SUPREME COURT OF QUEENSLAND

CITATION:	*Mirage Resorts Holdings P/L v Brellen Pty Ltd* [2003] QSC 423
PARTIES:	**MIRAGE RESORTS HOLDINGS PTY LTD ACN 010 814 347 AS TRUSTEE OF THE MARINERS PARADISE PROPERTY TRUST** (plaintiff) **v** **BRELLEN PTY LTD ACN 085 190 094** (defendant)
FILE NO:	6573 of 2003
DIVISION:	Trial Division
PROCEEDING:	Trial
DELIVERED ON:	11 November 2003
DELIVERED AT:	Brisbane
HEARING DATE:	3, 4, 5, 7 and 10 November 2003
JUDGE:	Muir J
ORDERS:	**1. It is declared that the defendant did not give to the plaintiff a notice of exercise of option in accordance with clause 2.3(a) of the lease entered into in October 2000 between the plaintiff as lessor and the defendant as lessee;** **2. The defendant pay the plaintiff's costs of and incidental to the proceedings, including reserved costs, to be assessed on the standard basis.**
CATCHWORDS:	LANDLORD AND TENANT – COVENANTS – FOR RENEWAL – Generally – where the defendant leased property from the plaintiff with an option to renew the term of the lease – where the option could be exercised by the delivery of a notice in writing by the defendant within a period of time nominated under the lease – where the plaintiff claims declaratory relief that the notice was not received prior to the expiry of the option period – whether the notice was provided by the defendant prior to the expiry of the notice period
COUNSEL:	R N Traves for the plaintiff P J Dunning for the defendant
SOLICITORS:	Allens Arthur Robinson for the plaintiff Bell Legal Group for the defendant

[2] **MUIR J**: The plaintiff claims a declaration that the defendant has not given notice of exercise of option pursuant to cl 2.3(a) of a lease of part of the Marina Mirage complex entered into between the plaintiff as lessor and the defendant as lessee. It further seeks an order that the defendant deliver up the demised premises on 30 November 2003.

[3] The point at issue is a short one. Clause 2.3 of the lease provides –

> "(a) If the Tenant:
>
> (i) wishes to have a lease of the Premises granted to it for the Further Term to commence immediately after the Expiry Date;
> (ii) gives a notice to the Landlord not more than nine months' nor less than six months' before the Expiry Date; and
> (iii) at that time and at the Expiry Date, is not in default under this lease,
>
> the Landlord will grant to the Tenant a lease of the Premises for the Further Term upon the same provisions as are contained in this lease, …".

[4] The "Expiry Date" is identified on the front page of the lease as 30 November 2003. The expression "Further Term(s)" means four five-year terms, the first of which commences on 1 December 2003 and expires on 30 November 2008. Under cl 2.3 the last date for giving notice of exercise of option for the grant of the first further term was 31 May 2003.

[5] Mr Lindsay Sinclair, the sole director of the defendant, swears that he delivered a written notice of exercise of option to the business premises of the plaintiff in the Marina Mirage Centre on the morning of 28 May 2003. The plaintiff denies receiving any notice of exercise of option or copy of it on or prior to 31 May 2003.

Mr Sinclair's version of events concerning the alleged exercise of option

[6] Mr Sinclair was tidying up matters at the end of May 2003 preparatory to departing from the Gold Coast at the end of the month for a week. He was reminded by his diary entry of 31 May 2003 "that the option letter still had to be done". Being "completely computer illiterate" he asked his son James to prepare the notice for him. That was done on 27 May.

[7] On the morning of 28 May 2003 he consulted the latest invoice received by him from the plaintiff, ascertained that $11,278.97 was outstanding and wrote out a cheque for that amount. Being in a rush, he inadvertently wrote the wrong date on the cheque butt. He then had discussions with two of his sub-tenants in the Marina Mirage complex about arrears in rent and/or outgoings, went to the plaintiff's office, spoke to a receptionist at the front desk and asked to see Amanda Burling, the plaintiff's Centre manager. He was told that Mrs Burling was in the Centre somewhere and was not available, whereupon he put the envelope containing the notice of exercise of option on the counter above the receptionist's desk saying

"Can you give this to Amanda?". The envelope did not have a name on it and Mr Sinclair did not see the receptionist take the envelope or place a date stamp on it.

