SUPREME COURT OF QUEENSLAND

CITATION:	*Zen Foundation One P/L & Ors v Sippy Downs Group P/L & Ors* [2009] QSC 334
PARTIES:	**ZEN FOUNDATION ONE PTY LTD** ACN 109 254 926 (first plaintiff) **ASPIRATIONAL COMMUNITIES PTY LTD** ACN 107 759 875 (second plaintiff) **ASTOR FUNDS PTY LTD** ACN 108 355 406 (third plaintiff) **v** **SIPPY DOWNS GROUP PTY LTD** ACN 112 940 860 (first defendant) **BARRY KEITH TAYLOR AS LIQUIDATOR OF SIPPY DOWNS GROUP PTY LTD** ACN 112 940 860 (second defendant) **SYLVERTON PTY LTD** ACN 105 353 820 (third defendant)
FILE NO/S:	SC No 8626 of 2006
DIVISION:	Supreme Court
PROCEEDING:	Trial
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	20 October 2009
DELIVERED AT:	Mackay
HEARING DATE:	21 September 2009
JUDGES:	Cullinane J
ORDER:	**Judgment in favour of the Plaintiffs**
CATCHWORDS:	CIVIL LAW – CONTRACT – JOINT VENTURE – AGENCY – where joint venture executed between the plaintiffs - whether first and second plaintiffs estopped from asserting agency of first defendant - whether first defendant entered into contracts for the sale of Lots 8 and 20 as agent for the first and second plaintiffs - whether third plaintiff is entitled to the sum held in trust by the second defendant pursuant to the fixed and floating charge

Bank of England v Cutler (1908) 1 KB 208, cited
Re Goldcorp Exchange Ltd (in receivership) (1995) 1 AC 74, cited
Cave v McKenzie (1877) 46 LJ Ch 564, cited

COUNSEL: D Savage SC with, M Luchich for the first plaintiff, second plaintiff and third plaintiff
P Davis SC with, M Bland for the first defendant, second defendant and third defendant

SOLICITORS: Gadens Lawyers for the first plaintiff, second plaintiff and third plaintiff
Irlicht & Broberg for the first defendant, second defendant and third defendant

[1] These proceedings concern the disposition of a sum of money which represents the net proceeds of the sale by the second defendant of two parcels of land described as Lot 8 on RP 132099 and Lot 20 on RP 226599 and held in trust pending the resolution of this dispute.

[2] Lots 8 and 20 formed part of a greater area of land on the Sunshine Coast which was targeted for development. The role of the various parties in the relevant dealings which occurred and the proposed development will appear in the course of these reasons.

[3] At all relevant times, there was a joint venture agreement between the first plaintiff and the second plaintiff for the development of the lands. Another parcel had been acquired by the second plaintiff and transferred to the first plaintiff. Certain rights had been obtained over another parcel.

[4] The directors of the first plaintiff were one Matthew James Royal, Sharon Ann Smith and Glenn Laurence Anderson. Royal and Anderson were called as witnesses.

[5] The sole director of the second plaintiff was one William Douglas Hamilton. He was not called.

[6] The directors of the first defendant were Hamilton, Royal, Smith and Anderson. The first and second plaintiffs were equal shareholders in the first defendant.

[7] The third plaintiff held security in the form of fixed and floating charges over the first and second plaintiffs. These were executed on 20 December 2004.

[8] In a statement of agreed facts which was tendered, the following appears:

> *"Astor was not:*
>
> *(a) a party to the deed of release and settlement bearing the date 27 May 2005 between Silverton Pty Ltd (Silverton), Zen Aspirational Sippy Downs Group Pty Ltd (Sippy Downs Group), William Douglas Hamilton, Glenn Laurence Anderson, Matthew James Royal and Sharon Ann Smith (the deed of release and settlement);*

(b) aware of or given notice that the parties have entered into a deed of release and settlement or the terms of the document until after Astor had appointed a receiver to Zen and Aspirational.

Astor did not consent or acquiesce to the granting of security to Silverton by way of a charge (or otherwise) over:

(a) any property held by Zen or Aspirational; or

(b) any property held on trust by Sippy Downs Group on behalf of Zen or Aspirational."

[9] The specific transactions referred to above will I hope become clear in the course of these reasons.

[10] The third defendant has raised a number of defences the ultimate aim of which is to avoid the consequence of its security being postponed to the earlier security of the third plaintiff.

