SUPREME COURT OF QUEENSLAND

CITATION:	*R v Kanaris* [2005] QCA 473
PARTIES:	**R** **v** **KANARIS, Peter** (appellant)
FILE NO/S:	CA No 103 of 2005 DC No 613 of 2005
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	16 December 2005
DELIVERED AT:	Brisbane
HEARING DATE:	24 November 2005; 25 November 2005
JUDGES:	Williams and Jerrard JJA and Chesterman J Judgment of the Court
ORDER:	**Appeal against conviction allowed only to the extent of setting aside the convictions on counts 20 and 21 and directing that verdicts of acquittal be entered on those counts, but otherwise dismissed**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS – MISDIRECTION AND NON-DIRECTION – GENERAL MATTERS – CONSIDERATION OF SUMMING UP AS A WHOLE – appellant convicted by a jury of 18 counts of fraud of which five counts contained circumstances of aggravation and acquitted of three counts of fraud – trial judge directed the jury on each count individually – prosecution alleged the appellant made false representations and promises to induce the complainants to lend him money – representations revolved around land that the appellant asserted that he owned in Greece and of which an imminent sale would allow repayment to the complainants – appellant's defence stated that the prosecution could not prove beyond a reasonable doubt that he did not own the stated land and a sale was not imminent – the prosecution did not need to prove the non-existence of the land if they could prove he was not using the borrowed money for its stated purpose – whether the judge properly put the appellant's defence to the jury in summing

up – whether the judge otherwise erred in summing up – whether on all of the evidence the jury was entitled to convict on 18 charges of fraud

CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS – UNREASONABLE OR INSUPPORTABLE VERDICT – WHERE APPEAL ALLOWED – count 20 involved a complainant asking another complainant friend to lend him money – appellant had requested complainant ask for the money and in fact received the money directly – whether the complainant was induced to lend money on the basis of the appellant's dishonest promise or his friendship with the other complainant – whether it was open to the jury to conclude on the evidence that the appellant was guilty of fraud on this count

CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS – UNREASONABLE OR INSUPPORTABLE VERDICT – WHERE APPEAL ALLOWED – count 21 involved the appellant arranging an assignment of a judgment debt to a complainant for $60,000 on the basis that the debt would be bought back at $103,000 at the end of that year – appellant gave a personal guarantee and the purported sole director of the company to whom the debt was owed consented to the assignment – complainant was not repayed as promised and the appellant eventually gave him a cheque which he stated should not be presented until the land in Greece was sold to allow for funds – disputed evidence as to the ownership of the debt at the time of assignment to the complainant – whether the purported sole director could bind the company and reassign the debt if he knew of the dispute as to the debt's ownership – whether it was open to the jury to conclude on the evidence that the appellant was guilty of fraud on this count

CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS – IMPROPER ADMISSION OR REJECTION OF EVIDENCE – GENERAL PRINCIPLES – prosecution led evidence of the appellant's extensive casino gambling activity – casino records included critical comments about the appellant made by casino staff – judge directed the jury to disregard the comments as the records were simply to establish the appellant's presence at casinos on particular dates when large sums of money had been received by complainants – casino records showed appellant to be gambling heavily during periods when he represented to complainants that he needed money to assist with the sale of land in Greece – whether

evidence of gambling activity was admissible

CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – GENERAL PRINCIPLES – appellant sentenced on 18 fraud convictions to five years imprisonment – Court of Appeal set aside two of the appellant's convictions – whether the five year sentence was manifestly excessive when excluding those two convictions

Balcombe v De Simoni (1972) 126 CLR 576, cited
MFA v R (2002) 213 CLR 606, cited

COUNSEL: The appellant appeared on his own behalf
R J Pointing for the respondent

SOLICITORS: The appellant appeared on his own behalf
Director of Public Prosecutions (Queensland) for the respondent

[1] **THE COURT:** On 18 March 2005 Mr Kanaris was convicted after a trial (lasting 24 days) on 13 counts alleging offences against s 427[1] of the *Criminal Code* ("the Code"), and acquitted on three counts alleging offences against that section. Another count alleging a similar offence had been discontinued during the course of the trial. Mr Kanaris was also found guilty of five counts alleging offences against s 408C(1)(b) of the Code, and on 12 May 2005 he was sentenced to concurrent terms of five years imprisonment on all counts. The charges were nearly all founded on statements by Mr Kanaris, made to people who lent him money, that he needed it to complete the sale of property he had on an island in Greece, and that he would repay the lender when the property sold, which would be very soon.

[2] Five years was the maximum term available in respect of the offences against s 427, and 10 years was the maximum penalty for the offences against s 408C(1)(b), since each of those carried the circumstances of aggravation that the property dishonestly acquired was of a value of more than $5,000. The counts for offences against s 427 dealt with conduct alleged against Mr Kanaris before 1 July 1997, when that section was repealed by the *Criminal Law Amendment Act* (No 2 of 1997), and replaced by s 408C. The counts based on that section cover conduct from 1 July 1997. The learned trial judge declared that a head sentence of five years imprisonment was appropriate, and expressly did not distinguish between the counts in relation to penalty. That learned judge also recommended that Mr Kanaris be considered for post-prison community based release after he had served two years of the five year term. Mr Kanaris has appealed against each of his convictions, but had not applied for leave to appeal against sentence; he did ask that, if some convictions were overturned but not all, his sentence be reconsidered.

[3] Originally his sole ground of appeal was that each conviction "is unsafe and unsatisfactory and contrary to law", a ground which should be understood as a complaint that each verdict was unreasonable or could not be supported having

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[1] This section was repealed by the *Criminal Law Amendment Act* (No 2 of 1997) effective on 1 July 1997

regard to the evidence.[2] That ground of appeal requires that this Court consider the evidence on each count and ask itself whether it thinks that upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that Mr Kanaris was guilty of that count.[3]

[4] On 16 September 2005 Mr Kanaris was given leave to add further grounds alleging:

(a) that the learned judge erred in his summing up to the jury;
(b) comments made by the learned judge during the course of the trial were prejudicial to the appellant;
(c) that the learned judge erred in allowing evidence whose prejudicial value far outweighed its probative value;
(d) that the verdicts were inconsistent and unsafe; and
(e) that the verdicts were unreasonable and cannot be supported having regard to the evidence.

[5] In a written outline of argument received on 9 November 2005 Mr Kanaris effectively sought leave to add another four grounds, and he was heard on all grounds. The new ones contend:

(f) that the learned trial judge erred in allowing evidence of the character of Mr Kanaris;
(g) that the learned judge "erred to deny to natural justice";
(h) the Crown misled the learned judge "on application";
(i) that the learned judge's error denied the accused a fair trial.

[6] Written submissions received in September 2005 dealt with only grounds (c) and (e), and said nothing about the other suggested grounds of appeal. Mr Kanaris did make submissions in his November 2005 outline which covered all of the grounds of appeal (a) – (i). Ground (e) really repeated his original ground of appeal; it is convenient to deal together, albeit at length, with that ground and ground (a).

[7] Mr Kanaris represented himself at the trial and on the appeal. The lengthy pre-trial history which resulted in Mr Kanaris being self-represented is explained in the transcripts of the many pre-trial mentions of this matter, which are annexed to the affidavit of Susan Miles read on the appeal by the respondent Director. Those transcripts record that an indictment had been presented as long ago as October 2001, and by the time the trial from which this appeal is brought had actually started on 14 February 2005, there had been 42 such mention dates, including two days of lengthy pre-trial argument on 7 and 8 February 2005. Mr Kanaris had generally been a self-representing litigant since 14 February 2003, when he withdrew his instructions from his then solicitors. Those solicitors appeared again for him in July and August 2003, as friends of the court, but their instructions were again withdrawn. Other solicitors appeared for him on and from 28 April 2004 until 10 September 2004, when those solicitors in turn were given leave to withdraw.

[8] All up, the transcripts of those mention occasions establish that there had been nine separate occasions on which a trial date was set, beginning with one fixed for 15 July 2002, and ending with the matter being listed for trial on 14 February 2005. On some occasions the trial dates were adjourned because either Mr Kanaris, or his then lawyers, spoke of witnesses whom he might wish to call from Greece, who could not be available for the trial date fixed; that first happened on 4

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2 See *MFA v R* (2002) 193 ALR 184 at [25] and [46]
3 See *MFA v R* at [25] and [59]

July 2002 on a mention resulting in the trial set for 15 July 2002 being adjourned. On other occasions adjournments were granted so that Mr Kanaris could get legal representation, and that was largely the reason a trial date of 7 June 2004 was abandoned in favour of a trial date in November 2004.

[9] One reason that applications for an adjournment were given some sympathy, when the asserted purpose was to obtain legal representation, was that English is not Mr Kanaris' first language, and although he has an extensive vocabulary, and is clearly highly intelligent, his English has a pronounced accent and he also has a deep voice. At different times there were apparent concerns he may have difficulty being understood. The transcripts of those multiple listing occasions, and of the trial, and the experience of this Court hearing him in person on his appeal, demonstrates that he is a good communicator.

[10] The oral submissions made by Mr Kanaris on the hearing of the appeal were readily understood, although in general not really material to the issue whether the verdicts complained of were unsafe, as he had alleged. One matter that he emphasised in those submissions was that the trial was unfair and that, effectively, there had been a denial of natural justice. In those circumstances the only course open to this Court was to review the whole of the evidence in relation to each count, in order to decide whether there was any substance in any of the matters raised by him either in his written submissions or in his oral ones. Further, it should be noted that the Court itself raised some questions which warranted further considerations; at the invitation of the Court those matters were dealt with extensively by counsel for the Director in his address.

The summing up generally

[11] It is necessary to describe the evidence relied on by the prosecution on each count, when considering the argument that each verdict was unreasonable and unsupported by evidence. That is also relevant to the complaint about the summing up, as the learned trial judge described that evidence in detail to the jury for each count, in a summing up which covered the equivalent of two full days. At the end of the first half day of those directions Mr Kanaris, who had represented himself throughout the trial, remarked:

> "You are doing a good job, Judge. You're doing a good job."[4]

The transcript otherwise shows that Mr Kanaris was quick to complain and slow to praise. The quoted compliment seems to have been a genuine acknowledgment that the directions given by then were both balanced and correct, and that they gave Mr Kanaris every proper chance of an acquittal.

[12] And at the end of the next day Mr Kanaris did not suggest he had changed his mind about the summing up, although he did raise one point about a circumstance of aggravation on one count. At the final conclusion of the summing up (after another lengthy morning) Mr Kanaris still had no complaints, and had been specifically asked more than once by the learned judge, whenever the summing up had been adjourned, whether Mr Kanaris had any matters he wanted to raise in terms of any inaccuracy or misquoting of the evidence. It is clear from the way Mr Kanaris responded during the trial that he did not then suggest that the learned judge had misquoted the evidence in any way.

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[4] At AR Vol 7, page 1677

Introductory part of the summing up

[13] At the start of the summing up the learned judge gave very general directions to the jury about the respective functions of judge and jury, and then some specific warnings to the jury. Those included a warning against misuse of the considerable body of evidence the jury had heard about gambling by Mr Kanaris, and the judge reminded the jury that Mr Kanaris had argued that that evidence was defective and should not be relied on. The judge also directed the jury that gambling was not illegal, they were not dealing with a moral question, that the prosecution had argued that evidence could be used in particular ways, and whether or not it could be so used was a matter for the jury.

[14] Warnings were also given about not misusing a threat Mr Kanaris was said to have made against the complainant Mr Whateley, not to misuse evidence they had heard of a confrontation between a Mr Searson and Mr Kanaris, or evidence that cheques paid by Mr Kanaris to a Queensland casino had not been honoured, or that civil action had been taken against Mr Kanaris by Mr Whateley, or evidence that Mr Kanaris had borrowed money from other people, or the evidence given in relation to count 13 which had been discontinued. On each of those matters the learned judge specifically directed the jurors about ways in which that evidence might be misused, on how it should not be used, and how it might be ignored entirely.

[15] The learned judge then returned to general directions about evidence – what it was; how to assess it; hearsay (and examples of it in the trial) – and on ignoring sources of information external to the trial such as newspaper reports, assessment of witnesses, and the like. The judge directed the jury about not drawing any inferences adverse to Mr Kanaris from the fact that he did not personally give evidence although he called three witnesses, and how the evidence of those witnesses should be assessed in the same way as that of the witnesses called by the prosecution. Directions were given about the presumption of innocence, the onus of proof, the necessity for a unanimous verdict, the need to consider the evidence separately on each of the 21 charges before the jury, and the nature of those charges.

Directions on the charges

[16] The judge gave the jurors specific directions about the elements of a charge laid under s 427 of the Code, and on the elements of an offence under s 408C(1)(b). There is no complaint about those directions, and they stated the law clearly and accurately. In particular, the directions on s 427 emphasise the need for the prosecution to prove both a false representation and an intent to defraud. The direction on that followed *Balcombe v De Simoni* (1972) 126 CLR 576, particularly in the judgment of Gibbs J.

[17] The learned judge instructed the jury in those introductory directions that the prosecution must prove:

1. that on the date and place named in the charge;
2. the accused made a false pretence and a wilful false promise;
3. that the false pretence and the wilful false promise were made with intent to defraud; and

4. that as a result of the false pretence and the wilful false promise the accused obtained the property set out in the charge or induced the delivery of the property to another person.[5]

[18] In further directions the learned judge explained that a false pretence was a representation of fact by words or otherwise, which was false, and which Mr Kanaris must have known at the time of making it was false. Likewise the judge explained that a wilfully false promise was a promise to do or omit to do something, made by Mr Kanaris, which at the time of making Mr Kanaris did not intend to perform or did not believe he would be able to perform. Regarding intent to defraud, the judge directed the jury that if a person made a statement or a representation which he knew to be untrue or did not believe to be true, or a promise which he did not intend to perform or did not believe he would be able to perform, and made the statement or promise for the purpose of inducing another person to give him property or money, knowing that the other person would not give the property or money but for what was falsely said in the statement or the promise, then the jury could find an intent to defraud.[6] The judge also directed the jurors that the prosecution had to prove that Mr Kanaris, by a false pretence **and** the alleged wilfully false promise, caused the property to be paid over or delivered; and that the false pretence was a substantial reason for the complainant to pay over the money or deliver it.

[19] The judge explained to the jurors that the law provided that acts in relation to property might be dishonest even if a person intended afterwards to restore property, or make restitution or fulfil obligations or make good any detriment, and that it was necessary for the jury to determine whether dishonesty had been established on each count. Those introductory directions filled 35 pages of transcript.[7]

Directions on each count

[20] The learned judge then turned to directions on each count, and those followed a pattern in which the learned judge read the specific count to the jury, and reminded them of the specific allegations the prosecution had to establish to secure a conviction. The judge then gave careful directions summarising the evidence on that count ("the evidence reminder"). On each count the learned judge gave the evidence reminder, gave a direction on the elements of the offence which the prosecution had to establish for a conviction ("the elements direction"), and summarised the Crown and defence submissions ("the arguments direction"). The evidence reminder, the elements direction, and the arguments direction were the staple part of the individual summing up for each count, together with count specific observations and directions. Those directions on the individual counts took well over one day.

