

FEDERAL COURT OF AUSTRALIA

Lifetime Investments Ltd v Commercial (Worldwide) Financial Services Pty Ltd
[2005] FCA 226

INTERLOCUTORY RELIEF – *ex parte* application – mareva orders – principles applicable – sufficiency of evidence as to risk of dissipation of assets – delay by applicants – inability to locate dissipated funds

INTERLOCUTORY RELIEF – *ex parte* application – anton piller orders – principles applicable – *prima facie* case of misappropriation of monies – real possibility of evidence being destroyed – undertakings as to damages

FEDERAL COURT – cause of action – conversion of monies – constructive trustees – section 52 *Trade Practices Act 1974* (Cth) – jurisdiction – lack of federal element

STATUTES

Trade Practices Act 1974 (Cth), s 52

CASES

A v C [1981] QB 956 foll

Anton Piller KG v Manufacturing Processes Ltd [1976] 1 All ER 779 appl

Bankers Trust Co v Shapira and Ors [1980] 1 WLR 1274 foll

Cardile v LED Builders Pty Ltd (1999) 198 CLR 380 app

Jackson v Sterling Industries Ltd (1987) 162 CLR 612 app

Patterson v BTR Engineering (Australia) Ltd (1989) 18 NSWLR 319 cons

Victoria University of Technology v Wilson [2003] VSC 299 foll

OTHER AUTHORITIES

J Mowbray et al., *Lewin on Trusts*, 17th edn, Sweet & Maxwell, London, 2000

**LIFETIME INVESTMENTS LTD (A St Vincent and the Grenadines Company No 5479 IBC 2000) v COMMERCIAL (WORLDWIDE) FINANCIAL SERVICES PTY LTD AND WILLIAM DAVID WALLADER
NO QUD 60 OF 2005**

**KIEFEL J
BRISBANE
10 MARCH 2005**

IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY

QUD 60 OF 2005

BETWEEN: LIFETIME INVESTMENTS LTD
(A St Vincent and the Grenadines Company No 5479 IBC 2000)
APPLICANT

AND: COMMERCIAL (WORLDWIDE) FINANCIAL SERVICES
PTY LTD (ACN 053 354 706)
FIRST RESPONDENT

WILLIAM DAVID WALLADER
SECOND RESPONDENT

JUDGE: KIEFEL J

DATE OF ORDER: 10 MARCH 2005

WHERE MADE: BRISBANE

THE COURT ORDERS THAT:

Upon the Applicant (and its Agent) by its Counsel undertaking;

A. To:

- (a) submit to such order (if any) as the Court may consider to be just for the payment of compensation, to be assessed by the court or as it may direct, to any person, whether or not a party, adversely affected by the operation of this Order or any continuation with or without variation thereof; and
- (b) to pay the compensation referred to in (a) to the person there referred to.

B. To serve forthwith upon the execution of this Order on the Respondents:

- (a) a copy of the application and motion filed herein 7 March 2005;
- (b) a sealed copy of this Order;
- (c) a copy of the affidavits filed herein of Joseph Severin (sworn 1 March 2005; filed 7 March 2005), Ece Mustafa-ey (sworn 4 March 2005; filed 7 March 2005) , Lisa Busch (sworn 2 March 2005; filed 7 March 2005), Lisa Busch (sworn 4 March 2005; filed 7 March 2005), Bruce James Alexander Virgo (sworn 4 March 2005; filed 7 March 2005), Heather Ruth Watson (sworn 4 March 2005; filed 7 March 2005), the undertaking by the Applicant (dated 25 February 2005 filed 7 March 2005), the

undertaking by Australian Receivables Pty Ltd (dated 2 March 2005 filed 7 March 2005), and the further affidavits of Peter Vincent Mills (sworn 10 March 2005 and filed by leave 10 March 2005) and David John Chatfield Edwards (sworn 10 March 2005 filed by leave 10 March 2005).