[11] Some of the issues raised in the pleadings (some of which alleged serious wrongdoing on the part of the first and second plaintiffs) disappeared in the course of the trial. It is clear that a joint venture between the plaintiffs was executed on 24 June 2004.

[12] The third defendant contracted to buy Lot 20 from the then owner on 13 November 2003 for $2,665,450.

[13] On 30 January 2004 the third defendant contracted to buy Lot 8 from its then owner for $3,780,000.

[14] On 29 April 2004 the third defendant entered into put and call options in respect of Lots 8 and 20 with the second plaintiff. The second defendant exercised the options and contracts to sell Lot 8 for $6,157,833 and Lot 20 for $4,340,167 came into effect as a consequence on 23 February 2005.

[15] It is I think a fair comment to make that in respect of all of the dealings relevant to this litigation, Lots 8 and 20 represented the only real value. The difficulties in obtaining development approval and associated with that, obtaining the finance necessary to complete the various transactions determined much of what occurred.

[16] Relations between Hamilton on the one hand and the directors of the first plaintiff on the other, deteriorated. Arguments over control and other issues developed within the joint venture. In addition the parties found themselves facing double stamp duty in a substantial sum as a result of a transaction involving one of the lots and were anxious to avoid this occurring in the future.

[17] Advice was sought from the first plaintiff's solicitors, McInnes and Wilson, in early March 2005. Mark Woolley was the solicitor in the firm who thereafter attended to the joint venturers' legal affairs. He was called as a witness. He had given advice as to alternate possible structures for the joint venture to avoid the stamp duty problems in the future. Anderson prepared a written summary of these options, one of which included an agency option.

[18] Allan O'Neill, a solicitor who had previously been employed by the solicitors for the joint venture and the first plaintiff was engaged by the first plaintiff to give advice about taxation matters. He identified the agency option in which an agent would be appointed for the purposes of acquiring property on behalf of the joint venture as the preferred course. He described it as simplifying matters in terms of GST.

[19] On 29 March 2005 the joint venturers resolved to appoint an agent. The first resolution (prepared by O'Neill) appears at page 444 of Exhibit 2.

[20] A somewhat more extensive resolution appears at page 453. It also bears the date 29 March 2005 and was prepared by O'Neill:

> *"ROLE OF SIPPY DOWNS GROUP PTY LTD (ACN 112 940 860)*
>
> *RESOLVED that Sippy Downs Group Pty Ltd (ACN 112 940 860) will have no legal standing in terms of Sippy Downs Joint Venture, as described by the Sippy Downs Joint Venture Agreement, executed on 24 June 2004 ('the Agreement'), until all relevant issues are unanimously agreed between the Parties to that Agreement and the intended Variation to that Agreement is executed by both those Parties, being ZEN FOUNDATION ONE PTY LTD AND ASPIRATIONAL COMMUNITIES PTY LTD*
>
> *RESOLVED that it is the intention of the Joint Venture Committee that Sippy Downs Group Pty Ltd (ACN 112 940 860) is to be appointed to act in a variety of different capacities in relation to Sippy Downs Group Pty Ltd (ACN 112 940 860) as described by the Sippy Downs Joint Venture Agreement, executed on 24 June 2004 ('the Agreement').*
>
> *RESOLVED that it is the intention of the Joint Venture specifically in relation to the holding of the Joint Venture Assets, as defined in the Agreement at sub-clause 20.1, and which is inclusive of all real property acquired by the Joint Venture participants, that Sippy Downs Group Pty Ltd will be the 'registered owner', as defined in Schedule 2 of the Land Title Act 1994 (Qld) and act as trustee for all real property acquired under the Agreement.*
>
> *RESOLVED that all existing rights and benefits attributable to the Joint Venture participants, including all legal and beneficial interests in the Joint Venture Assets and as provided for by the Agreement, will be preserved.*
>
> *RESOLVED that the basis for any change is only to:*
>
> - *Improve the transparency and efficacy of the existing Joint Venture Project.*
> - *Remove any perceived inconsistencies or ambiguities in the current Agreement.*
> - *Clearly identify the roles of the various parties to the Joint Venture Agreement.*
> - *Ensure greater efficiencies in the operation of the Joint Venture Project."*

[21] The first defendant had been incorporated on 14 February 2005.

[22] Problems arose when the third defendant was unable to complete the contracts with the vendors and the second plaintiff was not able to complete the contracts with the third defendant. Extensions were obtained but it was obvious that all of the contracts were at risk of failing. Some degree of urgency developed.