[8] Mr Sinclair then asked if he could see Russell Purchase, the plaintiff's accountant. Mr Purchase came out "fairly quickly" to the reception area. Mr Sinclair greeted him and gave him a cheque made out to the plaintiff in the sum of $11,278.97 on account outgoings owing under the lease. Mr Sinclair said words to the effect "Does this bring my account up to date?", to which Mr Purchase responded, "That looks right but I'll let you know if it isn't". It is common ground that on payment of that sum the plaintiff was no longer in breach of any obligation under the lease to pay moneys.

[9] This was the first time he had been up to date with outgoings under the lease and he paid them "for the purposes of the notice to exercise the option".

The versions of events of the plaintiff's employees concerning the alleged exercise of option

[10] **Jane-Marie Doody** was the plaintiff's receptionist at relevant times. She commenced her employment in that capacity in March 2003 and had not met Mr Sinclair before the occasion on which he came into the office, introduced himself and said he had a cheque for "Russell". She was expecting Mr Sinclair to come into the office around that time, having been told by Mrs Burling that he might do so in order to exercise the option on his lease. Her recollection is that Mr Sinclair said nothing about an option, that in response to a request by Mr Sinclair she telephoned Mr Purchase's extension and told him Mr Sinclair was at reception. Mr Purchase then came out and spoke to Mr Sinclair. She did not overhear or register what was being said and she did not accept any envelope from Mr Sinclair.

[11] **Amanda Burling** had responsibilities for leasing, liaising with tenants and managing the Centre generally. She was the senior employee in the plaintiff's Centre management office at relevant times, although two of the other employees, including Mr Purchase, did not report to her. Before 28 March 2003 she was aware that the last date for exercise of option by the defendant was falling due. In the page of her diary for 31 May 2003 she had entered "Lindsay Sinclair out of option period". On 28 May 2003, on returning to the office after being out for a short period, she was told by Mr Purchase that Mr Sinclair had brought in a cheque. On the next day she was given a phone message which Mr Sinclair had left with Mrs Doody requesting that either she or Mr Purchase return the call. She asked Mr Purchase to do this. She did not see any document purporting to be a notice of exercise of option by the defendant until receiving such a document on 19 June 2003 in the circumstances described later.

[12] **Mr Purchase,** the plaintiff's administration manager, states that on the morning of 28 May 2003 he received a telephone call from Mr Sinclair who requested copies of invoices "going back to February 2003 as his originals had disappeared". He told Mr Sinclair when they would be available and Mr Sinclair said that he would be up later to collect them. After assembling the requested material Mr Purchase arranged for the invoices to be left in an envelope at reception. Later in the day, in response to a call from Mrs Doody, he went to the reception where Mr Sinclair gave him a cheque and left. Mr Sinclair did not give him anything else and the exercise of

option was not mentioned. He noticed that Mr Sinclair was carrying a cheque book or a cheque book folder but nothing else.

[13] On 29 May 2003 he was given a telephone message by Mrs Doody concerning a call from Mr Sinclair. He attempted to call the number but after "the phone reverted to message bank" he hung up.

Mrs Burling's further evidence

[14] Mrs Burling received a message that Mr Sinclair had telephoned her about 1.30pm on 18 June 2003. She returned his call at about 5.30pm and made a diary note of the conversation immediately after it. The diary note relevantly records –

> "He said he dropped in a letter to take up his option when he paid the cheque (received 28 May 2003), which I replied 'We did not receive any letter from him on that day, only a cheque'. He nervously replied he gave it to Russell (male staff member), I replied that he did not give any letter to Russell only a cheque. Lindsay then said he had given it to the receptionist (female staff member), I replied he did not give the receptionist any letter. He then said 'Well, I'll drop in a copy of the letter tomorrow', which I repeated again. 'No letter was ever received'."

[15] The next day Mr Sinclair in the common area on the Centre's ground level requested another employee of the plaintiff, Ms Hildebrand, to give an envelope containing what purports to be a copy of notice of exercise of option to Mrs Burling. On being given the envelope Mrs Burling took the purported notice to Mrs Doody and had it date stamped.

[16] Mrs Burling then took legal advice and, consequent on that advice, sent a letter to the defendant confirming that no notice of exercise of option had been received on or before 31 May 2003 and that the plaintiff would not agree to an exercise of option outside the option period.

