

TRANSCRIPT OF PROCEEDINGS

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DISTRICT COURT

No 4984 of 1989

CIVIL JURISDICTION

KIMMINS DCJ

DEFIANCE MILLING CO PTY

Plaintiff

and

WALLCO NO 1 PTY LTD TRADING AS LOAF INN
BAKERY

First
Defendant

and

MALCOLM L JAMES

Second Defendant

BRISBANE

.. DATE 13/4/92

JUDGMENT

HIS HONOUR: In this particular case it seems incontrovertible that by a letter dated 8 April 1992 the South Australian solicitors for the second defendant advised the solicitors for the plaintiff that "our instructions in relation to this matter have been withdrawn." I was informed of certain things from the Bar table, both by counsel for the second defendant and counsel for the plaintiff, and of course, I accept what they say; their account of things were told to them by professional men. It seems that in an excess of caution, counsel for the plaintiff asked his solicitors to confirm with the second defendant's Adelaide solicitors that they had no further instructions. This was on the morning of Friday, the 10th. I accept that the plaintiff's

solicitors were then informed that the second defendant's solicitors have no further instructions.

A copy of a letter from the firm of - either the former or present, I don't know which - South Australian solicitors for second defendant was handed up. This, on its face, shows that there has been no contact between the second defendant and his Adelaide solicitors since probably 3 April. It seems that the second defendant has vanished. Apparently fears are held for his safety, and it is not known at this stage whether he, in fact, has simply decided to leave for his own purposes or he has come to some harm, either at the hands of others or at his own hand.

The situation is unfortunate that it seems to me that the plaintiff is entitled to act on the basis that they did receive written confirmation that the solicitors for the second defendant had no further instructions, and this was confirmed as late as last Friday. I intend to give judgment. This judgment can be set aside under the rules if something transpires which brings it within the purview of such rules.

I give judgment for the plaintiff against the second defendant in the sum of \$16,000.

I further order that the second defendant pay interest on such sum at the rate of 12 per cent from the 18th day of October 1989.

I further order that the second defendant pay the plaintiff's costs of and incidental to the action to be taxed.