[23] The contracts between the third defendant and the second plaintiff contained provisions prohibiting the plaintiff's from approaching the owners directly.

[24] Hamilton however had taken some steps to try to reach an agreement with the owners. He had apparently procured a person (one Kefford) for the purpose of entering into contracts in respect of Lots 8 and 20 through a company, Contemporary Development Projects Pty Ltd. For a consideration of $100,000 he agreed to take a number of steps including his resignation as director of that company and the transfer of all of his shares in it to the second plaintiff or its nominee.

[25] This further exacerbated relations between Hamilton and the directors of the first plaintiff who were concerned about the implications of dealing directly with the owners in view of the legal advice that had been given.

[26] A meeting was held on 29 March 2005 at Woolley's office attended by the directors of the first plaintiff and Hamilton. The possibility had arisen that the third defendant might be prepared to release the second plaintiff from its obligations under the contracts which had come into existence pursuant to the exercise of the options. The discussion proceeded upon the basis that the first defendant would in those circumstances acquire Lots 8 and 20 as agent for the joint venture and Woolley was asked to prepare a document to appoint the first defendant as agent.

[27] Negotiations with the third defendant resulted in an agreement to release the second plaintiff from its various obligations under the contracts entered into and to have the third defendant represented on the joint venture committee.

[28] Woolley gave evidence that he prepared a draft appointment of agent document and forwarded it to the first plaintiff, and O'Neill. The latter amended it.

[29] He gave evidence that he next saw the document after it had been executed by the directors of the first plaintiff and Hamilton on behalf of the second plaintiff.

[30] The document which was executed bears the date 18 May 2005 but plainly it was not executed until some time considerably later than that. No evidence emerged as to how it came to bear this date but I do not think anything turns on this.

[31] By an email dated 23 May 2005, Anderson had asked Woolley to send a copy of the appointment of agent which he had prepared "to Cameron for his perusal". This was a reference to Cameron Charlton, the solicitor for the third defendant. This email followed a meeting by way of conference call between directors of the third defendant and Anderson, Royal and Hamilton which will be referred to a little later.

[32] Woolley sent a copy of the notice of appointment of agent to Charlton by email of 24 May 2005.

[33] The following day he sent to Charlton correspondence which he said his client had attempted to send the previous evening but had not succeeded in doing so:

> *"Dear Cameron*
>
> *This afternoon; myself, Matthew Royal and William Hamilton had a conference call with Tim Murray and Donald Blanksby to discuss the possibilities of securing their position in the event that we don't settle lots 8 and 20 by EOM and entering into back up contracts with Terelilnk and Quinlan.*
>
> *During this call, it was agreed that as an entry point into the JV we are willing to give Silverton a position on the Joint Venture Committee, which in effect controls the contracting entity, in this case being the Sippy Downs Group Pty Ltd. Sippy Downs Group Pty Ltd is a company owned on a 50/50 basis by Zen Foundation One Pty Ltd and Aspirational Communities Pty Ltd and has an agreement with the incorporated join venture to act solely as an agent for the JV. I have attached a copy of the JV agreement for your information and Mark Woolley is also more than up to speed with the agreement himself so please feel free to discuss this with him.*
>
> *It was also agreed that as an exit strategy agreeable to both parties, we would as soon as practically possible, put the amalgamated lots, being 6, 7, 8 & 20 on the market via a tender process. This can be done either on the 1st of June when the back up contracts would come into force, or sooner if an agreement can be negotiated whereby Silverton agree not to sell to an outside party. Obviously we cannot market a property we have not secured so this would have to be agreed to first.*
>
> *Regards*
>
> *Glenn Anderson*
> *Director"*

[34] Blanksby and Murray acknowledge that they had participated in the telephone conversation referred to but say that whilst the possibility of an agent being appointed was discussed, neither had understood that an agent had been appointed. Neither Royal nor Anderson had a specific recall of the discussion but gave evidence that the conversation covered those subjects set out in the email.

[35] It is clear however that by 25 May the third defendant, by its solicitor, had been made aware that the first defendant was to act as agent for the joint venture and the notice of appointment of agent had been forwarded to Charlton. The appointment of agency related specifically to the acquisition of Lots 8 and 20.

[36] Whilst it is not possible to identify precisely the date upon which the appointment of agent occurred, I think it likely that it was either on 24 or 25 May or at the latest, a day or so later.