- C. That upon the execution of this Order, a Supervising Solicitor (being a member of the firm of Supervising Solicitors referred to in paragraph 5 of this Order) will offer to, and will if requested, explain to the Respondents or their employees, servants, agents or other persons appearing to be in charge of the premises referred to in paragraph 2 of this Order upon whom this Order is served, the nature and effect of this Order and their right to seek and obtain legal advice before complying with this Order provided that such advice be obtained forthwith and in any event within one hour of service of this Order.
- D. To use any documents or information disclosed or obtained as a result of this Order only for the purposes of this proceeding and not to use the documents or information for any other purpose whatsoever without further obtaining the leave of this court.
- E. To procure that an independent firm of solicitors (**'Supervising Solicitors'**) supervise the execution of this Order at the premises referred to in order 2 below.
- F. AND the solicitors for the Applicant by its Counsel (being also their Counsel for this purpose) undertaking
- (i) to deliver to this Court the originals of all documents and property obtained as a result of paragraphs 2 and 3 of this Order within two working days of their removal;
 - (ii) where ownership of any article obtained as a result of this Order is disputed, to deliver up such article to the custody of the solicitors acting on behalf of the Respondents within two working days of receipt of a written undertaking by such solicitors to retain the same in safe custody and to produce the same if required to the court.

THE COURT ORDERS THAT:

ANTON PILLER

1. The following orders are subject to the following restrictions:
 - (a) The Orders must be served by a Supervising Solicitor, and orders 2 and 3 must be carried out in his or her presence and under his or her supervision;
 - (b) At the time the Orders are served on a Respondent or the person in charge of the premises, a Supervising Solicitor will also serve a notice in the form attached;
 - (c) The Orders do not require the person served with the Orders to allow anyone to enter the premises who in the view of a Supervising Solicitor could gain commercially from anything he or she might read or see on the premises if the person served with the Orders objects;
 - (d) No items may be removed from the premises until a list of the items to be removed has been prepared, and a signed copy of the list has been supplied to the person served with the Orders, and he or she has been given a reasonable opportunity to check the list;
 - (e) Before permitting entry to the premises by any person other than the Supervising Solicitors and any accompanying female employee of their firm and two of the Applicant's representatives, the Respondents or any employee of them or any of them, or any other person appearing to be in control of the premises may:
 - (i) seek legal advice, and apply to the court to vary or discharge the Orders, provided he or she does so at once; and
 - (ii) gather together any documents he or she believes may be incriminating or privileged and hand them to a Supervising Solicitor for the Supervising Solicitor to assess whether they are incriminating or privileged as claimed. If the Supervising Solicitor concludes that any of the said documents may be incriminating or privileged documents or if there is any doubt as to their status the Supervising Solicitors shall exclude them from the search and shall retain any documents of doubtful status in their possession pending further order of the court.

While this is being done, entry to the premises by any person may be refused, and permission for the search to begin may be refused, for a short time (not to exceed one hour, unless a Supervising Solicitor agrees to a longer period). If

any of the Respondents or their agents or servants wish to take legal advice and gathers documents as permitted, he or she shall first inform a Supervising Solicitor and shall keep him or her informed and further informed of the steps being taken.

2. Forthwith upon service of these orders the Respondents by themselves or servants, officers, employees, partners or agents or agents permit Peter Mills and/or solicitors employed by the firm Jones King lawyers and not more than two other persons holding Peter Mills' written authority to enter each of the premises occupied by the Respondents whether as owner or under lease or licence secured at 4 Covey Street, Chermiside, West Queensland, at any time between the hours of 10 a.m. and 5 p.m. on 11 March 2005 (or so soon thereafter) to:
 - (a) Search for and inspect copies of all original or copy documents including any computerised original or copy of the classes of documents enumerated in Schedule A hereto; and
 - (b) Remove into the custody of the Applicant's solicitors, Jones King lawyers, all such original or copy documents including any computerised original or copy thereof of the documents or classes of documents or equipment enumerated in Schedule A hereto.
3. The Respondents forthwith upon service of a sealed copy of this Order deliver up to the Applicants all originals and copies of the documents and classes of documents enumerated in Schedule A hereto.
4. Until 4:30 p.m. on the 16 March 2005 or further Order other than in compliance with paragraphs 2 and 3 hereof the Respondents be restrained from disclosing, using, copying or dealing with in any way any original or copy of documents or classes of documents or equipment as are enumerated in Schedule A hereto.
5. The Applicant's conduct any search of the premises pursuant to paragraph 2 above under the supervision of Bruce Alexander James Virgo and Heather Watson of the firm Roberts Nehmer McKee Lawyers ('Supervising Solicitors').
6. Prior to removing any item from the premises referred to in paragraph 2 hereof the solicitor executing the Order shall:
 - (a) Prepare an inventory of items seized and shall give the occupant of the premises the opportunity to check the inventory; and

