

43/84

IN THE PRIVY COUNCIL

No. 18 of 1984

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES,  
COMMON LAW DIVISION, COMMERCIAL LIST,  
MATTER NO. 16159 OF 1980

BETWEEN:

PHILLIP WILLIAM CARNEY  
Appellant (Defendant)

AND:

DARRELL BRUCE ARNETT  
Respondent (Plaintiff)

**RECORD OF PROCEEDINGS**

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SOLICITORS FOR THE APPELLANT

Kennedy & Kennedy,  
111 Elizabeth Street,  
SYDNEY.

Telephone: 232 3033  
DX 231 SYDNEY

By their Agents:

MacFarlanes,  
10 Norwich Street,  
LONDON, EC4A 13D U.K.

Telephone: (01) 831 9222

SOLICITORS FOR THE RESPONDENT

White & Associates,  
49-51 Eton Street,  
SUTHERLAND.

Telephone: 542-3644  
DX 11048 MIRANDA

By their City Agents:

Law & Milne,  
68 Pitt Street,  
SYDNEY.

Telephone: 232 2522  
DX 223 SYDNEY

By their Agents:

Charles Russell & Co.,  
Hale Court,  
Lincoln's Inn,  
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Telephone: (01) 242 1031

IN THE PRIVY COUNCIL

No. of 1983

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES,  
COMMON LAW DIVISION, COMMERCIAL LIST,  
MATTER NO. 16159 OF 1980

BETWEEN:

PHILLIP WILLIAM GARNEY  
Appellant (Defendant)

AND:

DARRELL BRUCE ARNETT  
Respondent (Plaintiff)

## RECORD OF PROCEEDINGS

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BETWEEN:

PHILLIP WILLIAM CARNEY

Appellant (Defendant)

AND:

DARRELL BRUCE ARNETT

Respondent (Plaintiff)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE:

PART I

Documents included in the Record

No.	Description of Document	Date	Page
1.	Statement of Claim	16 October, 1980	1
2.	Notice of Appearance (Not reproduced)	23 October, 1980	
3.	Defence	23 February, 1981	4
4.	Plaintiff's Notice of Motion for Summary Judgment	7 May, 1981	14
5.	Affidavit of J.E. Herbert	1 May, 1981	Reproduced in Record of 16157 of 1980
6.	Affidavit of K. Jehnic	1 May, 1981	"
7.	Affidavit of D.B. Arnett	1 May, 1981	"
8.	Affidavit of the Defendant	3 September, 1981	"
9.	Affidavit of W.S.Morton	3 September, 1981	"
10.	Affidavit of L.J. Kelk	11 September, 1981	"

No.	Description of Document	Date	Page
11.	Transcript of Evidence taken before Master Allen	15 September, 1981	Reproduced in Record of 16157 of 1980
<u>PLAINTIFF'S EVIDENCE:</u>			
	<u>HERBERT</u> - John Edward		
	Examination		
	Cross-Examination		
	<u>JEHNIC</u> - Karlo		
	Examination		
	Cross-Examination		
	<u>ARNETT</u> - Darrell Bruce		
	Examination		
	Cross-Examination		
<u>DEFENDANT'S EVIDENCE:</u>			
	<u>DEFENDANT</u> - <u>CARNEY</u> - Phillip William		
	Examination		
	Cross-Examination		
	Further Examination		
12.	Reasons for Judgment of Master Allen in favour of the Plaintiff on Motion for Summary Judgment	23 October, 1981	"
13.	Judgment of Master Allen	26 October, 1981	15
14.	Affidavit of the Defendant (Not reproduced)	26 October, 1981	
15.	Affidavit of the Defendant (Not reproduced)	17 November, 1981	
16.	Defendant's Notice of Motion for Stay of Execution (Not reproduced)	17 November, 1981	
17.	Defendant's Notice of Appeal from the decision of the Master	23 November, 1982	16
18.	Order of Hunt, J. for stay of execution pending determination of appeal from the decision of the Master (Not reproduced)	23 November, 1981	
19.	Reasons of Begg, J. allowing Defendant's appeal from the decision of the Master	24 May, 1982	Reproduced in Record of 16157 of 1980
		Index "B"	

No.	Description of Document	Date	Page
20.	Order of Begg, J. allowing Defendant's appeal from the decision of the Master.	24 May,	Reproduced in Record of 1982 16157 of 1980
21.	Plaintiff's Notice of Motion for entry of the matter in the Commercial List and for directions (Not reproduced)	24 May,	1982
22.	Plaintiff's list of documents (Not reproduced)	15 June,	1982
23.	Defendant's list of documents (Not reproduced)	28 June,	1982
24.	Amended Defence	4 November,	1982 18
25.	Agreed List of Documents	Undated	Reproduced in Record of 16157 of 1980
26.	Transcript of Evidence taken before his Honour, Mr. Justice Rogers	28 - 31 March,	1983 "

DEFENDANT'S EVIDENCE:

DEFENDANT, CARNEY - Phillip William

Examination	28 March,	1983
Cross-Examination		
Further Cross-Examination		
Re-Examination	29 March,	1983

VAN DER SLUIS - Ross Gerrard

Examination	29 and 30 March,	1983
Examination on the Voir Dire		
Further Examination		
Witness withdrawn by consent.		

MORTON - Wayne Stanley

Examination	30 March,	1983
Cross-Examination		
Re-Examination		

PLAINTIFF'S EVIDENCE:

ARNETT - Darrell Bruce

Examination	30 March,	1983
Cross-Examination		
Re-Examination		

No.	Description of Document	Date	Page
26.	<u>Plaintiff's Evidence Continued:</u>		Reproduced in Record of 16157 of 1980
	<u>SIMPSON</u> - Danny Kenneth		
	Examination	30 March,	1983
	Cross-Examination		
	<u>HERBERT</u> - John Edward		
	Examination	30 March,	1983
	Cross-Examination		
	Re-Examination		
	<u>JEHNIC</u> - Karlo		
	Examination	30 March,	1983
	Cross-Examination		
27.	Reasons for Judgment of his Honour, Mr. Justice Rogers	31 March,	1983 "
28.	Judgment of his Honour, Mr. Justice Rogers	6 April,	1983 31
29.	Appellant's Notice of Motion for Leave to Appeal to Her Majesty in Council (Not reproduced)	20 April,	1983
30.	Affidavit of the Appellant (Not reproduced)	5 May,	1983
31.	Appellant's Notice of Motion for order staying execution of Judgment (Not reproduced)	5 May,	1983
32.	Order granting Conditional Leave to Appeal to Her Majesty in Council	6 May,	1983 32
33.	Order for stay of execution of Judgment (Not reproduced)	6 May,	1983
34.	Further Orders in respect of the pay- ment of costs of the proceedings before the Master and the Appeal from the decision of the Master	6 April,	1983 Reproduced in Record of 16157 of 1980
35.	Motion of Appellant for final leave (Not reproduced)		
36.	Affidavit of D.S. Kennedy (Not reproduced)		
37.	Certificate of Compliance (Not reproduced)		

No.	Description of Document	Date	Page
38.	Order granting Final Leave to Appeal	19 August,	1983 35
39.	Suitor's Fund Certificate (Not reproduced)		
40.	Affidavit of L.E. Farrant verifying Record	15 March,	1984 36
41.	Affidavit of G.A. White verifying Record		1984 Reproduced in Record of 16157 of 1980
42.	Certificate Verifying Transcript Record	15 March,	1984 37