[37] Advice had been given that the appointment of agent had to be signed before the contracts in respect of Lots 8 and 20 were signed and I accept Anderson's evidence that he was conscious of this. He was emphatic that it had been signed prior to contracts between the owners and the first defendant being executed and I am satisfied this is in all likelihood what happened.

[38] The contract in respect of Lot 20 was executed on 30 May 2005. The contract in respect of Lot 8 bears the date 23 May 2005. It was originally prepared with Contemporary Development Projects Pty Ltd as the proposed purchaser and presumably bears that date as a consequence.

[39] There is correspondence which would suggest that the contract could not have been entered into prior to 30 May (Exhibit 2 p 1016). There are a number of documents which are dated after 23 May but before 30 May which clearly indicate that no contract had been executed (Exhibit 2 p 759 and p 769).

[40] In order to reach the point at which it was possible to contract with the owners, it was necessary to deal with the contracts between the owners and the third defendant and the contracts between the third defendant and the second plaintiff.

[41] This was done by entering into a deed of release and settlement prior to the two contracts between the first defendant and the owners being executed.

[42] A deed of release and settlement was entered into on 27 May 2005.

[43] The aims referred to above were to be achieved by the deed of release and settlement releasing the second plaintiff from its obligations and securing the payment of a sum of money to the third defendant. In addition the third defendant was to have representation on the joint venture committee.

[44] Woolley prepared an original draft and Charlton, who was unhappy with this, prepared a further draft. In that draft Clause 5(c) provides:

> *"Silverton consents to the SDG entering into the new contracts as agent of the joint venturers."*

[45] Charlton said that he obtained instructions from the directors of the third defendant following this and as a consequence spoke to Woolley.

[46] Charlton says he told Woolley that it was unacceptable to his client to have any reference to the first defendant as an agent for the joint venturers and that any such agency would defeat the purpose of taking security. Blanksby gave evidence that when he became aware of a suggested agency he conveyed his objections to it to Charlton. He said that so far as he could see it was unclear what was sought to be achieved by it and that he instructed his solicitor to object to the first defendant acting as agent.

[47] Woolley says he has no recollection of such a conversation with Charlton and Charlton acknowledges that Woolley did not expressly accept the proposition that had been put to him. There is no correspondence between the parties dealing with the subject. Nonetheless the document was amended to delete the reference to the first defendant acting as an agent.

[48] The schedule of securities provided as follows:

> *"1. Guarantee and indemnity given by the Guarantors securing the obligations of Aspirational under this Deed.*

2. *Fixed and floating charge given by Aspirational over the assets and undertaking of Aspirational securing the obligation of Aspirational under this Deed.*

3. *Fixed and floating charge given by Zen Foundation over the assets and undertaking of Zen Foundation securing the obligation of Aspirational under this Deed.*

4. *Fixed and floating charge given by Sippy Downs Pty Ltd over the assets and undertaking of Sippy Downs Pty Ltd securing the obligation of Aspirational under this Deed."*

[49] The parties appear at pp 853A and 854 of Exhibit 2:

Details	
Date	27 May 2005
Parties	
Name	Sylverton Pty Ltd ACN 105 353 820
Short form name	Sylverton
Capacity	in its own right
Notice details	MDB & Co, Level 1, 566 Elizabeth Street, Melbourne Vic 3000
Name	Aspirational Communities Pty Ltd ACN 107 759 875
Short form name	Aspirational
Capacity	in its own right
Notice details	Urban Securities Corp Ltd, SE 3, Level 1, Spherion House, 200 Creek Street, Brisbane Qld 4000
Name	Sippy Downs Group Pty Ltd ACN 112 940 860
Short form name	Guarantor (also referred to as SDG)
Capacity	in its own right
Notice details	Urban Securities Corp Ltd, SE 3, Level 1, Spherion House, 200 Creek Street, Brisbane Qld 4000
Name	Zen Foundation One Pty Ltd ACN 109 254 926
Short form name	Guarantor
Capacity	in its own right
Notice details	Urban Securities Corp Ltd, SE 3, Level 1,

	Spherion House, 200 Creek Street, Brisbane Qld 4000
Name	William Douglas Hamilton
Short form name	Guarantor
Capacity	in his own right
Notice details	56 Edith Street, Alderley Qld 4051
Name	Glenn Laurence Anderson
Short form name	Guarantor
Capacity	In his own right
Notice details	Unit 12, 11 Florence Street, Wynnum Qld 4178
Name	Matthew James Royal
Short form name	Guarantor
Capacity	in his own right
Notice details	28 Howard Street, Grange Qld 4051
Name	Sharon Ann Smith
Short form name	Guarantor
Capacity	in her own right
Notice details	Unit 308, 36 MacDonald Street, Kangaroo Point Qld 4169

[50] As will be the seen the first defendant was described as a guarantor and as entering into the contract in "its own right".