[17] On 24 June 2003, Mrs Burling received another telephone call from Mr Sinclair in which there was discussion of the question of whether or not the option had been exercised. She made a diary note immediately after the call in which she recorded inter alia –

> "After a lengthy pause he said 'Why would I bring a cheque in on the 28 or whenever if I wasn't staying?' and I said "Because the amount was outstanding and required to be paid." He repeated again 'Why would I bring a cheque in if I wasn't saying?" I again repeated that the amount was outstanding and required payment. He repeated again 'Why would I bring a cheque in, so I was not in breach of my lease? I repeated again that the amount was outstanding and that I wasn't a mind reader and that I had no idea of what he was thinking. Lindsay seemed extremely nervous and started to ramble (not making any sense with his sentences) saying 'If a letter was left with Russell or the girl or someone…….. (pause) why would I bring a cheque in'. I said we did not receive any letter and that the debt was outstanding. He then said when we spoke on the 18th (18 June 2003)

> I was very precise when I said we had not received any letter, which I agreed that was right, as I would in any case a tenant had said they had left a letter and we had not received it. He then changed his story and said I said on the phone that it was okay to drop a copy of the letter the next day (being 19 June) after our phone conversation on the 18 June, which I replied I said no such thing and that I had made a file note of our conversation. (Extensive pause) Lindsay asked if Ric Cameron was in the office the Thursday he dropped in the cheque (Note: it was Tuesday 27 May he dropped in the Cheque) I said no he was not that day. (Long pause)."

[18] On Monday 18 August 2003, Mrs Doody went into Mrs Burling's office and showed her a notice of exercise of option similar to that received by her on 19 June. Mrs Burling had not seen the further notice of exercise of option before Mrs Doody showed it to her. The circumstance in which that document came to light was the subject of evidence by Mrs Doody and, in a more peripheral way, by Mr Purchase.

Mrs Doody's evidence concerning relevant events after 28 May 2003

[19] On 15 August 2003 Mrs Doody recalls working on a promotion for the plaintiff. From time to time that afternoon the reception desk was unsupervised and the bell on the door to the office rang several times when she was not in the reception area. She got up to investigate but found no one there. On Saturday, 16 August 2003 she worked in the office but locked the door when she was absent. When tidying her desk prior to departure at the end of the day she noticed an unmarked envelope behind her computer monitor. She found in it a notice of exercise of option dated 27 May 2003 signed by Mr Sinclair. She then placed the date stamp of 16 August 2003 on the envelope. In her statement of evidence in chief she swears –

> "I had not seen the envelope before, despite tidying my desk at the end of every work day. My computer monitor is a flat screen so it is relatively easy to see if there is anything behind it."

[20] The computer monitor was purchased and installed on 13 June 2003. It replaced an older, more bulky model which was located in the same position on the desk.

[21] Mrs Doody thought it highly improbable that the envelope could have been where she found it for as much as a week. She thought it possible that if she tidied her desk when seated she may have missed it. On the Saturday in question she saw it when she stood up to tidy her desk.

[22] On Saturday, 16 August 2003, Mrs Doody prepared a diary note in which she related the relevant events of that day for the benefit of Mrs Burling. The diary note stated, inter alia –

> "I have not seen the envelope before despite tidying my desk at the end of every work day. As my computer screen is a flat screen it is relatively easy to see if there is anything behind it. I do not believe the envelope could have been there for very long without being seen. I would be surprised if the envelope had been there for more than a week."

Did Mrs Doody have reason to recall whether Mr Sinclair had given her an envelope to give to Mrs Burling?

[23] Mrs Doody stated in her evidence in chief –

> "I was expecting Lindsay Sinclair to come into the office around that time because Amanda Burling had told me he might come in to exercise his option on his lease."

[24] In cross-examination Mrs Doody was challenged about this evidence. She had prepared three statements prior to the statement dated 23 October 2003 which contained her evidence in chief, none of which mentioned such a discussion with Mrs Burling. The first statement, dated 19 June 2003, was very brief and dealt with only with Mrs Doody's recollection of what happened when Mr Sinclair came into the plaintiff's office on 28 May 2003. A statement of 17 July 2003 was only marginally longer. It dealt with the same matter and added a statement that Mrs Doody had never seen a notice from the defendant exercising the option in its lease. The third statement, dated 11 September 2003, is rather longer. It deals with the events of 28 May 2003, the events of 16 August 2003 and addresses the changeover of the computer and the unlikelihood of an envelope placed behind the computer being overlooked.