[21] The false pretences and promises alleged in counts 1-5 and 8-16 were largely identical. Those counts alleged a false pretence that Mr Kanaris required money to enable him to settle the sale of a property development that he owned on the island of Kos in the Greek islands, and a false promise Mr Kanaris would repay money lent when the sale of the property settled, or within a specified, short, time. The

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5 At AR 1641
6 At AR 1614
7 They are reproduced at AR 1616-1650

Crown case to the jury was that it did not need to prove one way or another whether Mr Kanaris owned any land on an island in Greece; the dishonesty in his conduct was that the sums of money which he thereby obtained were never going to be used for the represented purpose and result in the sale of that land in the near future, and Mr Kanaris was never going to repay the money as promised. That proposition advanced in the Crown opening[8] differed slightly from the terms of the alleged false representation in the indictment, but the difference lay in the fact that the argument made to the jury in opening was an explanation of why the representation alleged in the indictment was false. Mr Kanaris, who did not give evidence at the trial, did not lead any evidence of the use he had made of the money.

[22] When the directions on individual counts were completed, the learned judge gave the jurors specific reminders and warnings about the evidence they had heard of casino records and gambling by Mr Kanaris. Those directions included directions reminding the jurors of the potential inaccuracy of the records of the Treasury and Jupiters Casinos gaming machine totals, which did not include jackpot wins under $5,000 and the need accordingly to treat those totals with caution, and also that the records did otherwise indicate the "timeframe over which Mr Kanaris was apparently playing at those machines".[9] The judge reminded the jurors of the exhibit number of the casino records tendered from four different casinos, the summaries of those in two other exhibits, and the significance the prosecution attached to those records. He also reminded the jurors of the arguments Mr Kanaris made about those, that there was human error in relation to the recording of play at tables, and that there could be an element of double counting in the figures. The judge reminded the jurors again that gambling was not a crime, and that the evidence about it and the records of the casinos were put before the jury because of their relevance to the question of whether Mr Kanaris had committed the specific crimes.

[23] The learned judge then gave warnings about other specific items of evidence and the necessity to avoid misuse of that, or wrongly rely on it, and the judge concluded the summing by reminding the jury again of the arguments that Mr Kanaris had presented to them[10] and the submissions made by Ms Merrin, counsel for the Crown.[11] That summing up *in toto* had identified the jury's role, the relevant issues, the charges, the evidence, the arguments, and the errors to be avoided when deliberating. It was carefully structured and presented, and Mr Kanaris was correct in his unguarded compliment to the judge.

The evidence on each count

Count 1

The charge and the evidence

[24] Count 1 charged that on 22 October 1996 at Brisbane Mr Kanaris, partly by falsely pretending to John Whateley that he required $25,000 to settle the sale of a property that he owned on the Isle of Kos in the Greek Islands and partly by wilfully falsely promising to Mr Whateley that he would pay him $50,850 within 56 days, obtained

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8 At AR 39

9 This direction appears at AR 1851

10 Those arguments were summarised at AR 1854-1864

11 Those arguments were summarised at AR 1864-1880

from Mr Whateley $25,000 with intent thereby then to defraud. The evidence reminder included that a boat broker, a Mr Stephenson, had met Mr and Mrs Kanaris at Sanctuary Cove in late June of 1996, when they had looked at boats which Mr Stephenson had for sale. They showed interest in the price range of $300,000-$400,000, and Mr Kanaris "mentioned in passing" that he would be having a property settlement coming forward soon which would enable him to buy a boat in which to engage in a better lifestyle. In August 1996 Mr Kanaris said he had a problem with the property, which was on the island of Kos in Greece, and that until it settled he could not purchase a boat. Mr Kanaris had signed an offer by then to buy one for $410,000, with the deposit to be paid within 21 days or earlier, depending upon a settlement of the property in Kos. As Mr Stephenson described it, that sale never occurred, and on a number of occasions there were contracts entered into to buy boats, but a deposit was never paid. On Mr Stevenson's evidence, Mr Kanaris always said that settlement of the sale of the land was going to be very soon.

[25] Mr Stephenson made it his business to continue having contact with Mr Kanaris because of the possibility of a sale to him of a boat of a substantial value. In a conversation in a coffee lounge, Mr Kanaris showed Mr Stephenson a copy of a contract in a language foreign to Mr Stephenson, apparently referring to a sale or transaction for $US16.25 million, and Mr Kanaris also showed Mr Stephenson a plan of the property and an architect's drawing of a proposed convention centre, to be built on land on Kos. Also in August 1996, Mr Kanaris told Mr Stephenson that Mr Kanaris needed to raise $50,000 to put towards finalisation of the sale of the land in Kos, and asked if Mr Stephenson could assist. Mr Stephenson said he would phone around among his friends, and did so. Mr Stephenson knew a Mr Whateley, a personal friend who was the company secretary at Flight Centre, a Mr John Breakspear, the manager of Boat Show International at Sanctuary Cove, and a Mr Graham Sellers, a personal friend of Mr Stephenson in business on the Gold Coast. Mr Whateley became interested, and Mr Stephenson introduced him to Mr Kanaris in September or October 1996.

[26] At that meeting Mr Kanaris told Mr Whateley that he was looking to borrow money on a short term basis to pay costs associated with a property that Mr Kanaris had in the Greek Islands, which Mr Kanaris had sold or was about to sell, and for which sale Mr Kanaris was required to meet legal and other costs. Mr Kanaris was asking for $25,000, and said the sale was worth $US20 million. The term of the proposed loan was for a period of 56 days, at the end of which Mr Kanaris expected the property to be sold, and he said the repayment of the loan would be from the proceeds. Mr Kanaris said Mr Whateley would be able to double his money. Those two men agreed at that meeting that Mr Whateley would lend Mr Kanaris the $25,000, in exchange for a second mortgage over a property owned by Mr Kanaris' son, and Mr Kanaris and Mr Whateley later met in a lawyer's office on 22 October 1996. On that date the $25,000 was given to Mr Kanaris, who produced a document "in a foreign language"[12] that appeared to refer to an amount of $US20 million. Mr Whateley asked for, but did not get, a copy of the document; Mr Kanaris said he could not let the document out of his possession and that he was forbidden to make a copy of it, because of tax implications, and other issues. An acknowledgment of debt was signed, which stated that the amount to be repaid was $50,850 within 56 days.

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12 AR 245

[27] That debt was not repaid on those terms, although Mr Whateley did get some of it back at a later date when he took legal action against the son and daughter-in-law of Mr Kanaris, to recover the $25,000 under the second mortgage. Mr Whateley also got judgment for interest, but did not recover that.

[28] Mr Kanaris suggested in cross-examination (and argued on the appeal), that Mr Whateley had lent the money to Mr Kanaris' son, but Mr Whateley rejected the suggestion in the witness box. His evidence was that the second mortgage the son gave was simply security for the loan made to Mr Kanaris. He made the loan because on the surface it appeared to be a reasonable investment and the land sale was imminent; with the money being repaid within 56 days.[13] (The suggestion that Mr Kanaris borrowed from Mr Whateley's son and daughter-in-law[14] was based on the fact that there was a second mortgage executed by them, of which Mr Whateley produced a copy in cross-examination.)

[29] Mr Whateley's evidence describes Mr Kanaris making the false representation before 22 October 1996, that he required $25,000 to settle the sale of a property he owned on the Greek Island, but made in October 1996; there was also agreement before 22 October that the period of the loan would be 56 days and that approximately $50,000 would be repaid.[15] It was on 22 October 1996 that the cheque was handed over and, presumably, on that date the second mortgage security upon which Mr Whateley had insisted was executed. That was the date when the wilfully false promise was made that $50,850 would be repaid. However, the false pretence made earlier was operating on Mr Whateley's mind, as described by his evidence, and it was open to the jury to find, as alleged in the charge, that a combination of that false pretence and false promise induced Mr Whateley to lend $25,000 to Mr Kanaris on 22 October 1996.

The summing up

[30] The learned judge drew the jurors' attention to the date 22 October 1996 in the indictment, explaining that that was not necessarily the same date as that on which the Crown alleged either the false pretence or wilfully false promise was made. The judge directed the jury, quite correctly, that the Crown did not have to prove that either the wilfully false promise or the false pretence was made on that day. Rather, that was the date on which the Crown alleged – and was required to prove – that the $25,000 was obtained, and that the false pretence and the false promise were a substantial reason or cause for Mr Whateley paying that money over ("the date direction"). That direction was appropriate where the Crown alleged a continuing false pretence.

[31] The learned judge reminded the jurors of the evidence that there was a $25,000 deposit to the account of Mr Kanaris with the ANZ Bank on 22 October 1996, and Mr Whateley's evidence was that he had accompanied Mr Kanaris to the bank to deposit the cheque.[16] Five thousand dollars was withdrawn on 22 October, $15,000 at Carina on 23 October, $500 at the Crown Casino in Melbourne on 25 October, and there were a number of separate withdrawals totalling $1,200, also at the Crown Casino. On 28 October there were two withdrawals totalling $600 at the Manly

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13 At AR 258
14 It is at AR 269
15 This is described at AR 244-245
16 At AR 246

TAB, and $4,916 was withdrawn on 29 October 1996. By then the balance account was $0. The judge also reminded the jury of statements in a Melbourne Crown Casino patron comment report, which recorded that Mr Kanaris arrived there on 23 October 1996 and left on 27 October; and of the records from Jupiters Casino in Broadbeach recording Mr Kanaris losing $6,408 at the tables and at Keno between 22 October 1996 and 2 November 1996. He also received complimentary services at that casino on 22 October 1996, and on 29 October 1996; in October 1996 he had a $6,010 loss at the tables at the Jupiters Casino.

[32] Taking count 1 as an example, the elements direction was in these terms:

> "To prove this charge the prosecution must prove to you that Mr Kanaris made a false pretence to Mr Whateley, that is, that he made a false statement to Mr Whateley and Mr Kanaris knew that it was false at the time. He also made a wilful false promise to Mr Whateley, that is, that Mr Kanaris made a promise to do something and at the time he made the promise he did not intend to perform it or did not believe that he would be able to perform it, that is, that Mr Kanaris knew it was false at the time.
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> Now, the prosecution must prove to you that element beyond a reasonable doubt. The prosecution say[s] the false pretence was that Mr Kanaris said that he required $25,000 to settle a sale of the property that he owned on Kos and that the wilful false promise was that Mr Kanaris would pay Mr Whateley $50,850 within 56 days.
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> …
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> The prosecution must prove to you beyond reasonable doubt that Mr Kanaris made a representation about the land which he knew to be false at the time and that he made a promise which he knew to be false in the way I have explained. If you cannot be satisfied of that, beyond a reasonable doubt, you must acquit.
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> …
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> If that has been proved to you, that is, that the prosecution have proved to you beyond a reasonable doubt that a false pretence was made and that a wilful false promise was made, then the Crown must also prove to you beyond reasonable doubt that the false pretence and the wilful false promise were made with intent to defraud in the way that I have explained. And also, that as a result of the false pretence, and the wilful false promise, Mr Kanaris obtained the $25,000 from Mr Whateley."[17]

[33] Again taking count 1 as an example, the arguments direction was as follows:

> "The prosecution case is that you can infer that this was false from Mr Kanaris' later conduct in relation to continuing to say the same thing to other people, make the same representations, make the same sorts of promises over a course of years, by the fact that Mr Kanaris continued to say he needed the money urgently and that the settlement would occur within a very short time frame, by the fact that Mr Kanaris never paid the money or repaid the money according to the promise that he'd made. The prosecution argue[s] that because of the similar types of representations and promises made to various

[17] These directions are at AR 1662-1665

> people over that time frame that you can infer that Mr Kanaris was being false at the time and that he knew that. The prosecution case is also that the casino records are of relevance during this period of time…There is no evidence before you that the land does not exist or that in the contracts for its sale did not exist. Similarly, there is no direct evidence before you that they did exist. You must decide the case on the evidence presented to you…The Crown case is that it is unnecessary to prove whether the land existed or not because it is from the evidence in relation to all of Mr Kanaris' conduct, his continued representations and promises and his continued Casino conduct that the Crown say you can infer his dishonesty and that these things were false."[18]
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> "Mr Kanaris argues that on all the evidence that the prosecution have not proved to the required standard that there was falsity in his representations or his promise and because of that you should, therefore, acquit."

[34] If count 1 had been the only count before the jury, then the argument Mr Kanaris made in cross-examination that it was a civil matter, and not a criminal one, might carry weight. But it was not the only matter, and the other counts described ongoing representations by Mr Kanaris to Mr Whateley, Mr Stephenson, and others. Those principally concerned the assertedly imminent sale of property Mr Kanaris allegedly owned on the Isle of Kos and which sale was frustrated by lack of immediately available cash, which those complainants then provided to Mr Kanaris. As shown in exhibits 61- 64, 72, and 74, during the relevant periods Mr Kanaris was gambling money, and losing it; if that was not the money lent to him, then it was other money that he actually had available from other sources but had repeatedly chosen over a period of four years not to apply to finalising an immensely lucrative land sale.

Counts 2 and 8

The charges and evidence

[35] The learned judge dealt with these counts together, they being inter-related. Count 2 charged that on or about 6 November 1996 Mr Kanaris, partly by falsely pretending to Mr Whateley that he required money to settle the sale of a property development that Mr Kanaris owned on the Isle of Kos and partly by wilfully falsely promising to Mr Whateley that he would pay him when the property settled, induced Mr Whateley to deliver to a person unknown $1,500 with intent thereby then to defraud. Count 8 alleged that on or about that same date Mr Kanaris by the same false pretence and same false promise obtained $1,500 from John Stephenson, with the same fraudulent intent. The learned judge reminded the jury that Mr Kanaris had told Mr Stephenson in August 1996 that Mr Kanaris needed to raise $50,000 to finalise the sale of the property in Kos, and count 8 related to a transaction in November 1996 in which Mr Stephenson also lent Mr Kanaris money. Mr Stephenson's evidence was that he understood Mr Kanaris was still endeavouring to get loans totalling the $50,000 Mr Kanaris required, which Mr Kanaris told Mr Stephenson related to engineering costs, survey costs, and local

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[18] These directions are at AR 1664 and AR 1665

rates and taxes. Mr Kanaris told Mr Stephenson that he needed $3,000 to complete the deal,[19] and Mr Stephenson then spoke to Mr Whateley, and they agreed to lend $1,500 each. Mr Stephenson drew that amount from his bank and collected the same from Mr Whateley. He then met Mr Kanaris and gave him $3,000, receiving two executed acknowledgments of debt. One was for Mr Whateley and one for Mr Stephenson. Both promised repayment of $1,500 by 16 December 1996, and interest at 17 per cent per annum in respect of any delay in payment.

[36] Mr Stephenson never received repayment of that $1,500, and said that the representations Mr Kanaris had made to him were a substantial reason for his handing over that money; he also said that "at the time we didn't expect to have a problem".[20] In cross-examination Mr Kanaris suggested, and Mr Stephenson denied, that the $1,500 was lent out of friendship rather than as a business deal. Mr Stephenson also denied the further, and apparently inconsistent, suggestion that he had not given Mr Kanaris $1,500 on that day.

[37] Mr Whateley's evidence was that after the initial loan of $25,000, he received a further request in November 1996 from Mr Stephenson, to lend money for additional costs that Mr Kanaris was experiencing, and agreed to do that, because he was adequately covered by the second mortgage.[21] Mr Whateley also said that he lent the $1,500 because he felt that he had invested some money and the $1,500 could assist in the land being settled, which would be to Mr Whateley's benefit because he would ultimately then get paid out. He could recall drawing out $1,500 but could not recall how it had been forwarded to Mr Kanaris. He could recall receiving another acknowledgment of debt.