[51] A few months later the joint venturers were negotiating proposed developments of the site. One of those negotiated with was Woolworths with whose representatives meetings were held in early August. Heads of agreement were prepared which made reference to the agency of the first defendant. Blanksby gave evidence that when he noticed that Woolley had included such a reference he objected to it and told his co-director, Murray about this. The reference was deleted.

[52] On the other hand, in subsequent heads of agreement prepared with another proposed developer, APM there is a reference to the first defendant being the first and second plaintiffs' agent.

[53] In evidence before me Blanksby said that he thought that the reference to agency was an unnecessary complication or a distraction, which given the sensitive state of the negotiations with Woolworths could lead to unnecessary division and would be better deleted.

[54] I should mention that there appears in Exhibit 2 at pp 1338 and following what purport to be minutes of a meeting of the joint venture committee at which Murray

and Blanksby, on behalf of the third defendant were present. These minutes purport to record a position favourable to the third defendant on the question of the agency. I accept Royal's evidence about his reasons for signing these minutes. They had been prepared by Murray before the meeting occurred and were brought by him to the meeting.

[55] I do not find these documents of any assistance in relation to the issues that I am concerned with.

[56] Whilst there was some argument that the appointment of an agent could not come into effect until certain reservations of Hamilton had been satisfied and there was no evidence of this occurring, the execution of the appointment by all of the directors including Hamilton and its unconditional terms satisfies me the appointment was intended to and did take effect upon its execution.

[57] I am satisfied that the first and second plaintiffs executed an appointment of agency agreement in the latter part of May appointing the first defendant as their agent for the purposes of acquiring Lots 8 and 20 and they did so prior to the execution of the contracts for the acquisition of those two parcels.

[58] This finding disposes of the primary issue.

[59] There was an issue as to whether the third defendant was aware of the agency prior to the execution of the deed of discharge and variation and the subsequent contracts. Knowledge of the third defendant cannot affect the legal consequences of the appointment by the first and second plaintiffs of the first defendant as an agent or any consequences in terms of property rights which flow from that.

[60] It is however relevant to some of the issues raised by the defendant and in particular an estoppel claim.

[61] It is difficult to know what to make of the conversation which took place between the solicitors at the time of the preparation of the deed of discharge.

[62] It is clear that the reference to the first defendant as an agent was deleted and I accept this was as a result of Charlton's insistence.

[63] On the other hand the use of the first defendant as an agent to acquire the lands was on the plaintiffs' case a matter of some importance to it. One would have expected some exchanges between the solicitors if the third defendant was in fact making the demand that the first defendant acquire the lands as principal.

[64] As I have said Woolley claims to have no recall of any such conversation.

[65] As I have found the first defendant proceeded to contract on behalf of the first and second plaintiffs to purchase Lots 8 and 20.

[66] The terms of the deed do not provide any real assistance to the third defendant in my view in support of its claim that a representation was made that the first defendant was acquiring the lands in its own right.

[67] It is true that a charge over the first defendant in its own right did not give the third defendant anything of value but on the other hand, the first defendant was only one

of a number of security providers including all of the directors as well as the first plaintiff and second plaintiff. That is, security was taken from virtually all those who had any involvement. The charges granted by the first and second plaintiffs would have provided security over whatever entitlements arose pursuant to the contracts to be entered into by their agent.

[68] The conversation which was held between the directors of the third defendant and the directors of the first defendant subsequently confirmed by email sent at the time Wooley forwarded to the solicitors for the third defendant the notice of appointment of an agent, must be taken as fixing the third defendant with knowledge of the existence of the first defendant's agency. The evidence does not justify a conclusion that this situation ever altered.

[69] It is incumbent upon a person claiming an estoppel to identify the representation relied upon and the detriment which it is alleged was suffered as a result of such reliance.