- (b) Give the occupant a signed copy thereof prior to removing any of the items seized.
7. If an occupant of any of the premises is, or is likely to be, a woman, the Supervising Solicitor shall be a woman or accompanied by a woman.
 8. By 10:45 a.m. on 14 March 2005 the Supervising Solicitors shall make, file and serve on the parties an affidavit setting out his or her report as to the manner in which this Order was executed.
 9. By 10:45 a.m. on 14 March 2005 the solicitor executing the Order shall swear, file and serve on the Respondents a copy of an affidavit specifying and describing each item removed from any person on behalf of the Applicants from the premises referred to in paragraph 2 hereof and deposing to the whereabouts of such thing at the time of swearing of the said affidavit.
 10. In the event that anything or any information apparently derived from any thing of a description specified in paragraphs 2 or 3 hereof is stored on or contained within a computer disk or storage device the Applicants or their nominated agent may remove same and by use of any such equipment take or make a copy of the contents of such computer disks or storage devices via downloading the contents of such computer disks or storage devices and further deliver any equipment seized under this order into the custody of the Court forthwith.
 11. Any documents obtained by Messrs Jones King as a result of the order shall be retained by them in safe custody for the sole purpose of this proceeding until further order.
 12. For the purpose of giving effect to the Order the Respondents and the person or persons at the premises shall to the best of their ability:
 - (a) Cause to be displayed or printed out by computer or computers all documents and materials referred to in paragraph 2 hereof or any portion or part of such materials as are in computer readable form and provide a Supervising Solicitor with the required passwords and log in names to do so;
 - (b) Specify and identify all documents, computers and computer storage devices and media all other things whatsoever in the possession, custody or control of the Respondents or at the premises at the time of the service of the Order which contained, record, identified or otherwise related to or which may be used for the production of documents or other things in printing or writing containing, recording or otherwise relate to any of the documents and materials in paragraph

2 and 3 hereof of the Orders above; and

(c) Open any locked enclosure at the premises secured for the purposes of storing any of the information or documents of the type referred to in Orders 2 and 3 hereof failing which the said enclosure may be unlocked by a locksmith engaged by the Applicants to permit the Order to be carried out in relation to the contents (if any) of such enclosure.

13. Until 4:30 p.m. on 16 March 2005 or further Order, other than in compliance with Orders 2 and 3 hereof, the Respondents are restrained from destroying, parting with possession, power or control of removing from their present location or changing or defacing in any manner whatsoever any original and copy documents, tapes, magnetic tapes, electronic readings, computer programs, computer disks, computer software and any other means of reproduction, access to, recording or incorporation of information referred to and set out in Schedule A hereto.

14. That the Applicant's solicitors, their employees or agents, be authorised to view, copy and download information and records as are listed in Schedule A they may seize or have delivered up to them as may reasonably appear to the Applicant's solicitors to relate to the location, application or use of the Funds or the subject matter of these proceedings,

PROVIDED THAT nothing in this order requires the Respondents to permit inspection or seizure of any document or item concerning which the Respondent claims a privilege against self-incrimination or legal professional privilege. In the event of any such claim against self-incrimination or legal professional privilege such document or item the subject of such claim shall be placed immediately in the custody of the Supervising Solicitors until further order.

15. There be no notification or publication of this Order in this proceeding until after the service of this Order on the Respondents.

16. Except for the purpose of obtaining legal advice the Respondents or any person on their behalf must not directly or indirectly inform anyone of these proceedings or of the contents of this order, or warn anyone that proceedings have been or may be brought against him by the Applicant until 4:30 p.m. on 16 March 2005 or on such further date as may be ordered by the Court.

17. The time for service of this Application is expedited.

18. The further hearing of the application is adjourned to 10:45 a.m. on 16 March 2005

before the Honourable Justice Kiefel.

19. That the Applicant provide security for its undertaking as to damages in the sum of \$20,000, such security to be provided by way of bank guarantee in a form satisfactory to the registrar of this Court.
20. The Applicant's costs of and incidental to this Application and the execution of the within order be reserved.
21. Liberty be reserved to any party to the proceeding or to any person affected by this Order to apply as they may be advised.
22. The costs of this day be reserved.