The summing up

[38] Although the evidence of Mr Stephenson clarified Mr Whateley's lack of recollection as to what he did with the $1,500, the Crown charged count 2 in a manner reflecting Mr Whateley's poorer memory than Mr Stephenson's. The learned judge directed the jury that to prove count 2 the prosecution needed to establish that Mr Kanaris made a false pretence and a false promise to Mr Whateley, that he knew they were false at the time, they were made with intent to defraud, and that on 6 November 1996 and as a result of that false pretence and wilfully false promise, Mr Kanaris induced Mr Whateley to deliver $1,500 to a person unknown. The effect of those directions was that Mr Kanaris had committed a second offence if, as he knew, the continuing effect of the previously made false statement and promise by Mr Kanaris was to induce Mr Whateley to part with a further $1,500 of his money.[22] The learned judge also directed the jurors on the elements of count 8 in terms which would have started to become familiar.

[39] Mr Kanaris had not made any new or further representation or promise to Mr Whateley before Mr Whateley gave his $1,500 to Mr Stephenson to give to Mr Kanaris. Mr Stephenson's evidence was that he told Mr Kanaris he and Mr Whateley would put in $1,500 each. The jurors could be satisfied that Mr Stephenson had repeated Mr Kanaris' request, made to Mr Stephenson, to Mr Whateley; it was a request for money that Mr Kanaris needed for a specific purpose

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19 AR 73
20 At AR 76
21 At AR 248
22 This direction is at AR 1673

which, if achieved, would ultimately benefit all three men. The jurors could also be satisfied that both Mr Stephenson and Mr Whateley believed the purpose was genuine, because of the representations and promises Mr Kanaris had made personally to each man. They could also be satisfied that when Mr Kanaris received the $1,500 via Mr Stephenson, he knew that it had come from Mr Whateley, as evidenced by the acknowledgment of debt, and he knew Mr Whateley had lent another $1,500 because of what Mr Kanaris had told Mr Whateley. In those circumstances the directions given were correct.

[40] The judge reminded the jurors that immigration records exhibited in the trial showed that Mr Kanaris left Australia on 8 November 1996 and arrived back on 29 November 1996. There were no bank records of any deposits of two cheques of $1,500, and no casino records relevant to the date 6 November. The judge reminded the jury of the argument by the prosecution that they could infer the statements made were false because of the continued conduct of Mr Kanaris in making the same representations to others over a substantial period, (those representations being that he needed the money urgently and that it would be repaid in a short time), his failure to repay the money, and his casino gambling. The judge also reminded them that Mr Kanaris argued dishonesty and falsity had not been proven to the required standard. Those respective positions were repeated for each count in the arguments direction.

Count 3

The charge and evidence

[41] Count 3 charged an offence of obtaining $5,000 from Mr Whateley on a date unknown between 28 November 1996 and 17 December 1996, by the same false pretence and wilfully false promise as in count 2. Mr Whateley's evidence was that in December 1996 he was asked to put forward another $5,000,[23] and he gave that amount personally in cash to Mr Kanaris. Mr Whateley's evidence made it possible that it was Mr Stephenson who asked Mr Whateley for the $5,000, on behalf of Mr Kanaris, as on count 2. Mr Whateley received an acknowledgment of debt dated 16 December 1996, undertaking to repay $10,000 within 14 days. At that stage Mr Whateley believed the sale of the property was imminent and that the money lent would allow it to be settled. Provision was made for interest. He was told that legal problems existed relating to the property having been held in Nazi title, Italian title, and Greek title: the two men had a conversation about the land when they met on the occasion Mr Whateley paid over the $5,000, although Mr Whateley could not really remember its terms.

The summing up

[42] The learned judge reminded the jurors of cross-examination by Mr Kanaris which drew to Mr Whateley's attention the change in date on the acknowledgment of debt from 16 November 1996, the date typed on the document, to 16 December 1996; and to the evidence that Mr Kanaris was overseas between 8 and 29 November 1996. Mr Kanaris suggested the dates had been falsified in some way, and the judge reminded the jurors of that, and of the suggestion by Mr Kanaris made to Mr Whateley in cross-examination that Mr Kanaris had not executed the acknowledgment of debt for $10,000. The judge also reminded the jurors that in

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[23] AR 254

November 1996 the Jupiters Casino records indicated that Mr Kanaris lost $2,300.04 at the tables, and in December 1996 $1,316; he was recorded as losing $430 between 16 and 21 December 1996, and winning $500 at Keno on 16 December 1996. The judge gave the elements direction, the date direction, and the arguments direction. The jury could regard that count as another instance of the effect of the original representations, intended by Mr Kanaris to continue to affect Mr Whateley, as well as being evidence of the effect such statements as were made when the money was delivered by Mr Whateley.

Count 4

The charge and evidence

[43] Count 4 charged that Mr Kanaris, by the same false pretence and same false promise, obtained $2,500 from Mr Whateley on 9 December 1996 with intent to defraud. Mr Whateley's evidence was that at the end of November he was contacted again[24] with a request for a further $2,500, and he talked with some colleagues and raised that amount, consisting of sums of $500 put in by five people, of whom he was one. Mr Whateley's evidence made it probable the approach was through Mr Stephenson and not by Mr Kanaris. Mr Kanaris collected the money from Mr Whateley in person at the latter's office in early December 1996. He received another acknowledgment of debt, dated 9 December 1996, in which repayment of $5,000 was promised; Mr Whateley still believed settlement of the sale of the land in Kos was imminent.[25]

The summing up

[44] The learned judge reminded the jurors of this evidence, and of Mr Whateley's inability to recall any of the discussions that might have occurred when Mr Kanaris collected the money, and presumably when he received the acknowledgment of debt. That acknowledgment also bore the typed date November, which had been crossed out with the words "Dec" written above it.[26] Mr Kanaris suggested in cross-examination of Mr Whateley that that document had also been falsified, because Mr Kanaris was out of the country on 9 November 1996, and the judge again directed the jury (as the judge had on count 3) that that was a matter of Mr Whateley's credibility; the judge again reminded the jurors of the evidence of the $1,316 loss at the Jupiters Casino in December 1996, and gave the elements direction in terms similar to the earlier directions the judge had given, including the date direction in respect of the continuing false pretence. The judge also gave the arguments direction.

Count 5

The charge and evidence

[45] This count charged that on or about 6 March 1997 Mr Kanaris, partly by falsely pretending to Mr Whateley that he required money to pay rates owing on a property development that Mr Kanaris owned on the Isle of Kos before it would settle and partly by wilfully falsely promising that he would repay Mr Whateley when the

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[24] AR 251

[25] At AR 253; repeated at AR 254

[26] The acknowledgments of debt with the changed dates appear at AR 1962, 1967, and 1961

property settled, induced Mr Whateley to deliver $8,000 to Mr Kanaris and $1,000 to Mr Stephenson with intent to defraud. The judge reminded the jury of Mr Whateley's evidence that Mr Stephenson had contacted him in March of 1997 to advise that "things were about to settle",[27] that there were some back rates that were due, and the final amount was needed for settlement. (Mr Stephenson said) Mr Kanaris did not have that amount and needed another $9,000, of which $8,000 would go towards the property and $1,000 was to repay Mr Stephenson for a telephone bill that Mr Stephenson had paid on behalf of Mr Kanaris.

[46] Mr Whateley's evidence was that he agreed to advance the money, and met with Mr Stephenson and Mr Kanaris at a coffee shop, and that there he gave Mr Kanaris $8,000 in cash and Mr Stephenson $1,000. Some discussion occurred in which Mr Kanaris represented that this was the final amount needed to settle the property, it being a waterfront property on the Isle of Kos. The sale was definitely happening and "about to happen."[28] As usual Mr Whateley received an acknowledgment of debt (dated 6 March 1997) in which there was a promise to repay the $9,000 together with a bonus of $15,000, which would all be paid by 15 April 1997.

Summing up

[47] The learned judge reminded the jury that Mr Stephenson's evidence differed somewhat in that, while Mr Stephenson could recall paying a mobile phone bill of $800 for Mr Kanaris in February or March 1997, Mr Stephenson's recollection was that he had never been repaid that amount. The judge also reminded the jury that no bank record showed a deposit of that $8,000, but that records from Jupiters Casino recorded a loss of $1,754.50 on 8 and 9 March 1997 (qualified by the evidence that the machine figures did not include jackpot wins under $5,000), and a loss of $3,534 at the gambling tables between 7 and 9 March 1997. The judge gave the elements direction and the arguments direction. (Mr Whateley's evidence was that he was never repaid at any stage any of the amounts he lent.)

[48] In argument on the appeal Mr Kanaris submitted that exhibits 25 and 27, the acknowledgment of debt, and another draft of it, when examined with care, demonstrated forgery by Mr Whateley. One of those exhibits (27) now is largely blank, although it contains signatures and faint words identifying it as an acknowledgment of debt for $9,000 can be read; the other (25) is an acknowledgment of debt dated 6 March 1997 in respect of the $9,000. It is clear enough that the photocopied signature on exhibit 25 is not a photocopy of the signature on exhibit 27. Mr Kanaris agreed his genuine signature was on the faint (exhibit 27) document, as an original signature, and on the other as a photocopy, (of a different, genuine signature of his); he suggested in argument on the appeal that in some fashion an acknowledgment of debt had been typed onto a document already containing his signature, obtained from a person or persons with whom he had left blank signed pieces of paper prior to going overseas. That suggestion of forgery of exhibits 25 and 27 had not been raised during his cross-examination of Mr Whateley, in which cross-examination he both specifically accepted Mr Whateley's evidence that he had given Mr Kanaris $8,000 in cash, and a cheque for $1,000 to Mr Stephenson, at a coffee shop, and also suggested that perhaps that had not happened. Those contradictory stances adopted in cross-examination of Mr

27 At AR 257
28 AR 257

Whateley revealed only that Mr Kanaris was fishing for a ground on which to challenge Mr Whateley's evidence. His suggestions on the appeal that the documents were forged were simply a further example of that same conduct; there are many possible reasons for there being more than one copy of an acknowledgment of the one debt.

Counts 6 and 7

The charge and evidence

[49] The learned judge then directed the jurors on counts 6 and 7 collectively. Count 6 alleged that on or about 6 May 1997 Mr Kanaris, partly by falsely pretending to Mr Whateley that Mr Kanaris required money to speak to a solicitor in Sydney who specialised in bringing money into Australia from Greece, and partly by wilfully falsely promising to Mr Whateley that he would repay him, induced Mr Whateley to deliver $1,500 to the Australia and New Zealand Banking Group Limited ("ANZ Bank") with intent to defraud; count 7 alleged the same false pretence and wilfully false promise, and that by that conduct Mr Kanaris obtained an airline ticket from Mr Whateley on or about 13 May 1997. Mr Whateley's evidence about those two counts was that in May 1997 he was contacted by Mr Kanaris, who told him that Mr Kanaris had to urgently meet with a lawyer who was an expert in arranging for money to come in from the Greek Islands or from overseas, and who would arrange for it to come into Australia quickly. Mr Kanaris asked Mr Whateley to advance a further $1,500 for the lawyer, and for Mr Whateley to provide Mr Kanaris with an airline ticket to get down to Sydney. Mr Kanaris said in that telephone conversation that the sale of the property was "just about to go" and that Mr Whateley would be paid back when the settlement occurred and the money arrived. Mr Whateley agreed, and arranged for $1,500 to be paid into Mr Kanaris' ANZ Bank account at Carindale (for which Mr Whateley received a receipt dated 6 May 1997), and he also arranged for a return ticket to Sydney to be booked through one of the Flight Centre stores, for which Mr Whateley paid on his credit card. He could not recall how the ticket was delivered to Mr Kanaris.

[50] He advanced that further money and the price of the ticket because he thought it was his way of finally getting the thing over and done with,[29] and he did not lend Mr Kanaris any more money after that date. Thereafter relations between the two men soured, and they had one further meeting at Indooroopilly "around 1997",[30] in which Mr Kanaris suggested Mr Whateley should withdraw a complaint Mr Whateley had lodged with police, because the land really was going to settle "and things could be difficult if I didn't".[31] Mr Whateley did not ever receive repayment.

The summing up

[51] The learned judge reminded the jurors of that evidence, and of a suggestion by Mr Kanaris that Mr Whateley and Mr Stephenson had colluded to bring charges against him, and evidence that a $1,500 deposit was made to Mr Kanaris' ANZ Bank account on 6 May 1997, with a withdrawal of $1,000 that same day, and a further withdrawal of $500 on 7 May 1997, leaving a balance of $2.63.

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29 At AR 260
30 At AR 264
31 At AR 264

[52] The judge then reminded the jurors of the evidence that on or about 6 May 1997 a report from Jupiters Casino indicated that the "patron history" for Mr Kanaris for the month of May recorded a loss of $14,353, and another loss of $9,408 at the machines. Likewise the records of the Conrad Treasury Casino recorded a $2,600 loss at the tables on 15 May 1997 and a patron history for May 1997 of a $5,000 loss at tables. The judge then gave, in terms that must have become increasingly familiar, the elements direction, the arguments direction, and the date direction.

[53] On Mr Whateley's evidence, Mr Kanaris personally made representations to him on a date in October 1996, in March and May 1997, and on the date of that meeting at Indooroopilly. The jury could find that the effect of the first representation, made in October 1996, underlined or reinforced by statements repeated by Mr Stephenson and ones by Mr Kanaris, was to induce the payments made by Mr Whateley. Mr Kanaris did not keep repeating those original representations, but that would have been obvious to the jury.

Count 9

The charge and evidence

[54] Count 9 was the second count which alleged that money or other property had been obtained from Mr Stephenson by false pretences. That count alleged that on or about 7 November 1996, Mr Kanaris, partly by falsely pretending to Mr Stephenson that Mr Kanaris required money to settle the sale of a property development that he owned on the Isle of Kos, and partly by wilfully falsely promising to Mr Stephenson that he would pay him when the property was settled, obtained from the Bank of Queensland Limited travellers' cheques to the value of $12,000 with intent to defraud.

[55] Mr Stephenson's evidence was that on 7 November 1996, the day after he gave Mr Kanaris $1,500 (6 November 1996, the loan which was the basis of count 8), and having spoken several times on 6 November during the day and night with Mr Kanaris, Mr Stephenson and his wife agreed to lend Mr Kanaris another $12,000. That loan was an attempt by Mr Stephenson to bridge the gap between the $25,000 Mr Kanaris had gotten from Mr Whateley, plus the $3,000 that Mr Stephenson and Mr Whateley had put up together, and the amount of $50,000 which Mr Kanaris had said he needed for local land rates and taxes, drawings from surveyors, engineering drawings and the like.[32] The form in which that $12,000 was lent was in travellers' cheques to that value, which cost $165 to obtain. Accordingly the acknowledgment of debt given to Mr Stephenson was for $12,165. That acknowledgment of debt promised repayment on the date 30 days from 7 November 1996, with interest at 17 per cent per annum should payments not be made by that date.

[56] Mr Stephenson also prepared a document, executed by Mr Kanaris and Mr Stephenson, dated 7 November 1996, which recorded the loan of $25,000 from Mr Whateley, the further loan (from Mr Whateley and Mr Stephenson together) totalling $3,000, and the third loan of $12,165, lent by Mr Stephenson.[33] Mr Stephenson's evidence was that "usually he was offering to double the amount of money borrowed",[34] but he did not swear that that particular promise was made

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[32] This evidence is at AR 76 and 77

[33] That document exhibit 7, is reproduced at AR 1946

[34] At AR 82

regarding that particular loan of $12,165, and on his own evidence he initiated the suggestion of this further loan; he swore that:[35]

> "I asked him if we loaned him $12,000, if that would help, and, of course, naturally enough, it would."