PART II

List of Exhibits

Exhibit Mark	Description of Document	Date	Page
<u>PLAINTIFF'S EXHIBITS:</u>			
"A"	Letters from Airfoil Registers Sales Pty. Ltd. to K. Jehnic, J. Herbert and D. Arnett respectively	25 July,	Reproduced in Record of 1980 16157 of 1980
"A1"	Agreement for Sale of Shares between Darrell Bruce Arnett of the first part and Ilerain Pty. Limited	21 March,	1980 38
"A2"	Agreement for Sale of Shares between John Edward Herbert of the first part and Ilerain Pty. Limited of the second part	21 March,	Reproduced in Record of 1980 16157 of 1980
"A3"	Agreement for Sale of Shares between Karlo Jehnic of the first part and Ilerain Pty. Ltd. of the second part	21 March,	Reproduced in Record of 1980 16158 of 1980
"A10"	Deed of Guarantee between the Defendant of the first part and John Edward Herbert, Darrell Bruce Arnett and Karlo Jehnic of the second part	24 March,	Reproduced in Record of 1980 16157 of 1980
"A26"	Butt for Airfoil Registers Pty. Limited cheque No. 536165	24 March,	1980 "
"A27"	Butt for Airfoil Registers Pty. Limited cheque No. 536166	24 March,	1980 "
"A28"	Butt for Airfoil Registers Pty. Limited cheque No. 536167	24 March,	1980 "
"A29"	Butt for Airfoil Registers Pty. Limited cheque No. 536168	24 March,	1980 "
"A30"	Butt for Airfoil Registers Pty. Limited cheque No. 536169	15 August,	1980 "
"A31"	Butt for Airfoil Registers Pty. Limited cheque No. 536170	15 August,	1980 "
"A32"	Butt for Airfoil Registers Pty. Limited cheque No. 536171	31 July,	1980 "
"A33"	Butt for Airfoil Registers Pty. Limited cheque No. 536172	31 July,	1980 "
		Index "F"	



Exhibit Mark	Description of Document	Date	Page
"A34"	Butt for Airfoil Registers Pty. Limited cheque No. 536173	31 July,	1980 Reproduced in Record of 16157 of 1980
"A35"	Butt for Airfoil Registers Pty. Limited cheque No. 536174	18 March,	1980 "
"A36"	Butt for Airfoil Registers Pty. Limited cheque No. 536175	18 March,	1980 "
"A37"	Butt for Airfoil Registers Pty. Limited cheque No. 536176	18 March,	1980 "
"A43"	Reconstituted ledger account No. 18 of Airfoil Registers Pty. Limited Defendant's loan account	Undated	"
"A44"	Annual Return of Airfoil Registers Pty. Limited to 31 December, 1979	31 December,	1979 "
"A45"	Copy Balance Sheet for Airfoil Registers Pty. Limited as at 31 December, 1979, annotated in pencil	Undated	"
"A47"	Balance Sheet and Profit and Loss Accounts for Airfoil Registers Pty. Ltd. as at 27 June, 1980	Undated	"
"B"	Photocopy of calculations in Defendant's handwriting	Undated	"
<u>DEFENDANT'S EXHIBITS:</u>			
1(5)	Memorandum of Mortgage from Newbridge Industries Pty. Limited to Darrell Bruce Arnett	21 March,	1980 40
1(6)	Memorandum of Mortgage from Newbridge Industries Pty. Limited to John Edward Herbert	21 March,	1980 Reproduced in Record of 16157 of 1980
1(7)	Memorandum of Mortgage from Newbridge Industries Pty. Limited to Karlo Jehnic	21 March,	1980 Reproduced in Record of 16158 of 1980
1(8)	Caveat R758527	25 March,	1980 43
1(9)	Draft Agreement for Mortgage	Undated	Reproduced in Record of 16157 of 1980
1(11)	Page 30 of the Statement of Account of Airfoil Registers Pty. Limited with the Commercial Bank of Australia Limited, Padstow	27 March, Index "G"	1980 "

Exhibit Mark	Description of Document	Date	Page
1(12)	Airfoil Registers Pty. Limited cheque No. 536165	24 March,	1980 Reproduced in Record of 16157 of 1980
1(13)	Airfoil Registers Pty. Limited cheque No. 536166	24 March,	1980     "
1(14)	Airfoil Registers Pty. Limited cheque No. 536167 (Date unclear)		"
1(15)	Airfoil Registers Pty. Limited cheque No. 536168	15 August,	1980     "
1(16)	Airfoil Registers Pty. Limited cheque No. 536169	15 August,	1980     "
1(17)	Airfoil Registers Pty. Limited cheque No. 536170	15 August,	1980     "
1(18)	Airfoil Registers Pty. Limited cheque No. 536171	31 July,	1980     "
1(19)	Airfoil Registers Pty. Limited cheque No. 536172	31 July,	1980     "
1(20)	Airfoil Registers Pty. Limited cheque No. 536173	31 July,	1980     "
2	(Exhibit mark not used)		
3	Airfoil Registers Pty. Limited cheque butts numbers 536001-536164 and 536177-536200		"
4	Defendant's Interrogatories Nos. 2 and 3 and replies thereto		48

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW  
DIVISION

No. 16159 of 1980

DARRELL BRUCE  
ARNETT

Plaintiff

PHILLIP WILLIAM  
CARNEY

Defendant

STATEMENT OF  
CLAIM

1. On 21st March, 1980, Ilerain Pty. Limited agreed with the plaintiff to purchase from the plaintiff certain shares owned by the plaintiff in a company known as Airfoil Registers Pty. Limited.

2. Pursuant to the said agreement Ilerain Pty. Limited was to pay the sum of \$106,500.00 as follows:-

(a) As to the sum of \$41,000.00 such sum to be paid on 24th March, 1980.

(b) As to the sum of \$28,000.00 such sum to be paid on 31st July, 1980.

(c) As to the sum of \$37,500.00 such sum to be paid on 15th August, 1980.

3. Ilerain Pty. Limited has not paid the sums of \$28,000.00 and \$37,500.00 as hereinbefore set out.

4. The defendant in writing agreed that if the plaintiff would sell Ilerain Pty. Limited the said shares he would guarantee the payment for the said shares.

5. The plaintiff has made demand in writing to the defendant for payment

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Statement of Claim

of the said sums of \$28,000.00 and \$37,500.00 and the defendant has failed to pay the said sums.

6. The plaintiff claims from the defendant

(i) The sum of \$65,500.00

(ii) Interest in the sum of \$65,500.00 from the date of issue hereof until the date of judgment at the rate of \$10.00 per centum per annum pursuant to Section 94 of the Supreme Court Act.

To the defendant Phillip William Carney of 3 Turon Court, Turon Avenue, Kingsgrove, Company Director.

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1. You are liable to suffer judgment or an order against you unless the prescribed form of notice of your appearance is received in the Registry within fourteen (14) days after service of this Statement of Claim upon you and you comply with the rules of Court relating to your defence.

2. You are required to verify your defence.

3. You may, within fourteen (14) days after service of this Statement of Claim upon you, pay to the plaintiff or his solicitor the amount claimed together with interest thereon at the rate claimed upon the date of filing of this Statement of Claim until payment and also

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(L.S.) 182--

~~\$162-00~~ for costs. Further proceedings against you will be stayed when you also file a prescribed form of notice of payment.

Nominated place for trial: Sydney

Plaintiff:

Darrell Bruce Arnett

Statement of Claim

Plaintiff's Address  
for Service:

C/- Peet, Simpson & Co.,  
Solicitors,  
123 Forest Road,  
Hurstville. 2220

Address of Registry:

Law Courts Building, Level 5,  
Queens Square, Sydney.

D.K. Simpson  
.....  
Plaintiff's Solicitor

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Danny Kenneth Simpson  
October  
Filed: 16 ~~September~~, 1980.