Schedule A

1. Bank statements, cheque books and stubs, receipts, invoices, share certificates, financial documents and records (including documents and records relating to gaming, wagering or betting accounts) and correspondence relating to financial dealings of the Respondents or real estate transactions of the Respondents.
2. Computers (whether in whole or in parts), Computer disks or diskettes, CD-ROMs, DVD-Roms, central processing units, hard drives, computer programs, bookmarks, passwords, log ins, documents and similar articles which appear to the Applicant's representatives to contain financial information relating to:
 - (a) any of the Respondents;
 - (b) Bainton Investments;
 - (c) John Wilch;
 - (d) Swiss bank accounts or bank account numbers;
 - (e) International bank accounts;
 - (f) International monetary transfers;
 - (g) real estate transactions of either of the Respondents;
 - (h) the NAB account or accounts.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY

QUD 60 OF 2005

BETWEEN: **LIFETIME INVESTMENTS LTD**
 (A St Vincent and the Grenadines Company No 5479 IBC 2000)
 APPLICANT

AND: **COMMERCIAL (WORLDWIDE) FINANCIAL SERVICES**
 PTY LTD (ACN 053 354 706)
 FIRST RESPONDENT

WILLIAM DAVID WALLADER
SECOND RESPONDENT

JUDGE: **KIEFEL J**
DATE: **10 MARCH 2005**
PLACE: **BRISBANE**

REASONS FOR JUDGMENT

1 The applicant seeks Mareva orders against the assets of both respondents and Anton Pillor orders. Its application is brought ex parte.

2 The applicant is a company incorporated in St Vincent and the Grenadines in the West Indies. One Joseph Severin is its managing director. In March 2001, a Mr John Wilch, with whom Mr Severin had had some dealings, told him about the second respondent, Mr Wallader, who was a financial advisor and investment professional. To this date, Mr Severin has never met Mr Wallader. He spoke to him on or about 1 March 2001. Mr Wallader described himself as a veteran of banking transactions and a bank debenture dealer. He also told Mr Severin that he had interests in the cattle industry.

3 An investment agreement document was entered into and dated 30 March 2001. The terms of it are sketchy, to say the least, and it is difficult to view it as a truly commercial document. The term of the agreement was 40 weeks in a 12 month period. Pursuant to it, the applicant was to provide US\$2 million which was to be invested by the first respondent, who

was called the 'opportunity provider', in a Private Placement High Yield Investment with the first respondent. There is no indication of what this is, but Mr Severin believed that the investment would be in bank debenture notes. The document also referred to a joint venture agreement between the two companies, although the principal sum was to be repaid to the applicant at the conclusion of the agreement. The first respondent, but not the second respondent, apparently, was to provide a guarantee, which was given on the same day. Profits were to be divided as to the applicant, 82.5 per cent, to Mr Wilch for his company, 12.5 per cent, and to Mr Wallader, 5 per cent. The suggestion was that profits were to be paid weekly.

4 Mr Severin says that he sent the US\$2 million by bank transfer to an account designated by the first respondent at the National Australia Bank in Brisbane. No receipt is produced, although Mr Severin asserts that the records of the bank will verify this. Later communications with the respondents confirms the likelihood that this money was received.

5 Mr Severin says that he heard by the receipt of correspondence passing between Mr Wallader and Mr Wilch in May 2001 that Mr Wallader had been unable to place the monies in an investment pool. As I shall later discuss, it would appear that Mr Wallader was purchasing property about this time.

6 Mr Severin does not appear to have heard anything further and, curiously, appears to have made no inquiry. After the 40 week period passed, he spoke to Mr Wallader in early 2002 about the return of the funds, and assurances were given by Mr Wallader.

7 Between June 2003 and the present time, Mr Wallader told Mr Severin, possibly on two or three occasions, that the funds had been sent to Switzerland where others controlled them. He did not identify these entities or persons. Mr Severin says that the applicant did not bring proceedings because he had been told by Mr Wallader that funds would either be invested soon or returned. In January 2004 he told Mr Wallader that he would commence legal action and he says that this resulted in a threat made to him. He believes that the monies are placed outside the jurisdiction of the court or hidden.

8 The applicant's mercantile agents were instructed in July 2004. On 23 July 2004, the agent principally concerned with this file spoke to Mr Wallader with respect to repayment.