That evidence referred to the attempt by Mr Stephenson to bridge the gap between the $28,000 Mr Stephenson and Mr Whateley had by then lent, and the $50,000 said to be needed. Mr Stephenson swore that he thought lending the $12,000 would be "good for all of us because we would have got our money back".

[57] Mr Stephenson's evidence was that after receipt of the travellers' cheques Mr Kanaris went to Greece, where Mr Stephenson spoke with him nearly every day by telephone, endeavouring to find out how the settlement was going. Mr Kanaris left Australia on 8 November and returned on 29 November 1996. Mr Kanaris, by phone from Greece in November 1996, said that he was short of money, and Mr Stephenson provided him with $2,000 to pay Mr Kanaris' expenses there, and for which he received an acknowledgment of debt. There was no count charged in relation to that sum of money, and the learned trial judge specifically reminded the jury that that count had not been charged as an offence, and that they should not let themselves be prejudiced against Mr Kanaris because of that conduct.[36] Regarding count 9, the learned judge gave the evidence reminder, the elements direction, and the arguments direction.

Count 10

The charge and evidence

[58] Count 10 charged that on or about 9 December 1996 Mr Kanaris, by the same false pretence and same false promise as alleged in count 9, obtained $3,000 from Mr Stephenson with intent to defraud. Mr Stephenson's evidence was that after Mr Kanaris returned to Australia in early December 1996 the two men had several conversations, in which Mr Kanaris revealed that settlement had not taken place, and that he needed some more money. Settlement was going to happen not long after that money was obtained. Mr Kanaris asked Mr Stephenson "if I could arrange for it",[37] and Mr Stephenson provided a further $3,000, probably in the first half of December 1996. He swore it was provided because Mr Kanaris still needed money for drawings, rates, local taxes and the like, and because giving the money would help get the settlement. Mr Kanaris promised to repay the money on a specified future date, and Mr Stephenson gave him the $3,000 in cash at a café at Carrara. He received in return an acknowledgment of debt in the sum of $3,000 dated 9 December 1996, promising repayment within 21 days. The acknowledgment promises interest at 17 per cent per annum if not repaid on a date 21 days later. Mr Stephenson swore that the representations Mr Kanaris had made to him were a substantial reason for his giving Mr Kanaris that $3,000.[38]

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[35] AR 77

[36] This warning is at AR 1715

[37] At AR 87

[38] This evidence appears at AR 88-89

The summing up

[59] The learned judge reminded the jurors of that evidence, and a record from Jupiters Casino indicating a loss of $664 between 9 and 11 December 1996, and a loss overall in that month of $1,316 at the table. The judge gave the jurors the elements direction, the arguments direction, and the date direction.

Count 11 (acquittal)

The charge and evidence

[60] Count 11, on which Mr Kanaris was acquitted, alleged that on 31 December 1996 Mr Kanaris obtained $1,200 from Mr Stephenson, partly by the specific false pretence that Mr Kanaris required money as all his and his wife's money had been absorbed to settle the sale of a property development that Mr Kanaris owned on the Isle of Kos in the Greek Islands, and partly by a wilfully false promise that Mr Kanaris would pay Mr Stephenson when the property settled.

[61] Mr Stephenson gave evidence that on New Year's Eve 1996 he met Mr Kanaris at a café at Broadbeach, and that Mr Kanaris said he was short of money, so short that he was running out of money to live on locally. Mr Stephenson then drew $800 out of the bank, the maximum he could draw; he kept $100 for himself and paid the rest to Mr Kanaris. He also gave Mrs Kanaris a cheque from his company's account, Missile Ski Boats, for $500. He did not get an acknowledgment of debt, and he advanced that money to Mr Kanaris because the latter had said that all of his money had been used on a deal in Kos. At that time he was dealing with Mr Kanaris each day and there were always difficulties, but he had believed at that time (New Year's Eve) that the deal was going to happen.[39]

[62] The learned judge reminded the jurors of that evidence, and the evidence that a substantial reason for Mr Stephenson paying over that $1,200 was the statement by Mr Kanaris that all of his money had been used on a deal in Kos, and that there were no bank records of any deposit in relation to that $1,200 in the ANZ account. There were relevant casino records, with the Jupiters Casino document recording that on 31 December 1996 Mr Kanaris suffered a $222 loss at that tables[40] and a loss for the month of December 1996 of $1,316. The learned judge gave the jurors the arguments direction, the elements direction, and the date direction.

[63] The acquittal on that count is easily explained by Mr Stephenson's own evidence that he paid over that $1,200 that day because Mr Kanaris said he had no money and he had spent all of his on the deal in Kos. Mr Stephenson did not even say that Mr Kanaris asked for money from him on that date, nor that Mr Kanaris had promised to repay it.

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[39] This evidence is at AR 90-91

[40] He was recorded as gambling from 8.17 pm on 31 December 1996 to 5.41 am on 1 January 1997, at Jupiters Casino, Broadbeach (AR 2176)

Counts 12 and 14 (acquittals)

The charges and evidence

[64] Counts 12 and 14, on which there were also acquittals, were similar in nature. Both those counts alleged that on a date unknown between 21 February 1997 and 30 April 1997 Mr Kanaris obtained $800 from Mr Stephenson by the standard false pretences. Those counts were dealt with together by the learned trial judge in the directions, and resembled count 11 in the absence of any evidence of representations or promises from Mr Kanaris, other than that he had a need for money. Mr Stephenson's evidence was that on two separate occasions after January 1997, and before 30 April 1997, he had either given Mr Kanaris approximately $800, or had paid a phone bill of that amount on his behalf directly to Telstra. He gave evidence of an occasion when Mr Kanaris rang him and said he had a problem and needed a telephone bill to be paid, as he had run out of money and his phone would be cut off the next day if not paid; because of Mr Stephenson's need to keep in communication with Mr Kanaris, "after much discussion"[41] Mr Stephenson had said he would pay that amount, and he did. He also swore that "on one or two occasions" after payment of that $800 phone bill Mr Kanaris had phoned him in a panic when Mr Kanaris had no money and needed money to pay bills, either local or overseas; and on which occasions Mr Stephenson had given Mr Kanaris "an amount of $800".[42] He swore that in both instances that $800 (or thereabouts) was given to Mr Kanaris fairly quickly, and too quickly for Mr Stephenson to prepare an acknowledgment of debt on his computer, so accordingly no acknowledgment of debt was obtained on either occasion.

The summing up

[65] The learned judge gave the jury careful directions that there was no charge which reflected the claim that an $800 bill was paid to Telstra (for which there was no acknowledgment of debt), and the conduct which induced payment of that account was accordingly an example of uncharged conduct in respect of which the jury had to be aware of a risk of prejudice irrelevant to their findings on the other counts. The judge reminded the jurors of the evidence Mr Stephenson gave, limited in nature, of the two occasions on which he recalled paying an amount of $800 and for which he received no acknowledgment of debt. The judge reminded the jury of Mr Stephenson's evidence that his understanding was that the money was needed to meet costs in relation to the proposed sale of land, which was always going to settle but did not, although he did not understand whether the costs were being incurred in Greece or in Australia. The representations that costs were being incurred were the substantial reason for the payment of the money, on Mr Stephenson's evidence.

[66] The judge reminded the jury that there were no bank deposit records in relation to those amounts, but records from Jupiters Casino for the months of March and April 1997, recording a loss at machines in March 1997 of $1,940.80 (subject to unrecorded jackpots of under $5,000), and a loss of $3,534 at tables in that month. In April 1997 there was a recorded loss of $9,408 at machines (subject to the same qualification), and a $14,353 loss at the tables. The judge gave the elements direction, the arguments direction, and suggested that the fundamental issue on both

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41 At AR 110

42 At AR 111

counts was whether the incidents had occurred at all, and whether there had been a false pretence and false promise made.

[67] It is understandable that the jury acquitted on those two counts too. The only evidence the money was paid over was Mr Stephenson's rather hazy assertion that on either one or two occasions he had paid over such sums, and the view was certainly open on the evidence that all Mr Kanaris had said on each of the asserted occasions was that he had a need for money. A representation in those terms could be entirely true: Mr Stephenson did not swear that Mr Kanaris had promised to repay either of those $800 amounts.

Count 13 (*nolle prosequi*)

The charge and evidence

[68] Count 13, on which a *nolle prosequi* was entered, had alleged that on or about 30 January 1997 Mr Kanaris obtained $4,000 from Mr Stephenson by the standard false pretence and standard false promise. Mr Stephenson's evidence, however, was that in January of 1997, when Mr Kanaris was in Greece, he had said in a telephone call that the property had not settled, and that more money was needed. That resulted in Mr Stephenson sending $4,000 by telegraphic transfer to Mr Kanaris in Greece; but the money came from a Mr Wackner, not from Mr Stephenson.[43] That evidence led to the *nolle prosequi*.

Count 15

The charge and evidence

[69] Count 15 charged the last occasion on which Mr Stephenson lent Mr Kanaris money. That count alleged that on or about 30 April 1997, partly by (the standard) false pretence and partly by (the standard) false promise, Mr Kanaris, with intent to defraud, induced Mr Stephenson to deliver $5,200 to the ANZ Banking Group Limited. Mr Stephenson's evidence was that after Mr Kanaris had returned from Greece, and in a conversation in late February 1997, Mr Kanaris spoke of rezoning problems with the land in Kos, which had (again) delayed the final settlement. Mr Kanaris asked for more money to assist in settlement, at a meeting at the Boat Show International at Sanctuary Cove in April 1997. Mr Stephenson was then brokering a deal between Mr Kanaris and Mr John Breakspear, the Managing Director of the company trading as Boat Show International, for a purchase by Mr and Mrs Kanaris from that company of a 20 metre Princess motor yacht. Boat Show International was the Australian distributor for the variety of boats; contracts were signed but no deposit was paid, and a second arrangement was made that would have entitled Mr Kanaris to have a boat from the Princess factory (in the United Kingdom), but which arrangement was conditional upon Mr Breakspear's company supplying Mr Kanaris with $8,000 plus a business class airfare costing $5,200. If Mr Breakspear did that, the "deal" could "move forward",[44] whereby Mr Kanaris would buy that boat. First, however, Mr Kanaris had to settle the land deal on the Isle of Kos, and he needed money to go to Greece to finalise that, and he would then meet Mr Stephenson in England, see the boat, and finalise that contract.

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[43] This evidence is at AR 98
[44] AR 101

[70] On Mr Stephenson's evidence, Mr Breakspear agreed to pay that $8,000 to allow Mr Kanaris to settle the contract for the land, and thus place Mr Kanaris in funds to buy a boat. Mr Breakspear confirmed that in writing by a letter dated April 18 1997, which became exhibit 16 at the trial.[45] Boat Show International agreed in that letter to advance the $8,000 and provide the business class return airfare, and asked for repayment in full if, "for any unforeseen chance", Mr Kanaris did not proceed with the purchase of the 20 metre Princess. Mr Stephenson deposited the $8,000 received from Boat Show International into an account for Mr Kanaris on 21 April 1997.

[71] Some days later Mr Kanaris rang Mr Stephenson asking for $5,200 for the airfare; he said he needed the money. At first Mr Stephenson resisted paying it. He eventually did so because Mr Kanaris said to him that if Mr Kanaris did not get that $5,200 "everyone would lose their money",[46] and that information "pushed me over the edge which I regret, to give him the $5,200". Mr Stephenson did that by withdrawing $5,200 out of his MasterCard account and banking it to an account for Mr Kanaris. That withdrawal was on 30 April 1997; Mr Stephenson did not give Mr Kanaris any more money after that, although there were requests from Mr Kanaris for it. Eventually "we just sort of severed relationships".[47] It appears that they ceased communicating with each other around June 1997.

[72] Mr Breakspear's evidence generally confirmed that of Mr Stephenson, who had introduced Mr Kanaris to Mr Breakspear as a potential client. Mr Kanaris had expressed interest to Mr Breakspear in buying either one or two Princess boats, and at first settled on the purchase of one which would cost about $750,000. Mr Stephenson had described Mr Kanaris to Mr Breakspear as a man who had resources in Greece with an island property that he was selling or had sold. Mr Kanaris confirmed that information. Over time Mr Kanaris also confirmed that he would not have the money to go ahead until he got settlement on his land in Greece, which was not to be long term. Construction of the boat in the UK would not occur until a deposit was paid, but Mr Breakspear understood that would occur in the very near future, when the land in Greece was settled.

[73] Eventually Mr Stephenson told Mr Breakspear that Mr Kanaris needed some expenses paid to go to Greece to finalise his affairs and Mr Breakspear immediately decided (because of "the salesman in me")[48] to lend the $8,000. This was because the proposed boat purchase was a very big sale for Mr Breakspear. Accordingly, he provided the letter dated 18 April 1997 and the $8,000. Mr Kanaris did not ever purchase a boat, pay a deposit, or repay the $8,000.

The summing up

[74] Returning to count 15, which concerns the $5,200 that Mr Stephenson paid to provide Mr Kanaris with a return airfare, the learned judge reminded the jurors of Mr Stephenson's evidence relevant to the charge, and of the fact that in cross-examination Mr Stephenson had been asked why there was no acknowledgment of debt for that amount. Mr Stephenson's evidence in reply had been that on the night leading up to that payment Mr Kanaris had become very rude. Mr Stephenson's

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45 It is reproduced at AR 1955
46 AR 106
47 AR 114
48 At AR 405

evidence was that Mr Kanaris had badgered him for more money,[49] and that he had paid the $5,200 under the duress of the threat that if he did not, everyone would lose their money.[50] The judge then reminded the jurors that the contents of a letter of demand Mr Stephenson had sent Mr Kanaris were not evidence of their truth, and had been admitted only to establish the date on which it was sent. The judge also reminded the jury of Mr Stephenson's evidence in cross-examination, that inquiries he had made as to whether Mr Kanaris owned property in Greece had resulted in the conclusion that the company retained to make those inquiries could not find out the answer one way or another. The jury were also reminded that Mr Stephenson had not said in the Magistrates Court that the $4,000 which formed the basis of count 13 had come from Mr Wackner, and that he had said in the Magistrates Court that the $4,000 was his, and the judge explained to the jury that the impact of that on Mr Stephenson's credibility was a matter for them.

[75] The judge reminded the jurors of evidence in cross-examination in which Mr Stephenson rejected the suggestion from Mr Kanaris that, apart from an amount of $12,000, the rest of the money lent to Mr Kanaris had been on a friendly basis rather than part of a business deal, and that Mr Stephenson also rejected suggestions that he encouraged others to complain to the police about Mr Kanaris. The judge reminded the jurors of the ANZ Bank records recording the deposit of the $5,200 on 30 April 1997, and a withdrawal or withdrawals at the Carindale Hotel on that same day of $1,000, and a further withdrawal on 1 May 1997 of $3,200. There were then withdrawals on 2 May 1997 totalling $1,000 made at the Treasury Casino, and three withdrawals on 5 May 1997 totalling $500 at the Eagle Farm Racecourse. Casino records indicated that Mr Kanaris lost $2,400 at the tables on 1 May 1997, and $5,000 that month at the tables. The judge then gave the jurors the elements direction and arguments direction.

Count 16

The charge and evidence

[76] Count 16 related to $5,000 that Mr Kanaris had obtained from a Graham Sellers on 20 January 1997. The charge alleged that on that date partly by (the standard) false pretence, and partly by the false promise that Mr Kanaris would pay Mr Sellers $10,000 when the (Kos) property settled, he obtained that $5,000 with intent to defraud Mr Sellers. Mr Stephenson had given evidence about that matter, which was to the effect that in early 1997 Mr Kanaris had asked him for some more money, which Mr Stephenson said he did not have. Mr Kanaris had asked whether he could arrange for someone else to lend money to him, and as a result Mr Stephenson spoke with a John Hankins. That led to a meeting between Mr Stephenson, Mr Kanaris, Mr Hankins, and a Mr Wackner in January 1997; on that same date Mr Stephenson spoke with Mr Sellers. That was at Mr Sellers' work place at Pimpama, and Mr Stephenson went there with Mr Kanaris. The purpose of the visit was to borrow $5,000, which had been spoken about prior to that day and at the meeting with Mr Hankins and Mr Wackner.