[25] Also Mrs Doody's account of her conversation with Mrs Burling conflicted with a statement made subsequently by Mrs Burling in cross-examination to the effect that she did not discuss with Mrs Doody matters such as the likelihood of the defendant exercising its option. Mr Dunning, who appeared for the defendant, in his address, relied on Mrs Burling's evidence in this regard to cast doubt on the reliability of Mrs Doody's evidence. Considered carefully, however, the evidence of these two witnesses is not irreconcilable. Mrs Burling was not asked to consider whether she could have made the comment of which Mrs Doody gave evidence. Moreover, I consider it likely that Mrs Doody, being as astute person, would have become aware from conversations she overheard that Mrs Burling did not want the defendant to exercise its option and that the option was due to be exercised. She would thus have had reason to pay attention to Mr Sinclair's conduct even if (contrary to my conclusion) she had received no direct request from Mrs Burling.

Mr Purchase's further evidence

[26] Mr Purchase installed the monitor and recalls that the place from which he had removed the old monitor being dusty and having paper clips on it. He wiped the desk with a cloth before installing a new monitor. In the course of this exercise he did not notice any envelope behind or near the back of the monitor.

Mr Sinclair's further evidence

[27] Much of Mr Sinclair's statement, which became his evidence in chief, is taken up with: an explanation of the value to the defendant of its interest under the lease; an explanation of the great importance which Mr Sinclair attached to securing a renewal of the lease; and a discussion of the circumstances which demonstrate that the need to give notice of exercise of option and the time within which the giving of notice was required were matters of which he was acutely conscious at the end of May 2003.

[28] On 18 June 2003 Mr Sinclair rang Mrs Burling, told her that he would be dropping off some new sub-leases for her to look at and asked if he would be able to get his new head lease from the plaintiff. Mrs Burling responded "We haven't received your option", to which he replied that he had been in the office "to drop of the option weeks ago" when he dropped off the cheque for his outgoings. Mrs Burling said she had not heard anything about this and Mr Sinclair responded that he had dropped off his letter at reception but would drop off another copy the following day. His statement of evidence in chief records "I recall her saying that this would be 'ok'." He "dropped off another copy (of the) option letter on 19 July 2003" and subsequently received the plaintiff's letter dated 23 June 2003.

Commentary on the evidence

[29] I accept that the need to exercise the option by 31 May 2003 was something of which Mr Sinclair was aware in the last few days of May 2003. It is less obvious that he considered the defendant's interest in the lease to be of great value and that he had resolved to exercise the option on or before 28 May.

[30] The facts which emerged in cross-examination do not sit very comfortably with Mr Sinclair's evidence as to his belief concerning the great value of the lessee's interest under the lease. Mr Sinclair revealed that he had been having substantial difficulties with sub-tenants since at least the beginning of the year. He confessed that he was unable to say with any certainty whether the defendant had made a profit in either of the last two financial years. He then corrected himself to assert that the defendant would have made a profit in the year to 30 June 2003, although he had no financial records to support that contention. According to him, the defendant had never paid tax. He thought that it had filed a tax return in the past but was not able to say in what year. He accepted that under the first three year term of the lease the defendant had fallen substantially into arrears of its rental payments and that, in a compromise with the plaintiff, a substantial part of the area the subject of the lease had been surrendered in return for a waiver of arrears of rent.

[31] On balance, however, I find that Mr Sinclair did intend that the defendant would exercise the option. The payment on 28 May of arrears of outgoings strongly favours that conclusion. The evidence overall also justifies the conclusion that both parties regarded the defendant's interest under the lease as valuable.

[32] Having regard to the state of animosity and mistrust which existed between the two parties, I consider it unlikely that in effecting the exercise of option Mr Sinclair would not have taken particular care over the wording of the notice as well as with its mode of service and proof of service.

[33] It is therefore curious that when Mr Sinclair came into the plaintiff's office on 28 May and asked to see Mrs Burling and then Mr Purchase he would have been content to leave a document as important as the notice of exercise of option in an unaddressed envelope with a receptionist without revealing the contents of the envelope to her and mentioning the notice of exercise of option to Mr Purchase.

[34] It is possible, although not probable, that an envelope which fell behind the original computer monitor might not be noticed for some days. It is highly improbable that an envelope which fell behind the new computer monitor would not have been discovered by Mrs Doody within a few days of that happening. It is even less probable that if the envelope had been behind or under the old computer monitor it

would not have been discovered when that monitor was removed and the new one installed.