[70] I do not think the plaintiff has been able to do this in this case. Had the third defendant not entered into the deed of release with the second plaintiff thus bringing the contract between the second plaintiff and the third defendant to an end, the third defendant would probably have remained liable to the vendors of Lots 8 and 20. The evidence does not suggest that the third defendant would have been capable of completing any such agreement.

[71] A further and perhaps more fundamental obstacle lies in the path of the third defendant. The estoppel alleged is one which would have the result that the first and second plaintiffs would be precluded from asserting a claim to any beneficial interest in the contractual rights held by Sippy Downs.

[72] The apparent aim of such a claim is to deny the third plaintiff its security rights over the contractual interest which the first and second plaintiffs held by virtue of their agent having entered into the contracts with the owners of Lots 8 and 30. The third defendant’s security over the first defendant would thus be the effective security on this scenario.

[73] A claim of proprietary estoppel can only be maintained as between the parties to it namely the person to whom the representation was made and who acted to his or her detriment and the person estopped and his or her successors. As Farwell LJ said in *Bank of England v Cutler* (1908) 1 KB 208 CA at p 234:

> *"It is true that a title by estoppel is only good against the person estopped, and imports from its very existence the idea of no real title at all, yet against the person estopped it has all the elements of a real title."*

[74] In *Re Goldcorp Exchange Ltd (in receivership)* (1995) 1 AC 74 the Privy Council at p 94G & H said:

> *"Valuable as it may be where one party to the estoppel asserts as against the other a proprietary cause of action such as trover , this cannot avail the purchaser in a contest with a third party creditor possessing a real proprietary interest in a real subject matter, whereas the purchaser has no more than a pretence of a title to a subject matter which does not actually exist."*

[75] An estoppel cannot operate to deny the security rights of the third plaintiff in a case such as this. The claim based on estoppel must fail.

[76] There are some other arguments advanced. It is contended that the first defendant was not a bare trustee but had power to grant security in its name over the interest which arose under the contracts.

[77] There was also an argument advanced that the rights of the first and second plaintiffs under the contract did not fall within the terms of the third plaintiff's security.

[78] The assets of the grantee of the charge are expressed in the widest possible terms. Clause 2.2(a) refers to purchase and sale contracts relating to freehold and leasehold land. On the findings that I have made, the contracts are contracts to which the first and second plaintiffs are parties by their agent.

[79] The argument that in some way the first defendant has been able to charge in its own name the beneficial interest which arose under the contracts of sale faces some fundamental difficulties.

[80] In *Cave v McKenzie* (1877) 46 LJ Ch 564, Jessell MR at p 567 drew the distinction between an agent and a trustee in the following way:

> *"Now, first of all, it is be noticed that there is no trust or confidence of the land in the agent. The moment he is agent he has not got the land at all. It is in equity vested in the principal, while at law it remains in the vendor. Therefore it is not a case of 'trust or confidence' of land. Where there has been a conveyance, different considerations probably arise; and that is shewn by the proviso which excepts a conveyance from the seventh section. Therefore you do not establish any – 'trust or confidence'. You establish the negative, and show that the man was simply what is called a conduit pipe and nothing more, a mere agent, who never had any interest in the lands, and subsequently could not have any 'trust or confidence' of them."*

[81] Where an agent has actual title to property then the agent will have a trust imposed upon him but he is a trustee who is bound to follow the directions of the principal with respect to the property. See Spiegelman CJ *Onus-Strata Plan No 43551 v Walter Construction Group Ltd* 62 NSWLR 169 at 179 (para 46). This point had not been reached in this case.

[82] The distinction between an agent and a trustee explains why clause 14 of the fixed and floating charge in this case has no relevance. The defendants were inclined to place some reliance upon it.

[83] In my view none of the various claims which the defendants have advanced which have as I have already indicated, the aim of denying the third plaintiff its security rights over and in respect of the first and second plaintiffs have any merit.

[84] In the event the plaintiffs have succeeded.

[85] It seems to me that it is sufficient to make orders declaring that the first defendant entered into the contracts for the sale of Lots 8 and 20 as agent for the first and second plaintiffs and to declare that the third plaintiff is pursuant to the fixed and floating charges held by it over the first and second plaintiffs, entitled to the sum held in trust by the second defendant.

[86] There are a number of claims raised by way of counterclaim. Some of these were abandoned and I think the others necessarily fail in the light of these findings.

[87] I will hear from the parties as to the relief which should follow these findings and also on the issue of costs.