Mr Wallader did not suggest that there was any problem, and spoke of it being returned in a period of 45 to 60 days. In a letter signed by Mr Wallader on 3 August 2004, written application for the return of the monies was required. This letter seems to confirm the receipt of the monies by him. Although not considered to be contractually necessary, the agents arranged for the authority to be signed and forwarded to the first respondent.

9 There followed a series of emails and other communications between Mr Wallader and the mercantile agent. Some of the communications from Mr Wallader are strange, referring to harassment and threatening legal action himself. At each point, the mercantile agents were seeking confirmation of repayment. On 7 October 2004, the agent spoke to Mr Wallader, who said that repayment was set for 17 October 2004. The monies were not, however, forthcoming and further phone calls were unsuccessful.

10 At about this point, the applicant instructed his solicitors. In October 2004, the applicant's solicitors wrote to the solicitors for the respondent and received an offer, whilst repayment of the principal sum was being arranged by the respondents. It is not necessary to detail this offer in respect of which, as the applicant has properly pointed out, there may be an issue concerning its use in evidence.

11 The arrangement for repayment was still under way, apparently, in December 2004. On 19 January 2005, the applicant's solicitors sought from the respondent's solicitors information as to where the fund was located, whether it was invested and whether it was lost. No response was received to this request.

12 The first applicant has no assets, but the second applicant has some property including his residential property, from which he appears to run his business, a unit and some other land or residential property. In addition, he has an interest in a cattle property. The purchase and dealings in this property assume some importance in relation to this matter. There is no evidence of him taking steps in relation to his assets except with respect to the cattle property.

THE MAREVA ORDER

13 It is necessary for an applicant for a Mareva order to show that there is a prima facie cause of action against the respondents and a danger that their assets will be removed out of the jurisdiction or disposed of within jurisdiction, or otherwise dealt with in some fashion,

with the result that there will not be monies available to meet a judgment: *Jackson v Sterling Industries Ltd* (1987) 162 CLR 612 at 623; *Cardile v LED Builders Pty Ltd* (1999) 198 CLR 380 at 405 and 408.

14 The evidence here does not establish that there is a real risk that the second respondent, who is the only respondent who has assets, may further dispose of or deal with his assets. I do not understand Gleeson CJ's comments in *Patterson v BTR Engineering (Australia) Ltd* (1989) 18 NSWLR 319 at 325 to suggest to the contrary. His Honour there referred to cases in which an injunction may be necessary to prevent dissipation of assets even though the risk of dissipation may be assessed as somewhat less probable than not. As Redlich J commented in *Victoria University of Technology v Wilson* [2003] VSC 299 at [36] there must nevertheless be established a sufficient likelihood of risk which in the circumstances of a particular case justifies an asset preservation order.

15 There has been a movement in relation to one of the second respondent's assets, namely the cattle property to which I have referred. It is shown that a family trust purchased that property in May 2001. This is suspiciously close to the receipt of the funds from the applicant. The property then comprised 40 lots but in June 2003 was reduced to five. There has been no other dealing with other assets.

16 I would not be disposed to make a Mareva order against the respondent's assets. There has been a dealing, but that was almost two years ago. There is no current activity. In this respect delay works against the applicant.

17 I should add that one of the orders sought in this connection was that the respondents remit the funds of US\$2 million to an account in Australia. There would seem to me to be a real issue about whether or not these funds are in Switzerland or have been, in large parts, applied to the cattle property. The evidence suggests that the latter is likely. In any event, the applicant properly concedes that such an order is unlikely to be made without hearing from the respondents. It is too close to a final order. Even if I were satisfied that the funds were overseas it is not really known where they are. It is conjecture that they are in Switzerland. As a result, the order would be too vague to permit supervision and enforcement. What is needed is not only to hear from the respondents but for the applicant to ascertain from them where the funds are.

18 The real focus is, therefore, on the Anton Piller order. I have not, in connexion with the issue of the Mareva order, dealt with the question of whether an order would, in any event, go against the second respondent. With respect to most of the causes of action, it would seem to me that they are not available against him. This may not, however, be the case in relation to the claim that he has constituted himself a trustee or fiduciary.