[35] I accept the evidence of Mr Purchase that he cleaned the area of the desk on which the old monitor stood after removing it and that he did not notice any envelope in the process. It is highly improbable that the new monitor was placed on top of the envelope and that it somehow worked its way free and became visible to Mrs Doody.

[36] In cross-examination, Mr Dunning advanced the theory that the notice of exercise of option was received in the plaintiff's office on 28 May, held in the office and placed on the front counter where it was found on 16 August, by Mrs Burling or by someone at her direction. In address he postulated that having regard to deficiencies in the plaintiff's filing system, the notice may have been mislaid until after the plaintiff had commenced this action. In those circumstances, it was submitted, Mrs Burling (or another employee) may have been reluctant to reveal her failure to file or record properly the notice of exercise of option. That hypothesis would certainly address some of the difficulties facing the defendant to which I have just adverted. However, I find that there is no substance in these assertions.

[37] I do not doubt that Mrs Burling, found Mr Sinclair's conduct unattractive, that she disliked him and that she regarded him as an unsatisfactory tenant. Mrs Burling, however, had little to gain personally from taking such an extreme and risky measure.

[38] Despite hoping that the defendant would not exercise its option there is no evidence that Mrs Burling cast about for ways of justifying the eviction of the defendant. She asserts, and I accept, that had the option been exercised in time, the plaintiff would not have attempted to avoid renewing the lease on any other ground. The evidence discloses that the plaintiff did not obtain legal advice concerning the failure to exercise the option until Mr Sinclair's assertion on 18 June that notice of exercise had been given.

[39] Mrs Burling was subjected to a skilful and lengthy cross-examination. Although the cross-examination persuaded me that some aspects of Mrs Burling's evidence needed to be approached with caution, she was not shown to be duplicitous or dishonest. On the contrary, I concluded that Mrs Burling was attempting to give an honest account of events and that it was highly unlikely that she would engage in conduct of the nature of that attributed to her by the defendant.

[40] Mrs Burling, at times, was reluctant to make concessions and was somewhat combative in her approach but these matters do not necessitate the conclusion that her evidence was generally unreliable. I am satisfied that her diary notes of 18 June and 24 June 2003 concerning the events of those days are substantially accurate. I use the expression "substantially" because the diary notes are an amalgam of an attempted recording of objective fact and expressions of opinion influenced by Mrs Burling's perceptions of Mr Sinclair and her belief that no notice of exercise of option had been delivered.

[41] Under cross-examination, Mrs Burling had difficulty in explaining the basis for her conclusion that in the 18 June conversation Mr Sinclair sounded apprehensive and nervous. That, of itself, does not lead me to reject or discount the accuracy of that part of the diary note. What was recorded were Mrs Burling's impressions, gained

no doubt from matters such as tone of voice, hesitancy in speech and a comparison of Mr Sinclair's mode of speech and demeanour on that occasion with such matters on prior occasions. The reasons for the formation of impressions such as these are not always easy to describe, particularly months after the events in question.

[42] I am satisfied that in the course of both conversations Mrs Burling said to Mr Sinclair words to the effect that no notice of exercise of option had been received on 28 May. I am also satisfied that in neither conversation did Mrs Burling say anything to the effect that late notice or a further notice of exercise of option would be accepted or acceptable.

[43] It was not suggested that there was any conspiracy between Mrs Burling, Mrs Doody and Mr Purchase to secrete the notice of exercise of option and bring it to light after the expiration of the option period. It would, of course, have been an odd course of action for the three to take and it is just as odd if the conduct is confined to Mrs Burling. The simpler, and more obvious, course would have been to destroy the notice. That would have avoided the sorts of arguments now being advanced. Also, it would have avoided the prospect that, if the notice had been delivered on 28 May as Mr Sinclair contends, Mrs Doody would have had some recollection of it, which recollection may have been jogged by the discovery of the notice. Mrs Doody had not long been an employee of the plaintiff and the evidence does not suggest that there was any particular friendship between her and Mrs Burling.

[44] As Mr Dunning pointed out in his submissions, the placing of the notice of exercise of option behind the computer by Mr Sinclair or someone at his request is also rather odd. From an evidentiary viewpoint, it would have been preferable for the defendant to assert delivery of the notice on 28 May and contend that it had been mislaid by the plaintiff. There was also the difficulty of finding a location for the bogus notice in which it would be possible for it to be undetected for days, but where it would nevertheless be found within the space of a few weeks.

