9 per cent calculated from 10 October 2002, which is a sum which I round to $43,000. Accordingly, there will be judgment for the second plaintiff against the second defendant in the sum of $828,737.04.

[15] The application also seeks an order that moneys paid into an interest bearing deposit account pursuant to the court's order of 20 November 2002 "plus accrued interest" be paid out to the plaintiff's solicitors. I will order that money be paid from that account to the solicitors for the second plaintiff in satisfaction of the second plaintiff's judgment. The payment from those funds should be limited to the amount for which the second plaintiff has obtained judgment, which may or may not be less than the sum of $785,737.04 "plus accrued interest".

[16] I shall hear the parties as to costs, and as to the proposed order that a sum provided by way of security for costs be paid out to the plaintiffs' solicitors.