THE ANTON PILLER ORDER

19 This type of order requires an applicant to satisfy four essential pre-conditions: that there is an extremely strong prima facie case; that the damage which they will suffer will be serious; that there is clear evidence that the respondents have in their possession some damaging documents or other material; and that there is a real possibility that the material might be destroyed before any application inter partes could be brought: *Anton Piller KG v Manufacturing Processes Ltd* [1976] 1 All ER 779 at 784. The purpose of the order is to prevent the destruction of evidence necessary to enable an applicant to establish their case.

20 It may be accepted that the respondents are likely to have some correspondence and documents relating to the funds with the first respondent's bank which received the funds in the first place. Now it is shown that the cattle property may have been purchased with the funds, the prospect that there are documents relating to this transaction and the later sale is quite high.

21 The National Australia Bank would have some documents which ought to show where the funds went after their initial deposit, but it could not be suggested that the bank is likely to destroy such documents and their documents therefore can await an application for third party discovery.

22 The respondents have known of the prospect of these proceedings for some time. A product of the applicant's delay is, that it might follow, that if the respondents were ever likely to destroy the documents they have already done so. I accept, however, that that does not mean that an order should not be made or that it is presumed to be futile. Whether one calls it an Anton Piller order or a particular order in the context of trustees for discovery before pleading, it seems clear enough that the Court has power to require the production of documents where an applicant is attempting to trace monies which had been misappropriated: see *Bankers Trust Co v Shapira and Ors* [1980] 1 WLR 1274 and *A v C* [1981] QB 956.

23 This is a prima facie strong case of misappropriation. An Anton Piller order seems to me to be appropriate. The respondents are not likely to co-operate with respect to early discovery and there is a real prospect that documents and other information will be destroyed. The applicant has a real interest in knowing where the funds have been placed.

CAUSE OF ACTION

24 I have not to this point discussed the question of the strength of the applicant's true cause of action nor the jurisdiction of this Court. The cause of action which would enable the relief sought by way of discovery to be granted would seem to me to be that based upon the respondents being trustees or fiduciaries. Just how the respondents have constituted themselves may depend upon what they have done with the money. There is a reasonably strong indication that they have converted the money into property and if that were the case they may be constructive trustees.

25 In any event, at this point it may be said that the first respondent was given the funds to invest and to keep separate from its own funds because it was to repay those funds in specie and in full. In those circumstances it is strongly arguable that it constituted itself a trustee: J Mowbray et al., *Lewin on Trusts*, 17th edn, Sweet & Maxwell, London, 2000, pp 1-15. The second respondent might then be seen as procuring a breach of trust. That cause of action, of course, has no federal element. The only cause of action and the only federal element in the proceedings is a reference to a contravention of s 52 *Trade Practices Act 1974* (Cth).

26 Mr Severin does not, in his affidavit, identify the representation relied upon. In argument before me it was said that reliance was placed upon the first respondent's description of himself as experienced in or a veteran in investment matters. I have serious doubts that this is, in truth, a s 52 case, but whether this is so will be more apparent when the statement of claim is pleaded. I leave that matter for the consideration of the docket judge but I expect the applicant and its advisers to give careful consideration to whether the matter ought to remain in this Court

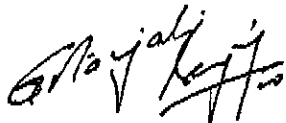
UNDERTAKINGS

27 Undertakings are offered by the applicant through Mr Severin, who resides in a

foreign jurisdiction, and the company which is its mercantile agent. There may be means by which undertakings can be enforced against the applicant. For reasons of practicality and convenience I consider that if steps are to be taken under an Anton Piller order, a bank guarantee is appropriate to permit ready access to compensatory funds. It is difficult to assess what damage, if any, might be caused by the execution of an Anton Piller order, in particular, in relation to the conduct of the first respondent's business at the premises in question. In these circumstances, however, I propose to require, in addition to the undertakings proposed, that a bank guarantee be lodged with this Court in terms satisfactory to the Registrar in the sum of \$20 000.

28 I will discuss with Counsel the terms of the order to be made.

I certify that the preceding twenty-eight (28) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Kiefel.

Associate: 
Dated: 10 March 2005

Counsel for the Applicant: Mr J Catlin
Solicitor for the Applicant: Jones King Lawyers
Solicitor for the Respondent: No Appearance
Date of Hearing: 10 March 2005
Date of Judgment: 10 March 2005