[45] In this regard, the plaintiff is assisted by the fact that the replacement of the computer was unknown to Mr Sinclair but not to Mrs Burling, Mrs Doody and Mr Purchase. The latter would have been aware that if the notice were to be found behind the monitor it would be apparent that it had been placed there after installation of the new monitor. The plaintiff's case also derives support from the fact that Mrs Burling was maintaining a careful watch on the prospective exercise of option. The interest of Mr Purchase and also of Mrs Doody had been engaged as well. In those circumstances, the possibility of a notice of exercise of option delivered by Mr Sinclair being overlooked or mislaid was greatly reduced.

[46] The manner in which events unfolded after 28 May also supports the plaintiff's case more than the defendant's.

[47] In his conversation with Mrs Burling on 18 June Mr Sinclair first asserted that the notice had been given to Mr Purchase. Faced with a firm challenge about this, he put forward "the receptionist" as the recipient. Mrs Burling's account of the conversation in her diary note of 18 June receives a degree of corroboration from Mr Sinclair's own diary note of 24 June.

[48] The conversation between Mr Sinclair and Mrs Burling of 24 June, as recorded in Mrs Burling's diary note of that date, is more consistent with a conclusion that Mr Sinclair was seeking a way around failing to exercise the option than with reliance

on a duly given notice. If Mr Sinclair had given a notice of exercise of option within time, I consider it probable that he would have aggressively and forcefully asserted his rights without the peripheral argument about payment of arrears and production of a copy of the notice of exercise of option.

[49] Then there is the evidence about the computer. Mr Sinclair swears that the notice was produced by his son James on Mr Sinclair's home computer. He swears that he is computer illiterate or virtually so and that the computer was bought for use by his two teenage sons who attend secondary school.

[50] On 18 October 2003, well after the solicitors for the plaintiff gave notice to the solicitors for the defendant that they wished to inspect the computer on which the notice of exercise of option was allegedly produced –

- A new software programme was installed on the computer;
- A document precisely in the form of the notice of exercise of option was created, probably by transferral from a disc onto the computer;
- The clock on the computer was wound back to 27 May so that that date would appear as the date of creation of the notice; and
- Something was done to the computer which erased any trace, with a few minor exceptions, of any prior use of the computer.

Additionally, the uncontested evidence is that the computer's system log indicates that the computer was not used between 30 January 2003 and 1:09 pm on 27 May 2003 despite the evidence of frequent use during this period.

[51] Mr Sinclair explains that one of his sons (together with a friend), despite being told that the computer was required for a court case, was responsible for doing whatever was done to the computer. Mr Sinclair explained his son's absence from the witness box by asserting that he suffered from attention deficit disorder and was suffering from an emotional disturbance resulting from the recent deaths of two persons close to him. The absence of the friend was unexplained (except to the extent that Mr Sinclair said that to call the friend would be embarrassing) and no medical or other evidence corroborating Mr Sinclair's assertions was forthcoming.

Concluding findings and findings on credit

[52] I did not find Mr Sinclair to be a credible witness generally. In particular, I do not accept his explanations concerning the computer and the failure to call witnesses who could explain what was done in that regard.

[53] The curious conduct surrounding the computer casts doubt on the accuracy of Mr James Sinclair's evidence. I consider it probable that his recollections and, in particular, his recall of the sequence and timing of events have been influenced by discussions with his father. I am not satisfied that the notice of exercise of option document was first created on or before 28 May 2003.

[54] Mrs Doody and Mr Purchase were both careful witnesses and I find their evidence to be generally reliable.

[55] I find that Mr Sinclair did not deliver a notice of exercise of option to the plaintiff's Centre management office in the Marina Mirage complex on 28 May or before 31 May 2003.

[56] I find also that the purported notice of exercise of option found behind the computer monitor by Mrs Doody on 16 August 2003 was not placed there by an employee of the plaintiff and that it was not in the plaintiff's office prior to the installation of the computer monitor by Mr Purchase.

Declarations and final orders

[57] Having regard to the above reasons –

(a) It is declared that the defendant did not give to the plaintiff a notice of exercise of option in accordance with clause 2.3(a) of the lease entered into in October 2000 between the plaintiff as lessor and the defendant as lessee;

(b) It is ordered that the defendant pay the plaintiff's costs of and incidental to the proceedings, including reserved costs, to be assessed on the standard basis.