[77] At the meeting with Mr Sellers, Mr Kanaris confirmed what Mr Stephenson had said to Mr Sellers on the phone as to the purpose of the loan, that being for finalising details on the sale of the land on the Isle of Kos. Mr Sellers gave Mr

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[49] AR 104
[50] AR 216

Kanaris a cash cheque for $5,000 drawn at the ANZ Bank at Benowa, and, at the request of Mr Kanaris, Mr Stephenson banked that into an account for Mr Kanaris the next day. Mr Kanaris gave Mr Sellers an acknowledgment of debt dated 20 January 1997, promising to repay $10,000 on or before 28 February 1997. Seventeen per cent interest was promised on the sum of $5,000 should payment be late. Thereafter Mr Stephenson remained in constant contact with Mr Kanaris, who went to Greece not long after.

[78] Mr Sellers' evidence generally accorded with that of Mr Stephenson. Mr Sellers recalled a telephone call in January 1997 made to his office, in which he spoke firstly with Mr Stephenson and then with Mr Kanaris, and recalled an agreement to lend $5,000 to Mr Kanaris, who described the purpose of the loan as to allow him to go to Greece to finalise settlement and sale of "this property."[51] The loan was to be for a very short period of time, and Mr Sellers would be repaid double the amount by 28 February. Mr Sellers understood that Mr Kanaris would be travelling to Greece almost immediately "on the basis of the property being settled to enable payment of these funds back to me by that due date".[52] The funds were advanced to allow Mr Kanaris to go to Greece to settle the property. They were never repaid.

The summing up

[79] The learned trial judge reminded the jurors of the terms of the count, of the evidence of Mr Stephenson and of Mr Sellers, and of the acknowledgment of debt. He reminded the jurors of the ANZ Bank statement recording a $5,000 deposit into the account of Mr Kanaris on 21 January 1997, and a withdrawal of that same amount that day at the Carina branch. Immigration records also recorded that Mr Kanaris left this country that day, arriving back on 21 February 1997.

[80] The judge reminded the jurors of the Jupiters Casino records demonstrating that on 24 February 1997, after Mr Kanaris returned to the country,[53] there was a $1,764 loss by Mr Kanaris on the tables in that casino, and a $452 loss at the machines that same day (excluding any jackpot wins under $5,000). The judge gave the jury the elements direction and the arguments direction.

Count 17

[81] Count 17, the last count charging a breach of s 427, was founded on the $8,000 Mr Breakspear was induced to deliver to the benefit of Mr Kanaris. The count alleged that on or about 21 April 1997 Mr Kanaris induced Mr Breakspear to deliver that amount to Mr Stephenson with intent thereby then to defraud, the inducement being partly by (the standard) false pretence and partly by a wilfully false promise that Mr Kanaris would repay Mr Breakspear the $8,000 on his return from (overseas).

The summing up

[82] The judge reminded the jurors of the evidence they had heard from Mr Stephenson about the events at the Boat Show International, and the role Mr Stephenson had played in brokering the proposed sale of the Princess boat to Mr Kanaris. The judge reminded the jury of Mr Stephenson's evidence about that transaction and of the

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[51] At AR 386
[52] AR 388
[53] See AR 2176

evidence from Mr Breakspear, and of the cross-examination by Mr Kanaris as to whether Mr Breakspear had been present in the business when Mr Kanaris returned from Greece in early 1997. The judge also reminded the jury that the agreed record of departures and arrivals from the Immigration records showed that Mr Kanaris had next left the country (after mid-April 1997) on 15 June 1997, returning on 28 June 1997. Mr Breakspear had said in re-examination that he had been in hospital in June of 1997.

[83] The judge reminded the jurors of ANZ Bank records recording the deposit of $8,000 on 21 April 1997, and a withdrawal of $4,000 at the Carina branch that same day, and two withdrawals on 23 April totalling $1,000 at the Jupiters Casino, followed by another withdrawal of $2,500 that same day at Broadbeach. There was then a withdrawal of $200 at Jupiters Casino on 24 April 1997, leaving a balance of $9. Casino records recorded that at Jupiters Casino Mr Kanaris lost $6,140 at tables between 18 April 1997 and 24 April 1997, and $4,651.50 at machines in the same period (subject to the fact the machine figures do not include jackpot wins under a value of $5,000). He had a monthly loss in April 1997 at Jupiters at tables of $14,353, and of $9,408 at machines (subject to the same qualification). The judge gave the jurors the elements direction, the arguments direction, and the specific direction that the Crown relied on the fact that the promise made was that the money would be used to travel to Greece. It was obtained on 21 April 1997, and Mr Kanaris next went to Greece in June.

Count 18

The charge and evidence

[84] Count 18 was the first count charging an offence against s 408C(1)(b) of the Code, that section having come into force on 1 July 1997. That count charged that on or about 7 October 1998 Mr Kanaris dishonestly obtained $5,000 from Cameron Searson. There is a considerable background history relevant to that alleged offence.

The background

[85] In 1997 and 1998 Mr Searson was the VIP marketing manager at the Crown Casino in Melbourne. His job was to attract "high rollers" to that casino, those being punters who had $5,000 or more in "front money", meaning that that was what those punters took with them on each visit to the casino. Mr Searson knew Mr Kanaris by reason of Mr Searson's occupation, having first met him in May or June of 1997. On Mr Searson's observations, Mr Kanaris was a regular client at that casino, and one who was given what were called "comps", complimentary services that the casino would provide for gamblers based on the extent of their play. Those services included bookings for airlines, for limousines, and the like. Mr Searson thought that Mr Kanaris was a wealthy businessman, because he had seen Mr Kanaris come to the Crown on a regular basis, spending $40,000 to $50,000, each time;[54] Mr Kanaris at some stage told Mr Searson that he owned a hotel in Greece, in Santorini, and got monthly payments from that hotel. Mr Kanaris also said he had other business interests, including beachfront land which he was developing into a resort, and which was valued at anything from $16 million to $55 million.[55]

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54 Evidence to this effect was given at both AR 439 and AR 444

55 See AR 440

[86] In July or August 1998 Mr Searson left his position at the Crown Casino, and he was given a redundancy and accumulated entitlement and bonus payout, totalling $120,000. Because he had a good relationship with Mr Kanaris in the latter's role as a client of the Crown Casino, and because Mr Kanaris had said to him that if Mr Searson was ever in Queensland to call Mr Kanaris and they would go fishing on "my boat",[56] Mr Searson took Mr Kanaris up on that offer when Mr Searson, his wife, and his two very young children all moved to Queensland.

[87] Mr Kanaris agreed to meet Mr Searson for a coffee at Surfers Paradise, and Mr Searson explained how he was looking for a house to buy and do up as an investment. Mr Kanaris advised against doing that, and, on learning that Mr Searson had roughly $60,000 to invest, advised that he might be able to arrange the assignment of a debt which had been awarded in the Southport Magistrates Court against an entity trading as Miami Club. The debt was owed to a company Mr Kanaris called "Bridgecomp", which he said needed cash flow; and while the debt was worth about $103,000, Mr Kanaris believed Mr Searson could acquire it for $60,000 because Bridgecomp needed that money quickly.

[88] Mr Kanaris and Mr Searson thereafter kept in regular touch, and Mr Kanaris stressed that he wanted to help Mr Searson become re-established in Queensland, and that Mr Kanaris could provide Mr Searson with a great opportunity. Accordingly Mr Searson met with Mr Kanaris, and Mr Hankins, and a Mr Wood. Mr Searson's evidence-in-chief was that the meeting was in Tweed Heads, New South Wales, although he agreed in cross-examination it may have been in Queensland. At that meeting the group discussed the proposed assignment of the debt to Mr Searson, who was told that payments by the debtor of $500 a week were being made, plus 10.5 per cent interest, equating to about $700 per week. Mr Searson thought that was a great opportunity for him to secure an income for his family, and he was also told that Bridgecomp would buy the assignment of debt back for $103,000 at the end of the year.

[89] Mr Searson was still not entirely comfortable with the proposition, and accordingly Mr Kanaris offered to provide a personal guarantee for the $60,000 "based on my assets overseas".[57] Mr Kanaris also explained that Mr Wood was the Managing Director of Bridgecomp, and that Mr Kanaris was attempting to broker the deal for Mr Searson before the owner of the building in which the Miami Club was situated purchased the assignment of the debt. Mr Wood's evidence was that he was the "beneficial owner"[58] of Bridgecomp (Bridgecomp Pty Ltd) and its sole Director.[59]

[90] Documents were produced, one being an assignment of a debt, and the other a guarantee, and after changes were made at Mr Searson's request, they were signed, with the assignment containing an agreement by the assignor to repurchase the judgment debt for $103,000 in three months. Mr Kanaris also signed a document which promised that "Cameron will have a full claim on any assets in Australia or overseas,"[60] purportedly guaranteeing repayment of the $60,000. Mr Kanaris and Mr Searson then went to the National Bank in Tweed Heads, where, at the specific request of Mr Kanaris, Mr Searson gave Mr Kanaris $15,000 in cash and deposited

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56 At AR 437
57 At AR 445
58 AR 704
59 AR 701
60 At AR 444

$45,000 into Mr Kanaris' Crown Casino Gaming Account.[61] That happened on 22 September 1998: the money was all withdrawn over that day and the next two,[62] during which Mr Kanaris lost over $37,000, beginning gambling just before midnight on 22 September 1998.[63] He had arrived in Melbourne late that night. Mr Wood's evidence was that the assignment of the debt was security, offered by Mr Wood, for the loan Mr Searson had made to Mr Kanaris to help with the land sale in Greece.

[91] It will not surprise to learn that Mr Searson did not receive the promised debt repayments, and after some two to three weeks he contacted Mr Kanaris, who suggested that Mr Searson get in touch with the Miami Club. Mr Searson did, and the club manager advised that there was a problem with the ownership of that debt, because a Barry Vial claimed that it had been assigned to him, and had produced a solicitor's letter asserting that.

[92] Mr Vial, called by Mr Kanaris, produced evidence that he and his wife were the acknowledged owners of the only shares in Bridgecomp Pty Ltd, for whom Mr Wood and his wife held the shares in the company on trust. On 22 September 1998 Mr Vial's solicitor had requested the club to stop making repayments until the dispute between the Vials and the Woods was resolved, and not to make debt repayments to the company via Mr Wood. On 11 September those solicitors had advised the Secretary of the Miami Club that Mr Wood "had ceased trading". Mr Vial then initiated court action against Mr Wood, to enforce the contention that Mr Vial controlled the company, and how repayments to it should be made (the action eventually lapsed after the club went into liquidation). Mr Searson, acting on more advice from Mr Kanaris, went to see a solicitor, after the club manager advised him of the dispute over the right of control of the debt repayments. The solicitor informed Mr Searson that there was currently a case being litigated between Mr Vial and Bridgecomp, in a court in Southport. Mr Kanaris then told Mr Searson that Mr Searson had to challenge that claim by Mr Vial, or else Mr Kanaris would withdraw his guarantee.

[93] Mr Searson attempted to do so, but the judge (as Mr Searson described the presiding judicial officer in Mr Searson's evidence in the criminal trial) told Mr Searson that the latter was not a party to the dispute and that the judge could not hear from him. This was relayed to Mr Kanaris, who insisted that Mr Searson intervene. Mr Searson learnt that Mr Vial claimed an assignment of the debt to him on 11 September (prior to Mr Searson's assignment), but Mr Kanaris continued to insist that Mr Searson had to challenge Mr Vial's claim. Mr Searson again did so in those proceedings, again unsuccessfully, and got no money from the debtor. Mr Kanaris then agreed to honour his guarantee, but only after he had finalised "the sale of some land in Greece", that being the land that Mr Kanaris had originally told Mr Searson that Mr Kanaris was going to develop. Mr Kanaris explained, in October 1998, that he expected the sale to be finalised by the end of that month.

Count 18 itself

[94] Those dealings provide the background to the offences charged in counts 18, 19, and 21, and are relevant to the count involving an Anthony Britten, count 20. Count

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61 At AR 445
62 AR 2171
63 See AR 2159; 2153; and 2142

18 charged that on or about 7 October 1998, Mr Kanaris dishonestly obtained $5,000 from Mr Searson. No count was charged based on the $60,000 paid for the assignment of the debt owed to Bridgecomp, but that dealing lay behind count 21. In early October 1998 Mr Searson was still satisfied with the promise of repayment of $60,000 (the guarantee) by the end of that month, and in other conversations at about that time Mr Kanaris explained how he had purchased 100 bread making machines from Germany that were worth $10,000 each, and which could be sold for anything up to $20,000 each. Mr Kanaris offered to give Mr Searson 40 per cent of that business, in which Mr Kanaris wanted to get his own son involved, but for which he needed somebody with business experience, like Mr Searson, to steer it in the right direction. Mr Searson thought that proposition sounded "pretty good to me",[64] and Mr Kanaris asked if Mr Searson could possibly lend him $5,000 until his monthly payments from the hotel he owned in Greece arrived. Mr Kanaris explained that he had caught himself a bit short that month. Mr Searson agreed to make the loan, because he felt obliged to, considering that Mr Kanaris was offering Mr Searson 40 per cent of the business, which was potentially worth quite a lot of money. On 7 October 1998 he paid $1,500 into a solicitor's account at Mr Kanaris' request, and $3,500 into Mrs Kanaris' Suncorp Metway account. He lent the money because he understood Mr Kanaris had expended his money on paying all the transport costs of the bread machines from Europe to Australia, leaving Mr Kanaris a little short.[65] Mr Searson has never been repaid that $5,000.

[95] He asked for it back as Christmas 1998 approached, explaining to Mr Kanaris the obvious need he had for money at that stage. Mr Kanaris replied to those requests with the response that he would able to repay Mr Searson when the sale of the land in Greece went through. That might take between two to six weeks.

The summing up

[96] The learned trial judge gave directions which reminded the jurors of those background dealings between Mr Searson and Mr Kanaris, including the payment of that $60,000, and the circumstances described by Mr Searson in which he paid the $5,000 to Mr Kanaris. The judge reminded the jurors of the cross-examination by Mr Kanaris, in which Mr Kanaris had suggested to Mr Searson that the $1,500 was to pay legal fees that Mr Searson owed to a Mr Keller and Mr Boulton; and that Mr Searson had denied that. The judge reminded the jurors of evidence of the deposit on 7 October 1998 of $3,500 in Mrs Kanaris' account, and the withdrawal that same day of $500 and of $2,000 on 8 October 1998. He also reminded the jurors of the Treasury Casino records showing that Mr Kanaris lost $250.90 at the machines on 8 October 1998, and $3,161.35 on machines for that month. Both those observations were expressly subject to the qualification that the Treasury Casino machines do not record jackpot wins under $5,000. The learned judge explained what the Crown was required to establish to prove that charge, and what constituted proof of dishonesty, and of the Crown argument as to falsity and dishonesty by Mr Kanaris. The judge advised the jurors that there was no evidence before them whether or not there existed any bread making machines, or business interest in Greece, and of the argument by Mr Kanaris that the jurors could not be satisfied beyond reasonable doubt that the dealing was dishonest or that he did not have the business interests he spoke of, including in the bread making machines. It was open to the jurors to be

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64 At AR 454
65 At AR 457

satisfied that Mr Kanaris never intended at any stage to repay any of the $5,000, and that therein lay his essential dishonesty.