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW DIVISION

No. 16159 of 1980

DARRELL BRUCE  
ARNETT

Plaintiff

PHILLIP WILLIAM  
CARNEY

Defendant

DEFENCE

1. In answer to paragraphs 1 and 2 of the Statement of Claim, the Defendant admits that Ilerain Pty. Limited agreed with the Plaintiff to purchase from the Plaintiff certain shares owned by the Plaintiff in a company known as Airfoil Registers Pty. Limited on the terms as to payment set forth in paragraph 2 of the Statement of Claim, but says that the terms of the said agreement are not fully or accurately set forth in the Statement of Claim. Save as aforesaid, the Defendant does not admit the allegations made in paragraphs 1 or 2 of the Statement of Claim or any of them.
2. The Defendant admits the allegations made in paragraph 3 of the Statement of Claim.
3. In answer to paragraph 4 of the Statement of Claim, the Defendant admits that he agreed to guarantee the obligations of Ilerain Pty. Limited in respect

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Defence

of the purchase by Ilerain Pty. Limited of shares of the Plaintiff in the capital of Airfoil Registers Pty. Limited, but says that the terms of the said agreement are not fully or accurately set forth in the Statement of Claim. Save as aforesaid, the Defendant does not admit the allegations made in paragraph 4 of the Statement of Claim or any of them.

4. The Defendant admits the allegations made in paragraph 5 of the Statement of Claim. 10
5. In further answer to the whole of the Statement of Claim, the Defendant says that -

(i) It was a term and condition of the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof, or alternatively, of the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and of the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof, that Newbridge Industries Pty. Limited, a subsidiary of the said Airfoil Registers Pty. Limited within the meaning of that word as used in the Companies Act 1961, would give financial assistance for the purpose of and in connection with the said purchase by Ilerain Pty. Limited 20

Defence

of shares of the Plaintiff in Airfoil Registers Pty. Limited by providing security, namely an unregistered mortgage of real estate, for the payment of the unpaid balance of the price of the said shares;

(ii) Pursuant to the said agreement, or alternatively, pursuant to the said agreements, the said Newbridge Industries Pty. Limited provided security, namely an unregistered mortgage of real estate, for the unpaid balance of the price of the said shares;

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(iii) In the premises, the said agreement, or alternatively, the said agreements, were illegal and unenforceable by reason of the provisions of Section 67 of the Companies Act 1961.

6. Alternatively to paragraph 5, in further answer to the whole of the Statement of Claim, the Defendant says that -

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(i) The agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof, was, or alternatively, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof, were, interdependent with



## Defence

an agreement by which Newbridge Industries Pty. Limited, a subsidiary of the said Airfoil Registers Pty. Limited within the meaning of that word as used in the Companies Act 1961, agreed to give financial assistance for the purpose of and in connection with the said purchase by Ilerain Pty. Limited of shares of the Plaintiff in Airfoil Registers Pty. Limited by providing security, namely an unregistered mortgage of real estate, for the payment of the unpaid balance of the price of the said shares;

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(ii) Pursuant to the last-mentioned agreement, the said Newbridge Industries Pty. Limited provided security, namely an unregistered mortgage of real estate, for the unpaid balance of the price of the said shares;

(iii) In the premises, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof, was, or alternatively, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof, were, illegal and unenforceable by reason

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Defence

of the provisions of Section 67 of the  
Companies Act 1961.

7. Alternatively to paragraphs 5 and 6, in further answer to the whole of the Statement of Claim, the Defendant says that -

- (i) The agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof was, or alternatively, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof were, entered into by the parties thereto in the expectation of the parties that Newbridge Industries Pty. Limited, a subsidiary of the said Airfoil Registers Pty. Limited within the meaning of that word as used in the Companies Act 1961, would give financial assistance for the purpose of and in connection with the said purchase by Ilerain Pty. Limited of shares of the Plaintiff in Airfoil Registers Pty. Limited by providing security, namely an unregistered mortgage of real estate, for the payment of the unpaid balance of the price of the said shares;
- (ii) In accordance with the said expectation,

Defence

Newbridge Industries Pty. Limited provided security, namely an unregistered mortgage of real estate, for the unpaid balance of the price of the said shares;

- (iii) In the premises, the said agreement was, or alternatively, the said agreements were, illegal and unenforceable by reason of the provisions of Section 67 of the Companies Act 1961.

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8. In further answer to the whole of the Statement of Claim, the Defendant says that -

- (i) It was a term and condition of the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof, or alternatively, of the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and of the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof, that Airfoil Registers Pty. Limited would give financial assistance for the purpose of and in connection with the said purchase by Ilerain Pty. Limited of shares of the Plaintiff in Airfoil Registers Pty. Limited by advancing on loan the first instalment of the price of the said shares;

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Defence

(ii) Pursuant to the said agreement, or alternatively, pursuant to the said agreements, Airfoil Registers Pty. Limited advanced on loan the first instalment of the price of the said shares;

(iii) In the premises, the said agreement was, or alternatively, the said agreements were, illegal and unenforceable by reason of the provisions of Section 67 of the Companies Act 1961.

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9. Alternatively to paragraph 8 hereof, in further answer to the whole of the Statement of Claim, the Defendant says that -

(i) The agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof was, or alternatively, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof were, interdependent with an agreement by which Airfoil Registers Pty. Limited agreed to give financial assistance for the purpose of and in connection with the said purchase by Ilerain Pty. Limited of shares of the Plaintiff in Airfoil Registers Pty. Limited

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Defence

by advancing on loan the first instalment of the price of the said shares;

- (ii) Pursuant to the last-mentioned agreement, Airfoil Registers Pty. Limited advanced on loan the first instalment of the price of the said shares;
- (iii) In the premises, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof was, or alternatively, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof were, illegal and unenforceable by reason of the provisions of Section 67 of the Companies Act 1961.

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10. Alternatively to paragraphs 8 and 9 hereof, in further answer to the whole of the Statement of Claim, the Defendant says that -

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- (i) The agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof was, or alternatively, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the agreement pursuant to which

Defence

the Defendant agreed as admitted in paragraph 3 hereof were, entered into by the parties thereto in the expectation of the parties that Airfoil Registers Pty. Limited would give financial assistance for the purchase of and in connection with the said purchase by Ilerain Pty. Limited of shares of the Plaintiff in Airfoil Registers Pty. Limited by advancing on loan the first instalment of the price of the said shares;

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(ii) In accordance with the said expectation Airfoil Registers Pty. Limited advanced on loan the first instalment of the price of the said shares;

(iii) In the premises, the said agreement was, or alternatively, the said agreements were, illegal and unenforceable by reason of the provisions of Section 67 of the Companies Act 1961.

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.....  
Defendant's Solicitor

Defence

AFFIDAVIT

On 20th February 1981, I, PHILLIP WILLIAM CARNEY of  
3 Turon Avenue Kingsgrove, Company Director, say on  
oath:-

1. I am the Defendant.
2. The defence set out above is true in substance and  
in fact.

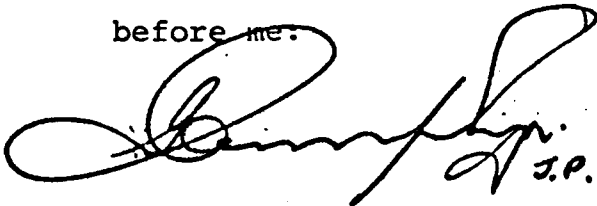
SWORN by the deponent )

at PADSTOW )

P.W. Carney

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before me:

A handwritten signature in black ink, appearing to be 'P. J. P.', written over a horizontal line. The signature is cursive and includes the initials 'J.P.' at the end.

