THE HIGH COURT

KELLY'S CARPETDROME LTD.

Judgement of Mr. Justice Costello an ex parte application delivered the 9th day of May 1983.

On the 3rd of May last I made an Order on the Application of the Liquidator. The Liquidator had claimed that Matthew Kelly was in serious breach of the Agreement made with the Liquidator regarding the occupation of 53-58 Mary Street. Having heard Counsel for Matthew Kelly I made the Order of the 3rd May directing him and the companies associated with him to vacate the premises 53-58 Mary Street by to-day 9th May.

An Application was made this morning to me ex parte requesting that part of this Order should be vacated - that it should not apply to Yves Enterprises Limited. I refused the Application.

I am now told that an Appeal was made to the Supreme Court, which made no Order in the matter but suggested that Counsel re-apply to me.

Counsel have re-applied to me now but I see no reason to change the view I took the last time the matter was before me.

The situation is this - the only person entitled to be on the premises was Matthew Kelly by the Order made last year.

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It is claimed that he entered into an Agreement with Yves Enterprises Limited on the 9th February 1982 (his wife being the majority shareholder and he having one share). I am however concerned with the Agreement between Mr. Kelly and the Liquidator sanctioned by this Court. Mr. Kelly was not allowed to enter into any Agreement with Yves Enterprises Limited or any other Company. I referred specifically to Yves Enterprises Limited in making my Order last week as I was aware that Mr. Kelly was involved in that Company in some indirect way.

I must refuse this Application. I take into account what the Supreme Court said, but I am quite satisfied that the Court had not all the facts before it. In saying this I do not intend any suggestion that Counsel misled the Court.

The Injunction on an ex parte application was granted (a Mareva injunction) relating to the activities of Matthew Kelly in aid of the relief now sought by the Liquidator that Kelly was personally liable for the debts of Carpetdrome. The Motion on notice to-day was adjourned for one week, but an injunction was granted for one week freezing

his assets and Yves Enterprises' stocks in trade in Mary Street premises. Counsel on behalf of Yves Enterprises applied ex parte to me to raise that part of my Order as far as the Company was concerned. I refused to do so. He has now re-applied in light of the views of the Supreme Court. I must refuse this request also.

I regard Mr. Kelly as being in very serious breach of the Agreement with the Liquidator and I cannot condone what he has done. I am very sympathetic with any member of the public who may be adversely affected but the Order must stand till Monday next.

Finally, there is another reason for refusing this Application. The Application ex parte this morning was one which required the utmost uberrimae fidee. I was told this afternoon that contrary to the impression given in Mrs. Kelly's affidavit she is in fact now living with her husband and is not separated from him. I regard the breach of the Applicants duty to the Court as a serious one justifying me in refusing the Application.

I affirm the above here
of my judgment