Counts 19 and 20

The charges and evidence

[97] The learned judge dealt with counts 19 and 20 together in the directions to the jury. Count 19 involved a further amount of $7,000 obtained, allegedly dishonestly, from Mr Searson on or about 30 October 1998; and count 20 alleged that Mr Kanaris dishonestly obtained $20,000 from Anthony Britten on or about 16 October 1998. Mr Britten was a friend of Mr Searson, who introduced Mr Britten to Mr Kanaris in October 1998, probably in the early part of that month. Mr Britten had extensive experience in the gaming industry and Mr Searson was his best friend.

[98] Mr Britten's evidence was that Mr Kanaris described a business opportunity he had in Greece, which was to set up gaming venues in differing locations, mainly tourist hotel destinations. The proposal involved placing poker machines in resorts and hotels, which would be a very profitable business to be in, and Mr Kanaris said Mr Searson needed cash up front from Mr Britten for Mr Searson to be involved in the project.[66] Mr Britten made it clear[67] that he was not to be a participant, just a creditor to Mr Searson. Mr Britten had a very limited recollection of the conversations which resulted, as he swore, in his handing Mr Kanaris $10,000, and also a bank cheque made out in the name of Mrs Kanaris, also for $10,000. What Mr Britten recalled was that that money was to be invested "by Cameron in the project",[68] and it would be repaid (by Cameron Searson) within "about three to four months".[69] Mr Britten's evidence in chief was that it was as a result of discussions with Mr Searson that he paid the $20,000 to Mr Kanaris.[70] Mr Kanaris suggested later that the knowledge and background which Mr Britten possessed would contribute to the project, in which Mr Britten would actually be a partner; those suggestions were made in early 1999, long after Mr Britten had paid over his $20,000.

[99] Mr Searson's evidence on those counts largely concentrated on count 19. He swore that Mr Kanaris had spoken of obtaining a gaming licence over some of the Greek islands to operate gaming machines on ships, ferries, and in hotels. Mr Kanaris spoke with Mr Britten and Mr Searson about it, and they were both willing to consider the project. What Mr Kanaris told them at a meeting between himself, Mr Searson, Mr Britten, Mr Hankins, and Mr Wood, was that he had an option to secure a three year exclusive gaming licence to operate machines as described, for a cost of $US3 million, that he would take care of the finance side of it, and he needed their expertise to set it up. Mr Searson and Mr Britten were both quite excited about that project, each having previously worked overseas in the gaming industry, and both thought it a tremendous opportunity.

[100] After a couple of days Mr Kanaris contacted Mr Searson again, advising that it would be necessary to come up with $210,000 to pay a "government official over

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66 This evidence is given at AR 622-624
67 At AR 623 L22
68 At AR 623
69 At AR 624
70 AR 623

there" to secure the licence; when Mr Searson told Mr Britten of that, Mr Britten was not keen on the idea but agreed to discuss it with Mr Kanaris. The three of them met at Mr Kanaris' home, and Mr Britten was reluctant to give Mr Kanaris $70,000 (one third of $210,000) until Mr Kanaris produced proof of the option; which Mr Kanaris said he could not do, because he had to first secure the licence. Mr Kanaris expressed offence at Mr Britten's attitude of distrust, and described his proposal as a golden opportunity to get in on a very lucrative business. In Mr Britten's absence, Mr Kanaris showed Mr Searson a document which referred to an offer (in a foreign language, apparently Greek) to buy something for $US16.5 million. Mr Kanaris explained that that was an offer on the land and that it would settle either in two, four, or six weeks; Mr Kanaris was unsure.

[101] Mr Searson did agree to be involved in the gaming licence proposal, if Mr Kanaris would accept the assignment to him of the debt for which Mr Searson had previously paid $60,000, plus what Mr Searson had already given to Mr Kanaris in cash, as payment for half of the gaming licence business, in which Mr Searson would have an equal share. Mr Searson understood Mr Kanaris agreed with that, and soon after Mr Kanaris contacted Mr Searson explaining that he needed $30,000 to pay an application fee for the licence.

[102] Mr Searson told Mr Kanaris that he had no more money, and Mr Kanaris suggested that Mr Searson try to get another mortgage on his wife's house in Tasmania. When Mr Searson said that was not an option Mr Kanaris became angry, and said that Mr Searson was not helping. Some days later Mr Kanaris called again and said he could borrow the $30,000 to pay the application fee from a friend of his who was a travel agent, but he had to pay that back by the end of the week; otherwise his friend could not fulfil his friend's obligation with airfares, and Mr Kanaris did not want that on his conscience. Mr Kanaris then explained he had been able to raise about $22,000, and Mr Searson said he could probably get the other $7,000. After a conversation with his wife, he persuaded her to agree to their using the remaining credit on their various credit cards and to their depositing $7,000 into a Suncorp Metway account in the name of Mrs Kanaris. That deposit was made on 30 October 1998. Mr Searson swore it was lent so that Mr Kanaris could pay back the friend from whom he had borrowed the $20,000 for the application fee for the gaming licence, and Mr Kanaris promised to repay the $7,000 – and the $5,000 – by the end of the month. It was not repaid, and has never been repaid.

[103] Returning to count 20 and the $20,000 lent by Mr Britten, Mr Searson's evidence was that he was involved in procuring that loan. Mr Kanaris had contacted Mr Searson on 15 October 1998 saying that he needed $20,000, and specifically asked Mr Searson to ask Mr Britten for it, promising to repay Mr Britten $30,000. Mr Searson did not say that Mr Kanaris said why he needed that $20,000. Mr Searson did ask Mr Britten for the $20,000 and he undertook to Mr Britten that Mr Searson would guarantee repayment of the $20,000 to Mr Britten.[71] Mr Kanaris continued to represent that repayment would happened before Christmas 1998, and would result from the sale of the land in Greece. On Mr Searson's account it was on or about 13 October 1998 that Mr Kanaris asked him to ask Mr Britten for $20,000, and Mr Britten paid it to Mr Kanaris two days later. That evidence accords with the banking evidence. On Mr Searson's evidence, Mr Britten had paid the $20,000 to

[71] At AR 464

Mr Kanaris before[72] the three men had a conversation about the proposed gambling business in Greece, and before Mr Kanaris told them of the need to pay $210,000 to a government official.

The summing up

[104] The learned trial judge reminded the jurors of all of that evidence, of evidence from Mrs Searson, of Mr Britten's evidence that he did not lend the money to Mr Kanaris but rather to Mr Searson, and of the matters that the Crown had to establish to make out either count. The judge directed the jury that the difference in view between Mr Searson and Mr Britten as to whom Mr Britten lent the $20,000 was irrelevant if the jurors were satisfied that conduct by Mr Kanaris occurred as described by both Mr Searson and Mr Britten, and were satisfied that the $20,000 was dishonestly obtained by Mr Kanaris by means of the representations Mr Searson and Mr Britten alleged he had made to them. The learned judge directed the jury that if they accepted Mr Britten's evidence, the money and the bank cheque came directly from Mr Britten to Mr Kanaris, and the question then became whether it was dishonestly obtained. The judge reminded the jurors that there was no direct challenge to Mr Britten's evidence that Mr Kanaris received the $20,000, and the issue was honesty or dishonesty.

[105] The judge reminded the jurors of the withdrawal on 16 October 1998 of $5,000 from the account into which a $10,000 cheque was deposited that same day. The judge also reminded the jurors of evidence from the Crown Casino of patron comment reports, recording that Mr Kanaris arrived at that casino on 16 October 1998, and left on 20 October. Between 16 and 19 October he lost $5,319 and received various complimentary services on 18, 19, and 20 October. Next, at the Conrad Treasury Casino Mr Kanaris lost $1,049.20 on 21 October 1998 at machines (subject to the qualification about jackpot wins). The judge also reminded the jurors of evidence of withdrawal on 30 October 1998 of two amounts totalling $5,000 and a withdrawal of $2,000 on 2 November 1998, and of records from the Treasury Casino. Those records recorded a loss by Mr Kanaris on 30 October 1998 of $1,861.25 at gaming machines (reminding the jurors that that did not include jackpot wins under $5,000), and a loss at those machines for the month of October of $3,161.35.

[106] The learned judge gave the elements direction, the arguments direction, and in the latter reminded the jury of the prosecution argument that the representations about business ventures overseas were based on representations about large funds coming from the settlement of the land, and were said to be a variation on the theme, with the representation of repayment from settlement of the land deal in Greece being false. The judge also reminded the jurors of the explanation of what constituted dishonesty.

[107] The important issue on this conviction, although not the one Mr Kanaris raised, is whether he was the person who obtained the $20,000 from Mr Britten, and to a lesser extent whether he did so dishonestly. The direction the learned trial judge gave, in re-direction,[73] concentrated on dishonesty and was:

> "The Crown case is that the dishonesty of Mr Kanaris related to the representations he had allegedly made to Mr Searson and to Mr

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[72] AR 463 L 50; 624 L5

[73] Reproduced at AR 1893-94

> Britten and that those representations made Mr Britten hand over the money to Mr Kanaris.
>
> Now, it doesn’t matter in that circumstance whether Mr Kanaris directly made representations to Mr Britten. If he made dishonest representations to Mr Searson and Mr Searson convinced Mr Britten to hand over the money, then there is still dishonesty in Mr Kanaris if that is proved to you beyond a reasonable doubt. So if your concern is about the evidence about whether Mr Kanaris directly made representations to Mr Britten, it doesn’t matter. If you are satisfied beyond a reasonable doubt that he dishonestly made representations to Mr Searson and because of that Mr Britten eventually handed over the money, well that’s that element of the offence proved. Whatever the arrangement was between Mr Searson and Mr Britten is irrelevant to that consideration.
>
> If you are satisfied beyond a reasonable doubt that the conduct of Mr Kanaris occurred as described in their evidence of both Mr Searson and Mr Britten, then you must consider whether the Crown has proved to you that the $20,000 was dishonestly obtained in the way that I’ve described. The difference in the views of each Mr Searson and Mr Britten as to who was the actual lender is irrelevant to that consideration.”

[108] That direction implied that the evidence on count 20 was much the same as for counts 2, 3, 4, and 5, where there was evidence of an original representation by Mr Kanaris to Mr Whateley which induced Mr Whateley to lend money, followed by further requests for money, communicated by Mr Stephenson. The direction implied that Mr Kanaris had made representations directly himself to Mr Britten before the $20,000 was handed over. But Mr Britten did not say he was persuaded to lend money to Mr Kanaris, or that anything Mr Kanaris said to him caused him to lend Mr Searson the $20,000, as Mr Britten said he did. And on Mr Searson’s account, Mr Kanaris had not made any promises or presentations to Mr Britten, other than a promise of repayment of $30,000, made via Mr Searson. The promise alone is not sufficient to sustain a conviction, even though Mr Kanaris clearly intended that Mr Searson would relay to Mr Britten both the request for $20,000 and the promise to repay it, and even though that promise was dishonest. That dishonest promise, on Mr Britten’s evidence, was not the reason he paid away $20,000. He did that because Mr Searson was his best friend, and Mr Britten had no actual expectation that any more than $20,000 would be repaid.[74] Because Mr Britten’s reasons for insisting his loan was to Mr Searson as principal, albeit paid directly to Mr Kanaris, include that it was what Mr Searson said to him, not what Mr Kanaris said, that led to the loan, the conviction on count 20 should be set side. The verdict cannot be supported having regard to the evidence.

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[74] AR 624

Count 21

The charge and evidence

[109] Count 21 alleged that on or about 16 January 1999 Mr Kanaris dishonestly induced Mr Searson to deliver to him a judgment debt in relation to the plaint in action number 183/96, (the one against the Miami Club) and that that property was of a value of more than $5,000. The count related to the circumstances in which Mr Searson reassigned to Mr Kanaris the judgment debt Mr Searson had acquired for $60,000. Mr Searson's evidence was that Christmas 1998 had come and gone without any money being repaid to him, and he had asked Mr Kanaris if Bridgecomp Pty Ltd would be repaying him the $103,000. Mr Kanaris advised that he did not know about that, and Mr Searson asked to be paid the guarantee of $60,000. Mr Kanaris agreed to that, with no indication of when, and informed Mr Searson that Mr Kanaris still had regular contact with Mr Wood, the director of Bridgecomp, whom Mr Searson was now unable to locate.

[110] By early January 1999 Mr Searson was pressing for repayment, and Mr Kanaris somewhat angrily responded that Mr Searson would not get the money until the land settled. More requests for repayment resulted in Mr Kanaris promising to purchase the assigned debt from Mr Searson, for $60,000, which would be paid by a cheque drawn on an account which was not then in funds, and which would only be placed in funds when the land settled. Mr Searson agreed to that, and on 16 January 1999 executed a deed in which he assigned to Mr Kanaris his interest in the debt; the deed recited that Mr Kanaris had satisfied the guarantee. On that same date Mr Searson signed an acknowledgment of having received a cheque for $60,000, and also acknowledging that there was no credit funds available at present. He did that because Mr Kanaris had said that settlement was "imminent".[75] Mr Searson's evidence was that Mr Kanaris expressly told him not to present the cheque because it would not be paid until funds were received from the sale of the land within a couple of weeks.

[111] Unsurprisingly, Mr Searson was never advised by Mr Kanaris that funds had been received and that that account was in credit, and when Mr Searson pressed for money in February 1999 he was told to "go and see a lawyer and don't ring me again, you arsehole".[76] That resulted in Mr Searson driving to Mr Kanaris' home, demanding to see him, but Mr Kanaris refused to come out. When Mrs Searson attempted to present the cheque she discovered, after paying a $35 fee, that payment on it had been stopped. Mr Searson has not been repaid any money by Mr Kanaris.

The summing up

[112] The learned judge's directions to the jury on that count including reminding them of the evidence by Mr Searson, and of the need not to be in any way prejudiced by the account, given both in evidence in chief and cross-examination, of the confrontation between Mr Searson and Mr Kanaris at Mr Kanaris' home. The directions included referring the jury to a considerable body of evidence from Mr Wood, the director of Bridgecomp Pty Ltd, not reproduced in this judgment, which evidence included that Mr Wood too had been told by Mr Kanaris about the valuable property in Greece

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75 At AR 467

76 At AR 470

which was under contract for sale, to be completed within a relatively short time, yielding proceeds of millions of dollars. Those statements were made in a period in which Mr Wood understood that Mr Kanaris intended to purchase a house from a Mr Hankins for between $500,000 and $600,000. Mr Hankins wanted to borrow $20,000 from or through Mr Wood, who practised in Tweed Heads as a conveyancer, so that Mr Hankins could lend that money to Mr Kanaris to enable Mr Kanaris to settle the purchase of the land in Greece and then buy Mr Hankins' property. Mr Wood was able to secure funds to lend to Mr Hankins, which Mr Wood understood would be lent as a short term loan, as the settlement of the land in Greece was "imminent".[77]

[113] As time passed Mr Kanaris revealed to Mr Wood further difficulties Mr Kanaris was experiencing in Greece in having the contract settled, which resulted in more money being lent (by variation of a mortgage on Mr Hankins' house granted to a financier Mr Wood introduced) to Mr Hankins, and then on lent to Mr Kanaris. Over time Mr Wood became increasingly entangled in the affairs of Mr Kanaris, and ended up working for him on a full time basis, leaving his practice in Tweed Heads and moving to Brisbane. The net result was that no monies lent to Mr Kanaris were repaid, because the land did not settle.