A Justice of the Peace

Filed: 1981

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW DIVISION

No. 16159 of 1980

DARRELL BRUCE ARNETT

Plaintiff

PHILLIP WILLIAM  
CARNEY

Defendant

NOTICE OF MOTION

The plaintiff will at 10.00 a.m. on 13th May 1981 at No. (L.S.) Court, Supreme Court, Queens Square, Sydney move the Court for orders:

1. Directing the entry of judgment for the plaintiff
2. Alternatively, striking out the defence and directing the entry of judgment for the plaintiff.
3. For such further or other relief as the nature of the case may require.
4. For costs.

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FILED 7th May 1981

D.K. Simpson  
.....  
Plaintiff's Solicitor

TO: Phillip William Carney



IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW  
DIVISION

No. 16159 of 1980

DARRELL BRUCE  
ARNETT

Plaintiff

PHILLIP WILLIAM  
CARNEY

Defendant

Judgment -

1. that the defendant pay the plaintiff \$65,500.00 together with \$6,729.45 for interest thereon pursuant to s.94 of the Supreme Court Act 1970 at the rate of 10 per centum per annum from 16th October 1980 to 26th October 1981;

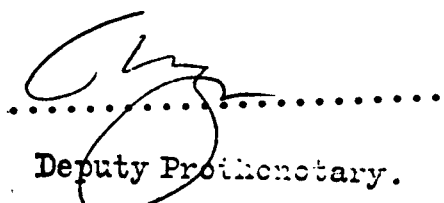
The Court orders that -

2. the defendant pay the plaintiff's costs of the proceedings generally including the costs of this motion for summary judgment which costs are to include the brief fee on hearing for senior Counsel on the basis of a single brief on hearing covering the motion for summary judgment in this case and the motions for summary judgment in Jehnic v. Carney (16158 of 1980) and in Herbert v. Carney (16157 of 1980).

JUDGMENT

Ordered 26 October 1981 and entered 15 July 1983.

By the Court

  
.....  
Deputy Prothonotary.

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW  
DIVISION

S17454 of 1981  
16159 of 1980

PHILLIP WILLIAM  
CARNEY

Appellant

DARRYL BRUCE  
ARNETT

Respondent

IN THE COURT  
BELOW

DARRYL BRUCE  
ARNETT

Plaintiff

PHILLIP WILLIAM  
CARNEY

Defendant

NOTICE OF APPEAL

The appellant appeals to the Court constituted by a Judge from the decision of Master Allen made on 26 October 1981.

GROUNDS:

1. That the Master erred in holding that any term of the contract between the plaintiff and Ilerain Pty.

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Limited relating to the acquisition by Ilerain Pty. Limited of the plaintiff's shares in Airfoil Registers Pty. Limited requiring the provision

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of a mortgage by Newbridge Industries Pty. Limited as security for payment of the purchase price was severable from the rest of the contract. (L.S.)

2. That the Master erred in holding that it would not be open to a tribunal of fact acting reasonably on a trial of these proceedings to infer that the contractual obligation of Ilerain Pty. Limited was to make the first payment of the said purchase price by a cheque drawn on the account of Airfoil Registers Pty. Limited.

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3. That the Master should have found

Notice of Appeal

that it was reasonably arguable that it was a term of the contract between the plaintiff and Ilerain Pty. Limited that the first payment on account of the said purchase price was to be made by a cheque drawn on the account of Airfoil Registers Pty. Limited.

4. That the Master erred in holding that any term of the said contract between the plaintiff and Ilerain Pty. Limited requiring that post-dated cheques drawn on the account of Airfoil Registers Pty. Limited should be handed over to secure the balance of the said purchase price was severable from the rest of that contract. (L.S.)

5. That on the evidence presented there was a proper defence to go to trial that the principal obligation relied upon the plaintiff in these proceedings was void by reason of Section 67 of the Companies Act 1961.

ORDERS SOUGHT:

1. That in lieu of the directions and orders made by Master Allen the following orders be made -

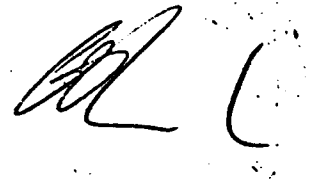
- (a) That the summons be dismissed.
- (b) That the plaintiff pay the defendant's costs including the fees for Senior Counsel.

2. Costs.

For hearing: 10 am 12th February 1982. (L.S.)

(Sgd.) D.S. Kennedy  
.....  
Appellant's Solicitor

FILED: 23 NOVEMBER 1981



IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW  
DIVISION

No. 16159 of 1980

DARRELL BRUCE  
ARNETT

Plaintiff

PHILLIP WILLIAM  
CARNEY

Defendant

AMENDED  
DEFENCE

1. In answer to paragraphs 1 and 2 of the Statement of Claim, the Defendant admits that Ilerain Pty. Limited agreed with the Plaintiff to purchase from the Plaintiff certain shares owned by the Plaintiff in a company known as Airfoil Registers Pty. Limited on the terms as to payment set forth in paragraph 2 of the Statement of Claim, but says that the terms of the said agreement are not fully or accurately set forth in the Statement of Claim. Save as aforesaid, the Defendant does not admit the allegations made in paragraphs 1 or 2 of the Statement of Claim or any of them.
2. The Defendant admits the allegations made in paragraph 3 of the Statement of Claim.
3. In answer to paragraph 4 of the Statement of Claim, the Defendant admits that he agreed to guarantee the obligations of Ilerain Pty. Limited in respect of the purchase by Ilerain Pty. Limited of shares of the Plaintiff in the capital of

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Amended Defence

Airfoil Registers Pty. Limited, but says that the terms of the said agreement are not fully or accurately set forth in the Statement of Claim. Save as aforesaid, the Defendant does not admit the allegations made in paragraph 4 of the Statement of Claim or any of them.

4. The Defendant admits the allegations made in paragraph 5 of the Statement of Claim.

5. In further answer to the whole of the Statement of Claim, the Defendant says that - 10

(i) It was a term and condition of the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof, or alternatively, of the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and of the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof, that Newbridge Industries Pty. Limited, a subsidiary of the said Airfoil Registers Pty. Limited within the meaning of that word as used in the Companies Act 1961, would give financial assistance for the purpose of and in connection with the said purchase by Ilerain Pty. Limited of shares of the Plaintiff in Airfoil Registers Pty. Limited by providing 20

Amended Defence

security, namely an unregistered mortgage of real estate, for the payment of the unpaid balance of the price of the said shares;

(ii) Pursuant to the said agreement, or alternatively, pursuant to the said agreements, the said Newbridge Industries Pty. Limited provided security, namely an unregistered mortgage of real estate, for the unpaid balance of the price of the said shares;

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(iii) In the premises, the said agreement, or alternatively, the said agreements, were illegal and unenforceable by reason of the provisions of Section 67 of the Companies Act 1961.

6. Alternatively to paragraph 5, in further answer to the whole of the Statement of Claim, the Defendant says that -

(i) The agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof, was, or alternatively, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof, were, interdependent with an agreement by which Newbridge

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Amended Defence

Industries Pty. Limited, a subsidiary of the said Airfoil Registers Pty. Limited within the meaning of that word as used in the Companies Act 1961, agreed to give financial assistance for the purpose of and in connection with the said purchase by Ilerain Pty. Limited of shares of the Plaintiff in Airfoil Registers Pty. Limited by providing security, namely an unregistered mortgage of real estate, for the payment of the unpaid balance of the price of the said shares;

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- (ii) Pursuant to the last-mentioned agreement, the said Newbridge Industries Pty. Limited provided security, namely an unregistered mortgage of real estate, for the unpaid balance of the price of the said shares;
- (iii) In the premises, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof, was, or alternatively, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof, were, illegal and unenforceable by reason of the provisions of Section 67 of the Companies Act 1961.