[114] There were no charges laid in respect of the monies borrowed from Mr Hankins, but Mr Wood's evidence about that was relevant as background evidence to Mr Wood's dealings with Mr Searson, whom he met through Mr Kanaris. Mr Wood confirmed in his evidence that that company did hold a judgment debt against the entity trading as Miami Club, which was worth around $100,000, and which was being paid off in instalments of $500 per week. Mr Wood's evidence was that there was no dispute in relation to the debt, but agreed there was a dispute about the ownership of the company Bridgecomp. Mr Wood swore Bridgecomp did not receive any of the $60,000 paid by Mr Searson, and it did not get a re-assignment of that debt from him.

[115] The learned trial judge carefully directed the jurors in detail about the cross-examination regarding the dealings between Mr Wood, Mr Searson, and Mr Kanaris, and about evidence from Mr Vial. The latter's evidence too was that there was ultimately a dispute as to whether repayment should be to Mr Wood or Mr Vial. The learned judge also directed the jurors about evidence from a Mr Tagi, called by Mr Kanaris in respect of those dealings.

[116] The judge directed the jurors on the elements of the offence alleged in count 21, the need to determine whether the judgment debt had value and, if as alleged, a value of more than $5,000, and reminded the jurors of the Crown submission that the representations to Mr Searson by Mr Kanaris were dishonest because they continued the falsity that the land would settle, and that funds would be available and paid from that settlement to Mr Searson. The judge reminded the jurors of the submission by Mr Kanaris that there was no dishonesty; Mr Kanaris argued he had simply re-purchased the debt and had said he would pay when the land was settled.

[117] The judge reminded the jurors of the payment of the $60,000 in September 1998 followed by the $45,000 transfer to the Crown Casino that day, and the records of that casino recording a $52,856 loss in September 1998, and the records of the

[77] At AR 686

Treasury Casino recording a $2,319.05 loss in that same month, September 1998. The judge reminded the jurors of the elements of the charge, the necessity for the prosecution to prove dishonesty, and the prosecution submission that by promising Mr Searson repayment when the land in Greece settled, Mr Kanaris simply continued with representations which had begun years before. The judge also reminded the jurors of the argument that Mr Kanaris made that they could not be satisfied that those were dishonest dealings, or that he did not have the land in Greece; and the necessity to find dishonesty as earlier explained by the learned judge. The directions also reminded the jurors that there was no challenge to the evidence that the debt was worth $103,000 in September 1998, and of the dispute as to the ownership of it.

[118] The evidence did entitle the jury to find that the debt had value in September 1998, but not that Mr Wood could legitimately bind the company on 22 September. He knew then of the unresolved challenge by Mr Vial. It follows that the jury could not conclude the company had assigned the debt to Mr Searson on that date, or that, if Mr Wood could act as the company on 22 September, he could cause it to assign the beneficial title to the debt. That in turn means the jury could find the document Mr Searson held might found a claim against Mr Wood, but not one against the company for the debt.

[119] Regarding count 21 Mr Kanaris complained that he had not been prosecuted for any offence committed when Mr Searson acquired the assignment of debt, because the prosecutor had informed the learned trial judge that the meeting at which Mr Searson agreed to pay $60,000 for the assignment of that debt, and executed the agreement, had happened in Tweed Heads in New South Wales. Mr Kanaris argued on the appeal that the evidence of Mr Wood was that the agreement had been made in Queensland, and that in cross-examination Mr Searson had conceded that was possible. Mr Kanaris argued that it followed that the prosecutor had wrongly and inaccurately told the judge the meeting occurred in New South Wales, and that was done so that the prosecutor could avoid proceeding on that charge.

[120] Mr Kanaris did not make clear what the asserted motive could possibly be for the prosecutor allegedly misleading the judge, to avoid prosecuting him. He did complain about dishonesty and conspiracy. The simple fact is that Mr Searson's evidence-in-chief was that the agreement to pay the $60,000 was made in New South Wales, and the prosecution was troubled about jurisdiction. The only result of that was Mr Kanaris did not face a 23rd count before the jury. His oral argument did not explain how that disadvantaged him in any way. If Mr Kanaris was fair, the only observation he could make about the conduct of the prosecution by Ms Merrin was that she prepared and presented the case against him so well that he did not even bother trying to answer it from the witness box.

[121] One important issue on this ground (again, one not raised by Mr Kanaris) is whether or not Mr Kanaris could have induced Mr Searson to deliver a judgment debt to Mr Kanaris, as alleged. For Mr Searson to do so, it was necessary that Mr Searson had obtained an assignment of that judgment debt to him. The evidence led by the Crown established that Mr Vial had genuinely asserted a right at the relevant time to control assignment of that judgment debt. In those circumstances, though the jury were entitled to accept that the judgment debt was worth more than $5,000 in September 1998, they could not have been satisfied that Mr Searson had acquired a beneficial title to it which he could be induced to deliver to Mr Kanaris or anyone

else. The other is that the prosecution did not prove Mr Searson suffered a loss by his purported assignment of the debt to Mr Kanaris. It did prove he suffered a loss when the cheque for $60,000 was dishonoured, but that was not the basis for the charge laid, which focused on the consideration Mr Searson offered, not on the fact that Mr Kanaris gave nothing of value for it. The conviction on that count should be set aside.

Count 22

The charge and evidence

[122] Count 22 alleged that on 29 March 2000 Mr Kanaris dishonestly induced one David McKie to deliver $50,000 to Kitty Brown. Mr McKie, when working in early 2000 as a real estate agent for LJ Hooker in Birkdale, was contacted by a Kitty Brown. She had been a work associate of his at another real estate agent firm in 1999. Ms Brown introduced Mr McKie to Mr Kanaris, because she had heard that Mr McKie had his house on the market for sale, and Mr Kanaris might be a purchaser.

[123] Those three people met on 11 March 2000. In the course of discussion Mr Kanaris revealed to Mr McKie that "they" were involved in a big property development in Greece, which was due to settle on 1 April 2000. However, there were outstanding rates and bills, and "they" needed extra money just to settle that. Mr Kanaris proposed purchasing the McKie's house and renting it back to them, as a favour to the McKies, and it was suggested to Mr McKie that he could do a favour in return to "them", by putting up $50,000 to help "them" settle "that big development in Greece".[78] Mr Kanaris promised to pay to Mr McKie $60,000 a year for two years when the property settled in Greece; there would be a $20,000 up front payment.

[124] Mr Kanaris suggested repaying the $50,000 as follows: Mr McKie had their home listed for sale at $269,000, and Mr Kanaris suggested that the contract show $319,000, with the $50,000 being repaid as part of an increased purchase price. The contract to buy the home was to settle on 19 April 2000. Mr McKie's evidence included a description of how Mr Wood, the conveyancer, was present; he appeared to Mr McKie to be part of the team involved in the property development in Greece, from which Ms Brown was expecting to receive a very substantial commission.

[125] A week passed and Mr McKie was put under some pressure to sign relevant documents. Mr Kanaris reminded Mr McKie of another part of the discussion a week earlier (11 March 2000) in which Mr Kanaris had described an intent to start a property investment business, with the $50,000 loan by Mr McKie being something of a commitment on Mr McKie's part to Mr McKie being involved in that business. Ultimately a contract dated 19 March 2000 was drawn up and signed by the McKie's, agreeing to sell their home for $319,000, with Ms Brown being the nominal purchaser. As security, Mr McKie was given two boxes of sapphires said to be worth $120,000. He took a sample of those to a jeweller, who verified their authenticity and value. The McKies accordingly arranged a short term loan of $50,000 from their bank.

[126] They had been told that the property in Greece would settle for about $75 million, and that Ms Brown's commission would be in the region of $1 million. Mr McKie and Ms Brown then spent some days looking for suitable buildings near a freeway

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78 At AR 629

in Brisbane, to be the headquarters for the property investment company Mr Kanaris would set up. On 29 March 2000 Mr McKie and Kitty Brown met at the Commonwealth Bank in Carindale. There Mr McKie drew two cheques, one made out to Mrs Kanaris for $36,000, and one made out for $14,000 to Kitty Brown. Mr McKie understood that those would both be given to Mr Kanaris, who was said then to be overseas in Greece finalising the development; the purpose of the payment was to enable that settlement to occur. Ms Brown executed an acknowledgment of indebtedness by her to the McKie's for that $50,000, promising it would be repaid three weeks after 29 March 2000, and if not interest would be payable at 10 per cent per annum.

[127] In mid-April 2000 Ms Brown contacted Mr McKie, advising that she was back in Sydney, but she did not have the $50,000 or the $20,000. She said there had been a delay in the development in Greece. It would now settle on 17 May. Mr McKie became concerned; further dealings then led to an agreement that a company called Easytrade would buy the house from the McKies for $269,000, the original list price, and the McKies then felt that everything would be okay. Mr Wood reassured them that that was the position, purportedly at Mr Kanaris' request; Mr McKie then gave Mr Kanaris back the sapphires. He did that in part because the contract to purchase his home was unconditional, and he thought the money for that would come from the same source as the $50,000, namely through Alan Wood's company via settlement of the development in Greece. In fact, Mr McKie was never repaid the $50,000, Mr Wood's company did not buy their home, and they retained the house. Very wisely they ceased all communications with Mr Kanaris and his cohorts soon after 17 May 2000.

The summing up

[128] The learned trial judge reminded the jurors of the terms of the count, and of the evidence given by Mr McKie, including his evidence in cross-examination that he had taken legal action against Ms Brown in an endeavour to recover the $50,000. That legal action was never completed. The judge pointed out that it was not suggested to Mr McKie that dealings did not take place as he alleged, or that he had not lent the $50,000, and reminded the jurors of the basic contention by Mr Kanaris, that the deal had been done with Kitty Brown, and not with him. The judge also reminded the jurors of evidence that Mr Wood had given relevant to that count, including that he was present when Mr McKie handed over the $50,000 (Mr Wood thought the cheque was given to Kitty Brown).

[129] The judge reminded the jurors of the need to examine Mr Wood's evidence with great care, and to note that while it certainly coincided in a number of respects with Mr McKie's evidence, the jurors might think that Mr Wood was involved in the dealings and could now be attempting to distance himself from them. He again reminded the jurors of the elements of the charge, what the Crown would need to prove to establish it, and the Crown argument that this was dishonest conduct by Mr Kanaris because it was a repetition of the representations and promises made by Mr Kanaris over what was by then a very long period of time. The judge also reminded the jurors of the arguments by Mr Kanaris that they could not be satisfied that his dealings were dishonest, nor that he had not had the land deal, and of the fact that the money was given to Ms Brown, and that he was not present when she received it. Hers was the name on the relevant contract, and he had not been involved.

Conclusions about the summing up

[130] This lengthy description of the evidence led on each count, and the careful directions the jury received on it, shows that there is no substance in any complaint about either the summing up, or the adequacy of the evidence to support the conviction on any count, other than counts 20 and 21. The learned judge took care to treat each count as a quite separate trial in which the jury received full and careful directions, and Mr Kanaris makes few criticisms in his November 2005 written submission. One was that the learned judge had an obligation to ensure that all possible defences were considered by the jury. The arguments Mr Kanaris repeatedly made to the jury was that the Crown had not proven beyond reasonable doubt that he had either been dishonest or had made any false representation, or had an intention to defraud, and the learned judge repeatedly reminded the jurors of that argument. That argument in turn was based on the proposition that the prosecution had not proven that Mr Kanaris did not own land on the Island of Kos which land he had contracted to sell, albeit with difficulties caused by circumstances not particularly under his control.

[131] But the Crown did not need to prove that there was no such land, to establish that Mr Kanaris had falsely pretended he required various sums of money to settle the sale of it and had falsely promised to repay monies lent to him, within a short period, and from the sale proceeds. Those were the essence of the false pretence charges and of the asserted dishonesty in the fraud charges. The fact that Mr Kanaris made essentially the same representation about those matters to Mr Whateley in mid-1996 as he made to Mr McKie in March 2000 went a very long way to proving the falsity of both statements, and of all intervening ones. Then there was the complete absence of evidence of any attempt to repay any of the victims, or produce to them any tangible evidence of the cause of the allegedly unexpected delay; the fact that Mr Kanaris repeatedly prophesised imminent settlement despite the assertedly repeated experience of unlooked for delay; the fact that he spent a great deal of money on another pursuit, gambling, that did not return him any net financial benefit over the period covered by the charges; and the fact that what he lost would have covered all of the monies he represented he needed to find, but which he said he could not. On the whole of the evidence, on each count other than counts 20 and 21 it was open to the jury to be satisfied beyond reasonable doubt that Mr Kanaris was guilty of it.

[132] His complaints about the summing up really come down to just two matters referred to in paragraph 23 of his November 2005 outline. One was the complaint that not all possible defences were put, and the other a complaint that the judge did not refer to evidence given by a Ms Fielding. The judge did refer to the substance of her evidence, which (relevantly) was simply to explain the documents produced to the court from the Melbourne Crown Casino. Mr Kanaris cross-examined her at some length, to no beneficial effect; his cross-examination only established that he obviously spent a great deal of time and money gambling. The cross-examination did not succeed in challenging the accuracy of the Crown Casino records, which reported that in the (calendar) years 1998, 1999, and 2000 Mr Kanaris lost $495,003 at that casino. His cross-examination of Ms Fielding had suggested that some wins might not be recorded, but she did not accept that, and there was no evidence to contradict her. She did state quite clearly that the records were not 100 per cent accurate, in that while the records kept by the machines were very accurate, those

kept by human supervisors at the gambling tables were not always entirely accurate, and there could be some error.

[133] Her evidence was the same in that regard as that from the witnesses called to produce and explain the records of the Jupiters, Treasury, and Star City Casinos. Whatever the degree of error, and it seemed likely to be very small, the relevance of the evidence of the records of those four casinos was that it demonstrated that over the period covered by the charges, Mr Kanaris had spent and lost a great deal of money at those casinos. For that period (the records of each casino did not cover the whole period) it could be shown that he had lost $780,433.21, excluding whatever jackpot wins under $5,000 on gaming machines he had at the Treasury and Jupiters Casinos.

[134] The learned judge did put the defences Mr Kanaris argued to the jury, and there are no other obvious defences. The judge quoted from the evidence of the records of the various casinos, which evidence was subject only to the challenge made in the proposition, that there may be some unrecorded wins and some inaccuracy. The general proposition, that Mr Kanaris was expending large sums of money on an unrewarding pursuit unrelated to a potentially immensely beneficial land sale, was unchallenged. The grounds of appeal complaining about the summing up should also be dismissed.

Ground of appeal (b)

[135] This ground of appeal complains that the learned trial judge intervened during cross-examination by Mr Kanaris, and Mr Kanaris calculated that occurred on over 400 occasions. His November 2005 written outline contended that those interventions led to confusion for the witnesses and for Mr Kanaris, to the extent that on occasions he forgot the question he wanted to ask. Even a cursory reading of the transcript of the trial reveals both that the learned trial judge was extremely patient with all present in the courtroom, including Mr Kanaris, and also that the judge went to considerable lengths to ensure that the evidence given by the witnesses was understood by the jurors and by Mr Kanaris, and that witnesses being cross-examined by Mr Kanaris understood the point of his questions. Often enough that point was not readily apparent the first time the question was asked, and the learned trial judge would intervene to assist with a clarification. Far from confusing the witnesses and Mr Kanaris, the interventions by the learned trial judge clarified what was at issue. Sometimes Mr Kanaris abandoned a particular line of questioning when it became apparent that there was really no point in issue. Often on those occasions all that was occurring was that Mr Kanaris was attempting to give evidence from the bar table under the guise of cross-examination, and the learned trial judge did not allow Mr Kanaris to do that. Sometimes the learned judge was assisting with a possible language difficulty. There is no substance in that ground of appeal.