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Amended Defence

7. Alternatively to paragraphs 5 and 6, in further answer to the whole of the Statement of Claim, the Defendant says that -

(i) The agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof was, or alternatively, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof were, entered into by the parties thereto in the expectation of the parties that Newbridge Industries Pty. Limited, a subsidiary of the said Airfoil Registers Pty. Limited within the meaning of that word as used in the Companies Act 1961, would give financial assistance for the purpose of and in connection with the said purchase by Ilerain Pty. Limited of shares of the Plaintiff in Airfoil Registers Pty. Limited by providing security, namely an unregistered mortgage of real estate, for the payment of the unpaid balance of the price of the said shares;

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(ii) In accordance with the said expectation, Newbridge Industries Pty. Limited provided security, namely an unregistered mortgage



Amended Defence

of real estate, for the unpaid balance of the price of the said shares;

(iii) In the premises, the said agreement was, or alternatively, the said agreements were, illegal and unenforceable by reason of the provisions of Section 67 of the Companies Act 1961.

8. In further answer to the whole of the Statement of Claim, the Defendant says that -

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(i) It was a term and condition of the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof, or alternatively, of the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and of the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof, that Airfoil Registers Pty. Limited would give financial assistance for the purpose of and in connection with the said purchase by Ilerain Pty. Limited of shares of the Plaintiff in Airfoil Registers Pty. Limited by advancing on loan the first instalment of the price of the said shares;

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(ii) Pursuant to the said agreement, or alternatively, pursuant to the said agreements,

Amended Defence

Airfoil Registers Pty. Limited advanced on loan the first instalment of the price of the said shares;

(iii) In the premises, the said agreement was, or alternatively, the said agreements were, illegal and unenforceable by reason of the provisions of Section 67 of the Companies Act 1961.

9. Alternatively to paragraph 8 hereof, in further answer to the whole of the Statement of Claim, the Defendant says that - 10

(i) The agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof was, or alternatively, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof were, interdependent with an agreement by which Airfoil Registers Pty. Limited agreed to give financial assistance for the purpose of and in connection with the said purchase by Ilerain Pty. Limited of shares of the Plaintiff in Airfoil Registers Pty. Limited by advancing on loan the first instalment of the price of the said shares; 20

(ii) Pursuant to the last-mentioned agreement,

Amended Defence

Airfoil Registers Pty. Limited advanced on loan the first instalment of the price of the said shares;

(iii) In the premises, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof was, or alternatively, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof were, illegal and unenforceable by reason of the provisions of Section 67 of the Companies Act 1961.

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10. Alternatively to paragraphs 8 and 9 hereof, in further answer to the whole of the Statement of Claim, the Defendant says that -

(i) The agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof was, or alternatively, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof were, entered into by the parties thereto in the expectation of the

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Amended Defence

parties that Airfoil Registers Pty. Limited would give financial assistance for the purchase of and in connection with the said purchase by Ilerain Pty. Limited of shares of the Plaintiff in Airfoil Registers Pty. Limited by advancing on loan the first instalment of the price of the said shares;

(ii) In accordance with the said expectation Airfoil Registers Pty. Limited advanced on loan the first instalment of the price of the said shares; 10

(iii) In the premises, the said agreement was, or alternatively, the said agreements were, illegal and unenforceable by reason of the provisions of Section 67 of the Companies Act 1961.

11. In further answer to the whole of the Statement of Claim, the Defendant says that -

(i) It was a term and condition of the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof, or alternatively, of the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and of the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof, that Airfoil Registers 20

Amended Defence

Pty. Limited would sell to the Plaintiff at a price less than its true value, a certain motor vehicle owned by Airfoil Registers Pty. Limited.

(ii) Pursuant to the said agreement, or alternatively, pursuant to the said agreements, Airfoil Registers Pty. Limited sold to the Plaintiff the said motor vehicle at a price less than its true value. 10

(iii) The sale of the said motor vehicle as aforesaid constituted the giving by Airfoil Registers Pty. Limited of financial assistance in connection with the purchase by Ilerain Pty. Limited of shares in Airfoil Registers Pty. Limited.

(iv) In the premises, the said agreement was, or alternatively, the said agreements were, illegal and unenforceable by reason of the provisions of Section 67 of the Companies Act 1961. 20

12. Alternatively to paragraph 11, and in further answer to the whole of the Statement of Claim, the Defendant says that -

(i) The agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof, was, or alternatively, the agreement pursuant to which Ilerain

Amended Defence

Pty. Limited agreed as admitted in paragraph 1 hereof and the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof, were, interdependent with an agreement by which Airfoil Registers Pty. Limited agreed to sell to the Plaintiff at a price less than its true value a certain motor vehicle owned by Airfoil Registers Pty. Limited.

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- (ii) Pursuant to the last mentioned agreement, Airfoil Registers Pty. Limited sold to the Plaintiff the said motor vehicle at a price less than the true value.
- (iii) The sale of the said motor vehicle as aforesaid constituted the giving by Airfoil Registers Pty. Limited of financial assistance in connection with the purchase by Ilerain Pty. Limited of shares in Airfoil Registers Pty. Limited.
- (iv) In the premises, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof, was, or alternatively, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof,

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Amended Defence

were, illegal and unenforceable by reason of the provisions of Section 67 of the Companies Act 1961.

13. Alternatively to paragraphs 11 and 12, in further answer to the whole of the Statement of Claim, the Defendant says that -

(i) The agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof was, or alternatively, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof, were, entered into by the parties thereto in the expectation of the parties that Airfoil Registers Pty. Limited would sell to the Plaintiff at a price less than its true value a certain motor vehicle owned by Airfoil Registers Pty. Limited.

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(ii) In accordance with the said expectation, Airfoil Registers Pty. Limited sold to the Plaintiff the said motor vehicle at a price less than its true value.

(iii) The sale of the said motor vehicle as aforesaid constituted the giving by Airfoil Registers Pty. Limited of financial assistance in connection with the purchase by

Amended Defence

Ilerain Pty. Limited of shares in Airfoil Registers Pty. Limited.

(iv) In the premises, the said agreement was, or alternatively, the said agreements were, illegal and unenforceable by reason of the provisions of Section 67 of the Companies Act 1961.

Defendant's Solicitor.

AFFIDAVIT

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On 4th ~~September~~ November 1982, I, PHILLIP WILLIAM CARNEY, of 3 Turon Avenue Kingsgrove, Company Director, say on oath:-

1. I am the Defendant.
2. The defences set out above are true in substance and in fact.

SWORN by the Deponent )  
before me: ) (Sgd)

(sgd)

A Justice of the Peace

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Filed: September, 1982



IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW  
DIVISION

16159 of 1980  
16157 of 1980  
16158 of 1980  
(L.S.)

DARRELL BRUCE  
ARNETT

Plaintiff

PHILLIP WILLIAM  
CARNEY

Defendant

JUDGMENT

JUDGMENT -

that -

1. That the defendant pay to the  
Plaintiff the sum of \$89,749.36.

2. This judgment takes effect  
on 6 April 1983.

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THE COURT ORDERS that -

1. The Defendant pay the  
Plaintiff's costs other than the costs  
of the application for summary judg-  
ment heard by Master Allen on 15 and  
16 September, 1981 and of the appeal  
from the decision of Master Allen  
heard before Begg J. on 24 May 1982.

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2. The exhibits to remain in  
Court for 28 days from today, to be  
handed out thereafter if no appeal  
brought, or, if any appeal be brought  
within that time, to be dealt with  
in accordance with the Rules of Court.

Ordered 6 April 1983 and entered.  
8.2.1984

By the Court

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(Sgd:) W. FARLOW (L.S.)

Chief Clerk

31. Judgment of his Honour,  
Mr. Justice Rogers

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW  
DIVISION

No. 16159 of 1980

DARRELL BRUCE  
ARNETT

Plaintiff/  
Respondent

PHILLIP WILLIAM  
CARNEY

Defendant/  
Appellant

ORDER

The Court Orders:

1. That leave to appeal to Her Majesty in Council from the judgment of this Court be granted to Phillip William Carney upon the following conditions:-

- (a) That the appellant do within 10  
three months from the date  
of this order give security  
to the satisfaction of the  
Prothonotary in the amount  
of \$1,000 for the due prose-  
cution of the said appeal  
and the payment of such costs 20  
as may become payable to the  
respondent in the event of  
the appellant not obtaining  
an order granting him final  
leave to appeal from the said  
judgment or of the appeal  
being dismissed for non-  
prosecution or of Her Majesty  
in Council ordering the appel-  
lant to pay the respondent's 30  
costs of the said appeal as  
the case may be;

- (b) That the appellant do within  
fourteen days from the date

Order granting Conditional  
32. Leave to Appeal

Order granting Conditional  
Leave to Appeal

of this order deposit with the Prothonotary the sum of \$50 as security for and towards the costs of the preparation of the transcript record for the purposes of the said appeal;

- (c) That the appellant do within three months from the date of this order take out and proceed upon all such appointments and take all such other steps as may be necessary for the purpose of settling the index to the said transcript record and enabling the Prothonotary to certify that the said index has been settled and that the conditions hereinbefore referred to have been duly performed;
- (d) That the appellant do obtain a final order of this Court granting him leave to appeal as aforesaid.

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2. That the costs of all parties of this application and of the preparation of the said transcript record and of all other proceedings hereunder and of the said final order do follow the decision of Her Majesty's Privy Council with respect to the costs of the said appeal or to abide the result of the said appeal in case the same shall stand or be dismissed for non-prosecution or be deemed so to be subject, however, to any orders that may be made by this Court up to and including the

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Order granting Conditional  
Leave to Appeal

said final order or under any of the rules next hereinafter mentioned, that is to say Rules 16, 17, 20 and 21 of the Rules of the second day of April, 1909 regulating appeals from this Court to Her Majesty in Council.

3. That the costs incurred in New South Wales payable under the terms of this order or under any order of Her Majesty's Privy Council by any party to this appeal be taxed and paid to the party to whom the same shall be payable. 10
4. That so much of the said costs as become payable by the appellant under this order or any subsequent order of the Court or any order made by Her Majesty in Council in relation to the said appeal may be paid out of any monies paid into Court as such security as aforesaid so far as the same shall extend and that after such payment out (if any) the balance (if any) of the said monies be paid out of Court to the appellant. 20
5. That each party be at liberty to restore this matter to the list upon giving two days' notice thereof to the other for the purpose of obtaining any necessary rectification of this order.

Ordered 6th May 1983 and entered 1983

(SGD.) K. QUINN (L.S.)  
Deputy Prothonotary

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW  
DIVISION

No. 16157 of 1980  
16158 of 1980  
16159 of 1980  
(L.S.)

DARRELL BRUCE ARNETT

Plaintiff/Respondent

PHILLIP WILLIAM  
CARNEY

Defendant/Appellant

ORDER

THE COURT ORDERS that -

Final leave be granted to the  
Appellant to appeal to Her Majesty  
in Council from the Judgment of  
the Court delivered by Rogers J.  
on 31 March 1983.

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Ordered 19 August 1983, and  
entered 8.2.1984.

{Judge}

By the Court

(Sgd:) W. FARLOW (L.S.)

Chief Clerk

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW DIVISION

No. 16157 of 1980  
No. 16158 of 1980  
No. 16159 of 1980

JOHN HERBERT  
Plaintiff/  
Respondent

PHILLIP WILLIAM  
CARNEY  
Defendant/Appellant

KARLO JEHNIC  
Plaintiff/  
Respondent

PHILLIP WILLIAM  
CARNEY  
Defendant/Appellant

DARRELL BRUCE  
ARNETT  
Plaintiff/  
Respondent

PHILLIP WILLIAM  
CARNEY  
Defendant/Appellant

AFFIDAVIT

Deponent: Leonie  
Estelle Farrant

Sworn:


On 15 March 1984 I, LEONIE ESTELLE  
FARRANT of 111 Elizabeth Street,  
Sydney in the State of New South  
Wales, Solicitor, say on oath:-

1. I am a Solicitor in the  
employ of Messrs. Kennedy & Kennedy, 10  
Solicitors for the Defendant/  
Appellant.

2. I have read the transcript  
Records prepared in the appeals in  
these matters and have compared  
them with the documents in the pro- 20  
ceedings in the Supreme Court of  
New South Wales of which they pur-  
port to be copies and I say that  
the transcript Records are correct-  
and true copies of those documents.

Sworn at Sydney

Before me: Leonie E. Farrant

  
.....  
Solicitor, Sydney.

CERTIFICATE OF THE DEPUTY PROTHONOTARY,  
COMMON LAW DIVISION OF THE SUPREME COURT  
OF NEW SOUTH WALES

VERIFYING THE TRANSCRIPT RECORD OF PROCEEDINGS

I, GEOFFREY ELDON MANSFIELD LAZAR, Deputy Prothonotary,  
Common Law Division of the Supreme Court of New South  
Wales

DO HEREBY CERTIFY as follows:-

That this transcript record contains a true copy of all  
such Orders Judgments and Documents as have relation to 10  
the matter of this Appeal and a copy of the reasons for  
the respective judgments pronounced in the course of the  
proceedings out of which the Appeal arose.

That the Respondent herein has received notice of the  
Order granting the Appellant Final Leave to Appeal to  
Her Majesty in Council AND has also received notice of  
the despatch of this transcript record to the Registrar  
of the Privy Council.

DATED: At Sydney in the State of New South Wales this  
15th day of March, One thousand nine hundred and eighty- 20  
four

G. Lazar (L.S.)  
.....

G. Lazar,  
Deputy Prothonotary,  
Common Law Division,  
Supreme Court of  
New South Wales.

THIS DEED made the 21st day of March, One thousand nine hundred and eighty between DARRELL BRUCE ARNETT of 5 Oatley Avenue, Padstow Heights in the State of New South Wales, Manager (hereinafter called "the Vendor") of the first part and ILERAIN PTY. LIMITED a company duly incorporated in the State of New South Wales and having its registered office C/- Charles M. Harvey & Co., 3rd Floor, 163 Clarence Street, Sydney in the said State (hereinafter called "the Purchaser") of the second part

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WHEREAS

(a) The Vendor is the owner of Share Certificate No. 6 in respect of 5 shares in company known as AIRFOIL REGISTERS PTY. LIMITED being a Company duly incorporated in the State of New South Wales and having its registered office at 131-133 Newbridge Road, Moorebank in the said State (hereinafter called the "the Company") (such shares being numbered 107 - 111 inclusive).

(b) The Vendor has agreed to sell the said shares to the Purchaser for the sum of One hundred and six thousand five hundred dollars (\$106,500.00)

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NOW THIS DEED WITNESSETH AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

1. The Purchaser shall pay to the Vendor the sum of One hundred and six thousand five hundred dollars (\$106,500.00) such amount to be made by cash or bank cheque as follows:-

- a) As to the sum of \$41,000.00 such sum to be  
Exhibit "A1" - Agreement  
38. for Sale of Shares, 21.3.80



Exhibit "A1" - Agreement  
for Sale of Shares, 21.3.80

paid on 24th March, 1980.

b) As to the sum of \$28,000.00 such sum to be paid on 31st July, 1980.

c) As to the sum of \$37,500.00 such sum to be paid on 15th August, 1980.