Ground of appeal (d)

[136] The acquittals on counts 11-13 were readily explicable, as earlier described. They do not suggest that the jurors in any way misunderstood either the evidence or their function, or that a miscarriage of justice occurred on the counts where there were convictions. That ground of appeal should be dismissed.

Grounds of appeal (c) and (f)

[137] These grounds of appeal can be considered together. They complained that the learned judge admitted evidence the prejudicial value of which far outweighed the probative value, and that that evidence included evidence adverse to the interest of Mr Kanaris, about his character. The evidence complained of was the evidence of the casino records showing the extent of Mr Kanaris' gambling activity. The records exhibited at the trial also included some comments by staff at casinos, which were critical of Mr Kanaris. For example, an entry in the "patron comments report" held by the Melbourne Crown Casino recorded that on 17 February 1998 a staff member had reported that Mr Kanaris complained about the soup which he had ordered, and had said that it was not suitable to eat, and that the smell was so bad that he had to air his room. Likewise on 3 March 1998 another staff member recorded that Mr Kanaris could be very rude.

[138] Those comments were critical of Mr Kanaris, but the particular reports were admitted to establish that Mr Kanaris was at the casino on those particular dates. The learned trial judge specifically told the jury, when those documents were first drawn to the jury's attention when the Crown was establishing by their contents that Mr Kanaris was at that casino at the times recorded that the comments were totally irrelevant.[79] The jurors were invited to disregard the comment column, and were told that the important matter as far as the Crown was concerned was the date involved. It was self evident that what mattered was the date, and the cross-examination of witnesses by Mr Kanaris quite independently demonstrated that he has a degree of arrogance in his dealings with others. The comments in the documents really disclosed to the jurors very little about him that they would not have observed for themselves, and the directions by the judge were appropriate.

[139] The evidence of gambling by Mr Kanaris was admissible. The evidence from the four casinos which went before the jury recorded specific dates on which Mr Kanaris had been gambling in casinos, and the extent of his gambling on those specific dates, as well as over a period of a few days on various occasions, and the extent of his monthly and yearly gambling at those casinos. The evidence of his gambling activities on dates on and immediately after receipt of money from complainants, relevant to the specific charges, was admissible. That evidence was relevant to disproof of the claim that he either needed or intended to apply the money obtained from the complainants in aid of settlement of a sale in Greece. Proving gambling on those dates necessarily involved proving that Mr Kanaris was an individual recorded as a gambler at those casinos, which in turn necessitated proof that he was a substantial gambler, one regarded as a "high roller". The records put before the jury showed that he was a regular customer of those casinos, betting and losing large amounts over time, but proof of that was an inevitable outcome of the evidence that Mr Kanaris was a client at those casinos whose gambling was recorded. The Crown were entitled to prove that Mr Kanaris either had money available to him and did not need the loans he obtained from the complainants, choosing instead to gamble with his own funds or funds from other sources, and choosing **not** to use that money to assist with the land sale, or else Mr Kanaris was applying the money lent to him to gambling, and **not** to the purpose for which it was lent. Mr Kanaris submitted in argument on the appeal that he would

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[79] At AR 893

have needed to be "a Greek Houdini" to avoid conviction, once evidence of that extent of gambling had been led. Essentially the submission is accurate, but that it is because of the probative force of the evidence. It showed that on more than one specific occasion after he had been given money by a complainant he went straight to a casino and started gambling. He was gambling heavily over the whole period in which he represented that he needed money to complete a lucrative sale of land. The evidence from the casinos completed a very strong Crown case.

[140] The evidence led about gambling covered only the period described in the indictment. Mr Kanaris argued otherwise in his written submissions, but was in error. In his ground of appeal (h) Mr Kanaris specifically claims that the Crown misled the learned trial judge when describing the evidence proposed to be called about gambling by Mr Kanaris, in that the Crown told the judge that the evidence would be evidence of actual wins and losses by Mr Kanaris, not simply evidence of his turnover as a gambler. Further, the Crown told the judge that the records were accurate. Mr Kanaris argued in his written submissions that both those statements were wrong, that they resulted in that evidence being admitted, and that a miscarriage of justice was occasioned by that error.

[141] The witnesses giving evidence about the casino records conceded that there would be a degree of inaccuracy in the records of play at the gaming tables, since those depended upon the observations of casino staff. They did not concede error about what was recorded for play on gaming machines, those records being essentially computer produced ones. Cross-examination by Mr Kanaris did not show any reason for doubting the overall reliability of the records of gambling at tables, and the only reason for doubting the reliability of the records of any casino regarding gambling on machines was regarding unrecorded jackpots of under $5000. Further, although the records of the relevant casinos did include a figure for turnover, that was not relied on in any way when calculating amounts won or lost by Mr Kanaris on any day, week, month, or year at any of those casinos. The manner in which the win or loss figures were calculated was explained by the witnesses, and Mr Kanaris did not make any relevant, sensible, or effective challenge to that in cross-examination. The fact that a turnover figure was included in the records produced, although expressly not relied on in any way, does not show that the Crown misled the learned judge or that the evidence about gambling wins and losses by Mr Kanaris was in any way unreliable. Accordingly, grounds of appeal (c), (f), (h) and (i), should all be dismissed. All those grounds complain in different ways about the admission of that evidence of gambling activity.

[142] One discrete complaint Mr Kanaris made was that the learned judge ruled that evidence of gambling activity was not admissible in relation to count 22.[80] He argued that despite that ruling, evidence was led about gambling activity from September 1996 (in the Jupiters and Treasury Casinos) up until the end of March 2000 (in the Crown Casino); that is, from the date of the meeting between Mr Whateley, Mr Stephenson, and Mr Kanaris in September or October 1996 (count 1), until the date on which the offence count 22 was committed.

[143] Mr Kanaris is correct in part on his complaint about that. The learned judge excluded some evidence in relation to count 22, but what the learned judge excluded was a notation on a patron comment report recording that on 30 March 2000 a room

80 That ruling is at AR 59 in the supplementary record of proceedings

which Mr Kanaris had booked at the Crown Casino was cancelled. The Crown had argued that entry was admissible to demonstrate that Mr Kanaris had made preparations to gamble with the $50,000 he anticipated receiving from McKie. The learned judge held that suggestion to be irrelevant speculation[81], and repeated those remarks when giving a general ruling about admissibility. That ruling did not exclude evidence that Mr Kanaris had continued to engaged in gambling up to the date on which Mr McKie paid $50,000. Continued gambling up till that date was relevant to disproof of a genuine need in March 2000 to borrow money to complete the sale of the land in Kos. Mr Kanaris has no valid complaint about the admission of evidence of gambling over this period: in fact, the evidence from the casino records did not show any gambling in February 2000 or March 2000.

[144] Where Mr Kanaris is correct is that the Crown did lead evidence of the note in the patrons' comments report for 30 March 2000, of a "no show" by Mr Kanaris. That was evidence the judge had excluded, but the Crown made no submission about it to the jury, and so it went before them simply as evidence that he did **not** go to a casino on 30 March 2000.

Ground (g): Denial of natural justice

[145] Mr Kanaris represented himself at the trial. At a mention on 28 April 2004, in anticipation of a May 2005 trial, what was effectively an application for an adjournment was made by the solicitor whom Mr Kanaris had very recently instructed. That solicitor advised the court that if the trial proceeded as listed, early in May 2004, Mr Kanaris would be unrepresented; the learned judge agreed with the submission that Mr Kanaris would be disadvantaged if representing himself, particularly because there was "some suggestion by him" that Mr Kanaris would call some witnesses from Greece.[82] Those may or may not have been the witnesses spoken of as long ago as 4 July 2002, and occasionally again thereafter. The solicitor advised the judge on 28 April 2004 that the solicitor knew Mr Kanaris had a lawyer in Greece with whom Mr Kanaris communicated, and that Mr Kanaris had travelled to Greece to finalise witness statements. The learned judge remarked that if anyone knew where the land was it would be Mr Kanaris. Ultimately the judge vacated the existing trial date and set a new date for starting the trial, 22 November 2004, and listed it for four weeks. He also listed the matter for mention on 10 September 2004, and the solicitor remarked that the solicitor did not think anyone could suggest that the court had not extended leeway to Mr Kanaris.[83] By 28 April 2004, there had already been 32 mention (or aborted trial) dates.

[146] On 10 September 2004 that same solicitor appeared on the mention, to advise the court that Mr Kanaris had terminated that solicitor's instructions and the solicitor was given leave to withdraw. Thereafter Mr Kanaris has represented himself. The Crown advised the learned judge in the course of submissions and argument that day that its position was that it would not rely on the result of title searches conducted in Greece or on the Isle of Kos, but would simply submit that the jury could infer from the evidence that Mr Kanaris did not own land as he had represented. The learned judge clearly advised Mr Kanaris, who said that he understood, that the Crown case did not depend on the searches that may or may not have been conducted in the past, and that the Crown intended to proceed to trial in

[81] At AR 52-53 in the supplementary record of proceedings
[82] At page 4 of the transcript of proceedings on 28 April 2004
[83] Transcript of proceedings 28 April 2004 at page 5

the absence of search results.[84] The transcript of the mention on 10 September 2004 records that the learned trial judge set the date 15 October 2004 to settle the admissibility of some evidence the admission of which Mr Kanaris challenged, and it records the learned judge advising Mr Kanaris that the matter was set for trial and that he would not get another adjournment.

[147] On 15 October 2004 another a pre-trial hearing was conducted, in which the learned judge again reminded Mr Kanaris that the Crown case did not rely on searches to establish whether land owned by Mr Kanaris existed or not at the relevant time, but instead relied on conversations and actions alleged against Mr Kanaris; the judge added that:

> "If you can prove where this land is, so much the better."[85]

There was no trial in November 2004. A trial date of 7 February 2005 was set down on a directions hearing on 17 December 2004, although Mr Kanaris had asked that there be another mention. Due to the illness of a Crown witness, the trial in fact started 14 February 2005, not 7 February. On 14 February Mr Kanaris advised the learned trial judge that he had a witness leaving (apparently Greece) on 25 February 2005, who would arrive in Brisbane on 27 February 2005, and who was required to return to Athens by 3 March 2005 for the wedding of the witness' only son. Mr Kanaris complained then that he had been "very very strong" inconvenienced by the delay (between 7 and 14 February) in the start of the trial. He did not advise the judge of the name of the witness, the evidence he expected that the witness would give, nor advise that the witness would not be available again after 3 March 2005.

[148] The Crown closed its case early on the afternoon of 9 March 2005[86] and thereafter discussion occurred in the absence of the jury about evidence Mr Kanaris intended to call from three witnesses. There were discussions about those witnesses, what evidence they would give, and his obligations when opening their evidence to the jury. Mr Kanaris made it clear that he would not be giving evidence himself, and he did not make any reference to the witness who had been obliged to be (apparently in Greece) on 3 March 2005. He made no reference to any lawyer in Greece or statements from witnesses obtained in Greece, the topic which had been the subject of comments by his solicitors nearly a year earlier on 28 April 2004, and often enough before then.

[149] When his appeal was first called on for hearing on 22 September 2005, and before the appeal hearing got under way, Mr Kanaris made a statement in which he referred to the transcripts of those pre-trial hearings, contending from the bar table that as events fell out he had been unable properly to prepare his defence. He explained in further submissions that the witness whom he had intended to call, had the trial started on 7 February 2005, and whom he had been prepared to call at a November 2004 trial, was a lawyer in Greece named Dimitris Kolias, who had acted for Mr Kanaris in respect of the land in Greece. That lawyer if called could confirm its existence, that it was held in trust for Mr Kanaris, and that a contract for its sale had been executed but had been delayed by various factors. Those included the necessity for a geologist's report. Mr Kanaris conceded that he had not at any stage identified to the learned trial judge the name of the witness, nor the evidence he could give, and that he had said nothing at all about wanting to call that witness

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84 This appears at page 6 of the transcript of 10 September 2004; repeated at page 17 of that transcript

85 Page 31 of transcript of proceedings on 15 October 2004

86 See AR 1408

after the complaint he had made on the first day of the trial on 14 February 2005. He said on 22 September 2005 that he did not have a statement from Mr Kolias.

[150] This Court, after hearing those submissions, did not enter into hearing his appeal, but adjourned it, and set it down for hearing on 24 November 2005, to give Mr Kanaris the opportunity to file affidavit material in support of the contention, which had emerged during his submission on 22 September 2005, that he had not in fact been able to present effectively his defence that he actually did own land under a contract of sale in Greece, as he had represented to the various complainants. He was advised by this Court of the benefit of his filing an affidavit from the Greek lawyer, as well as affidavit material from himself. His submissions had included the assertion that that lawyer had previously communicated with him on the relevant topic from Greece, advising of the difficulties; that lawyer had acted for him in 1996 and the first half of 1997.

[151] When his appeal came on in November 2005 his written outline made only a limited and guarded complaint that the decision on 17 December 2004 to list the trial to start on 7 February 2005 had seriously inconvenienced Mr Kanaris. In both that written argument, and in an affidavit by Mr Kanaris filed by leave at the start of this appeal, Mr Kanaris made it clear his complaint was "that natural justice was denied to me on 17 December 2004, not on the day of the trial". It became clear in his oral argument on the appeal, however, that he agreed he had all of his witnesses whom he intended or wanted to call available for a trial to start on 7 February 2005, consistent with what he had told the learned trial judge in a pre-trial hearing on 28 January 2005, when asked "Mr Kanaris, are you ready for trial?" by the judge. He answered "yes, your Honour." There is no merit in the complaint that setting the trial down to start on 7 February 2005 caused Mr Kanaris any inconvenience.

[152] The affidavit Mr Kanaris filed in this appeal made no claim that he had ever owned any land on any island in Greece. His affidavit did not refer to Mr Kolias or any other lawyer who could give any evidence that Mr Kanaris ever had owned any land in Greece, and gave no explanation for the absence of any evidence about land in Greece. In reality Mr Kanaris had abandoned any complaint about not being able to call Mr Kolias to prove ownership of land, as too risky; Mr Kanaris would face cross-examination. That ground of appeal should be regarded as abandoned, and rejected in any event. Mr Kanaris has spent most of this century implying he could call relevant witnesses from Greece, and this appeal was his last opportunity to show some substance in that claim.

[153] For those reasons all of Mr Kanaris' various grounds of appeal should be dismissed, although the convictions on counts 20 and 21 should be set aside. That limited success on appeal does not make the five year head sentence any less warranted. There were still three convictions on counts with a 10 year maximum, and Mr Kanaris had previous convictions for false pretences spanning the 17 years from 1968 to 1985, and a conviction for an offence of imposition committed on 19 November 1997. The offences under appeal showed a four year period of incessant exploitation of the vulnerability of other people, just so Mr Kanaris could get money with which to gamble. While gambling is entirely lawful, for a period in the last decade of the 20th Century Mr Kanaris financed his, in part, by defrauding other people. It will be a matter for the relevant Community Corrections Board whether there is an unacceptable risk of that being repeated if Mr Kanaris is placed on post-

prison community based release before completing any available programs which challenge addiction to gambling.

[154] The order of the Court is that the appeal is allowed to the extent of setting aside the convictions on counts 20 and 21 and directing that verdicts of acquittal be entered with respect thereto, and that otherwise the appeal against the convictions is dismissed.