P.W. Carney  
W.S. Morton

D.B. Arnett  
D.K. Simpson

-2-

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2. Upon receipt of the payment of the said \$41,000.00 the Vendor shall execute a Transfer of the said shares in favour of the Purchaser in appropriate form and shall hand such Transfer to the Purchaser.

3. Should any payment due by the Purchaser to the Vendor under Clause (1) hereunder be in arrears exceeding fourteen (14) days from the due date then the Vendor shall be at liberty to immediately commence proceedings to recover the amount due as a liquidated sum.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and in the year first hereinbefore mentioned:

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SIGNED SEALED AND DELIVERED )  
by the said DARRELL BRUCE ARNETT )  
in the presence of: )

D.B. Arnett

D.K. Simpson Solicitor

THE COMMON SEAL of ILERAIN PTY. )  
LIMITED was hereunto affixed by )  
authority of the Board of )  
Directors in the presence of: )

(L.S.)

P.W. Carney  
.....  
Director

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W.S. Morton  
.....  
Secretary



**MORTGAGE**

REAL PROPERTY ACT, 1900  
(To be lodged in duplicate)

(See Instructions for Completion Issued Separately)

OFFICE USE ONLY	
M	of
\$	

DESCRIPTION OF LAND Note (a)	Torrens Title Reference	If Part Only, Delete Whole and Give Details	Location
	Certificate of Title Volume 4838 Folio 22	WHOLE	Moorebank
MORTGAGOR Note (b)	NEWBRIDGE INDUSTRIES PTY. LIMITED a company duly incorporated in the State of New South Wales and having its registered office at 131-133 Newbridge Road, Moorebank.		OFFICE USE ONLY N

(the abovenamed MORTGAGOR) hereby acknowledges receipt of the principal sum of \$106,500.00

covenants with the undermentioned Mortgagee that the provisions set forth in the Schedule hereto shall be deemed to be incorporated herein, and, for the purpose of securing to the Mortgagee the payment of the principal sum and interest thereon, mortgages to the MORTGAGEE,

MORTGAGEE Note (b)	DARRELL BRUCE ARNETT of 5 Oatley Avenue, Padstow Heights, Manager	OFFICE USE ONLY
TENANCY Note (c)	as joint tenants/tenants in common	

PRIOR ENCUMBRANCES Note (d) all the Mortgagor's estate and interest in the land above described (which land is referred to in the Memorandum hereinafter mentioned and in the Schedule hereto as the mortgaged land) subject to the following PRIOR ENCUMBRANCES 1. Mortgage N725548  
2. Mortgage P799030 3.

DATE OF MORTGAGE 21st March, 1980

We hereby certify this dealing to be correct for the purposes of the Real Property Act, 1900.

Signed in my presence by the mortgagor who is personally known to me  
THE COMMON SEAL OF NEWBRIDGE INDUSTRIES PTY. LIMITED was hereunto affixed by authority of the Board of Directors in the presence of:

EXECUTION Note (e)  
Signature of Witness  
Name of Witness (BLOCK LETTERS)  
Address and occupation of Witness  
Secretary



Signature of Mortgagee  
Director

Signed in my presence by the mortgagee who is personally known to me

Note (e)  
Signature of Witness  
Name of Witness (BLOCK LETTERS)  
Address and occupation of Witness

Signature of Mortgagee

TO BE COMPLETED BY LODGING PARTY Notes (f) and (g)	LODGED BY		LOCATION OF DOCUMENTS	
	CT	OTHER	Herewith.	
			In R.G.O. with	
			Produced by	
OFFICE USE ONLY	Delivery Box Number	Extra Fee	Checked by	REGISTERED - -19
				Registrar General

RP 25 SCHEDULE HEREINBEFORE REFERRED TO  
1978

FOR THE CONSIDERATION AFORESAID the Mortgagor hereby

(a) Irrevocably appoints the mortgagee the attorney of the mortgagor immediately on or at any time after any breach or default by the mortgagor to exercise in the name of the mortgagor all rights, powers and remedies of the mortgagee expressed or implied herein and to receive any moneys payable to the mortgagor in respect of the mortgaged land whether in respect of the insurance compensation or otherwise and to do all things required to be done by the mortgagor and to execute all documents and to do all things necessary in regard to such matters.

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(b) covenants with the mortgagee as follows:

Firstly - The mortgagor will pay to the mortgagee the principal sum, or so much thereof as shall remain unpaid, on the as to the sum of day of \$41,000.00 on 24th March, 1980 as to the sum of \$28,000.00 on 31st July, 1980 as to the sum of \$37,500.00 on 15th August, 1980.

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~~Secondly---The mortgagor will pay interest on the principal sum or on so much thereof as for the time being shall remain unpaid, and upon any judgment or order in which this or the preceding covenant may become merged, at the rate of~~

~~( ) per centum per annum as follows, namely - By equal payments on the days of the months of in each and every year until the principal sum shall be fully paid and satisfied, the first of such payments computed from the day of 19 , to be made on the day of next: Provided always, and it is hereby agreed and declared, that if the mortgagor shall on every day on which interest is hereinbefore made payable under this security, or within fourteen days after each of such days respectively, pay to the mortgagee interest on the principal sum or on so much thereof as shall for the time being remain unpaid at the rate of~~

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~~( ) per centum per annum, and shall also duly observe and perform all and every the covenants on the mortgagor's part herein contained or implied then the mortgagee shall accept interest on the said principal sum or on so much thereof as shall for the time being remain unpaid at the rate of~~

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~~( ) per centum per annum in lieu of ( ) per centum per annum for every for which such interest shall be paid to the mortgagee~~

~~within such fourteen days as aforesaid,-----~~

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Exhibit 1(5) - Memorandum  
of Mortgage, 21.3.1980

Thirdly - The mortgagor will observe the provisions set forth in the Memorandum filed in the Registrar General's Office as Number Q860000, Note (h) which provisions are deemed to be incorporated herein. DELETION OF COVENANTS

~~Fourthly---It-is-hereby-agreed-and-declared~~ that notwithstanding anything hereinbefore contained the mortgagor shall have the right to repay the principal sum at any time upon payment of interest to the end of the then current month-together-with-one-month's-penalty-interest. ADDITIONAL COVENANTS Note (i)

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Fifthly - That the mortgagor will not without the consent in writing of the mortgagee first had and obtained further mortgage charge or otherwise encumber the mortgaged land provided further and it is hereby agreed and declared that should the mortgagor during the continuance of this security mortgage charge or otherwise encumber the said land or agree or attempt to mortgage charge or otherwise encumber the same without the written consent of the mortgagee first had and obtained then the principal sum together with interest at the rate aforesaid shall at the option of the mortgagee become due and payable to and recoverable by the mortgagee immediately. 20

~~Sixthly---It-is-hereby-further-acknowledged-that~~ the mortgagor will pay the stamp duty and legal fees of-the-mortgagee-in-connection-with-this-mortgage.-----

X  
X  
*W. S. Norton*

OFFICE USE ONLY					
DIRECTION: PROP		FIRST SCHEDULE DIRECTIONS			
No. OF NAMES:					
(A) POLIO IDENTIFIER	(B) No.	(C) SHARE	(D) J	(E)	NAME AND DESCRIPTION
SECOND SCHEDULE & OTHER DIRECTIONS					
(F) POLIO IDENTIFIER OR ORDR. DEALING & POLIO IDENTIFIER	(G) DIRECTION	(H) MORTGAGE TYPE	(I) DEALING NUMBER	(J)	DETAILS

SALES & 11 78 D. WEST, GOVERNMENT PRINTER

REGISTRAR GENERAL  
NEW SOUTH WALES

80 MAR 26 P1 43

R758527

CAVEAT FORBIDDING RECORDING  
OF DEALING

SECTION 72, REAL PROPERTY ACT, 1900  
(See instructions for Completion on back of form)

\*22 Milperra Rd, Revesby 2212

X		A	1 of 1
		\$21	
LAND which is to be affected by the caveat			
Torrens Title Reference	If Part Only, Delete Whole and Give Details	Location	
Certificate of Title Volume 4838 Folio 22	WHOLE	Moorebank	

10

LEASE, MORTGAGE, OR CHARGE  
which is to be affected by the caveat

Type of Dealing	Registered Number	Torrens Title Reference
NEWBRIDGE INDUSTRIES PTY. LIMITED		OFFICE USE ONLY N
*		

as the REGISTERED PROPRIETOR of the land above described.  
~~abovementioned~~  
~~registered-dealing.~~  
The CAVEATOR

20

DARRELL BRUCE ARNETT of 5 Oatley Avenue, Padstow Heights. Sales Manager	OFFICE USE ONLY
--	-----------------

claiming estate or interest pursuant to Memorandum of  
Mortgage dated 21st March, 1980

forbids the recording in the Register of any dealing  
affecting the land above described  
~~abovementioned-registered-dealing~~ until  
this caveat is withdrawn, or is removed by order of  
the Supreme Court or until after the lapse of fourteen  
days from the date of service of notice of such intend-  
ed recording at the following address:

30

C/- Peet, Simpson & Co.  
123 Forest Road,  
Hurstville

DATE OF CAVEAT 25th March, 1980

I hereby certify this caveat to be correct for the  
purposes of the Real Property Act, 1900.

Signed in my presence by the caveator who is personally  
known to me

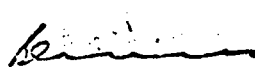
40

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness (BLOCK LETTERS)

\_\_\_\_\_  
Address and occupation of Witness

D.K. Simpson  
\_\_\_\_\_  
Solicitor for  
Signature of Caveator

LODGED BY	PEET, SIMPSON & CO. Solicitors 123-125 Forest Road HURSTVILLE 2220 579 4466 D.X. 11111 KOGARAH	DOCUMENTS LODGED
Delivery Box Number 852T		
Extra Fee	Checked by  K AD AD AD	REGISTERED 15-4-1980    (L.S.) Registrar General

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AD      c/s & N/S  
RULE UP ALL BLANKS

INSTRUCTIONS FOR COMPLETION

Typewriting and handwriting shall be clear, legible and in permanent black non-copying ink.

Alterations are not to be made by erasure; the words rejected are to be ruled through and initialled by the caveator.

If the space provided is insufficient, additional sheets of the same size and quality of paper and having the same margins as this form should be used. Each sheet identified as an annexure and signed by the caveator and the attesting witness.

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Rule up all banks.

The following instructions relate to the side notes on the form.

(a) Description of land. (If the caveat is only in respect of a registered dealing, rule through this panel.)

(i) TORRENS TITLE REFERENCE. - Insert the current Folio identifier or Volume and Folio of the Certificate of Title/Crown Grant for the land to be affected by the caveat, e.g. Fol. 126.

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(ii) PART/WHOLE.- If part only of the land in the Folio of the Register is to be affected by the caveat, delete the word "WHOLE" and insert the lot and plan number; &c.

(iii) LOCATION.- Insert the locality shown on the Certificate of Title/Crown Grant, e.g., at Chullora. If the locality is not shown, insert the Parish and County, e.g.

30

(b) Registered dealing. (If caveat is only in respect of a folio of the Register, rule through this panel.)  
Show the registered number of the lease, mortgage, or charge and the title reference affected thereby, e.g., Lease -Q123456 - Vol. 3456 Fol. 124.

(c) Show the full name and address of the registered proprietor of the estate or interest affected by the caveat.

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(d) Strike out "land above described" or "abovementioned dealing", whichever does not apply.

- (e) Show the full name, address, and occupation or description of the caveator.
- (f) State the nature and quantum of the estate or interest claimed and the facts on which the claim is founded. As for the need for precision in stating the \_\_\_\_\_ of the estate or interest claimed, see in re Jones 35 S.R., 560.
- (g) A caveator should not forbid dealings which he has no right to forbid. If it is intended to forbid recording of dealings by a specified person or to \_\_\_\_\_ certain specific dealings, insert the words "by (name of person)" or other suitable qualification. 10
- (h) State an address at which notices may be served. A post office box number is not acceptable.
- (i) Execution.

GENERALLY

- (i) Should there be insufficient space for the execution of this dealing, use an annexure sheet. 20
- (ii) The certificate of correctness under the Real Property Act, 1900 must be signed by the caveator in the presence of an adult witness, not being a party who is personally known.

The solicitor for the caveator may sign the certificate on behalf of the caveator, the solicitor's name (not that of his firm) to be typewritten or printed 30

Any person falsely or negligently certifying is liable to the penalties provided by section 117 of the Real Property Act, 1900.

ATTORNEY

- (iii) If the caveat is executed by an attorney pursuant to a registered power of attorney, the form of attestation must set out the full name of the attorney who must indicate the source of his authority, e.g., "AB by his attorney (or receiver or delegate, as the case may be) XY pursuant to power of attorney No. \_\_\_\_\_, and I declare that I have no notice of the revocation of the said power of attorney". 40



AUTHORITY

- (iv) If the caveat is executed pursuant to an authority (other than specified in (iii)), the form of execution must indicate the statutory, judicial or other caveat has been executed.

CORPORATION

- (v) If the caveat is executed by a corporation under seal, the form of execution should include a statement that the seal has been properly affixed, e.g., in of Association of the corporation. Each person attesting the affixing of the seal must state his position (e.g., director, secretary) in the corporation. 10
- (j) Insert the name, postal address, Document Exchange reference, telephone number and delivery box number of the lodging party. 20
- (k) If any document is lodged with this caveat, record in DOCUMENTS LODGED panel.

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

Pursuant to directions given by Mr.

COMMON LAW DIVISION

Justice Rogers on 26 May, 1982, the

COMMERCIAL LIST

plaintiff is required to answer the

16159 of 1980

following interrogatories and to

verify his answers.

DARRELL BRUCE ARNETT

INTERROGATORIES

Plaintiff

2. At all times between 31

PHILLIP WILLIAM  
CARNEY

January, 1979 and 24 March, 1980,

10

was not -

Defendant

(a) The plaintiff;

(b) Karlo Jehnic;

NOTICE TO ANSWER  
INTERROGATORIES

(c) John Edward Herbert;

(d) The defendant;

a Director of Newbridge Industries  
Pty. Limited?

3. At all times between 31

20

January, 1979 and 24 March, 1980,

was not -

2.

(a) The plaintiff;

(b) Karlo Jehnic;

(c) John Edward Herbert;

(d) The defendant;

a Director of Airfoil Registers  
Pty. Limited?

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW DIVISION

COMMERCIAL LIST

No. 16159 of 1980

DARRELL BRUCE  
ARNETT

Plaintiff

PHILLIP WILLIAM  
CARNEY

Defendant

VERIFIED STATEMENT  
IN ANSWER TO  
INTERROGATORIES

and

AFFIDAVIT VERIFYING

Deponent: Darrell  
Bruce Arnett  
Sworn: 7.9.1982

The plaintiff DARRELL BRUCE ARNETT

answers the defendant's Interrogatories specified in Notice filed on 21st July, 1982 as follows:-

2. Yes, as to each of the persons named.

3. Yes, as to each of the persons named.

10

PH ✓